Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

RESPONDING MOTION RECORD OF THE RECEIVER,
FTI CONSULTING CANADA INC.

(for the motion returnable June 11, 2024)

May 17, 2024

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TO: **THE SERVICE LIST**

I N D E X

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THIRD REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

May 17, 2024

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Respondents

A. Introduction

1. This is the Third Report of FTI Consulting Canada Inc. (**"FTI"**) in its capacity as receiver and manager (the **"Receiver"**), without security, of the following property (collectively the **"Property"**) of Trade X Group of Companies Inc. ("**Trade X Parent**"), 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. (**"Techlantic"**) and TX Ops Canada Corporation (**"TX Canada"**, and collectively, the **"Debtors"**):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Parent and TX Canada acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the "TX Canada Collateral" in the Affidavit of Westin Lovy sworn December 4, 2023 (the **"Lovy Affidavit"**).

2. This Third Report is tendered in response to the motion brought by 1309767 Ontario Ltd. (**"130 Ontario"**) and 2601658 Ontario Ltd. (**"260 Ontario"**, and together with 130 Ontario, the **"Van Essen Companies"**) to (among other things) stay all present and future litigation against them in relation to the Debtors (the **"Stay Motion"**).

B. The Receiver's mandate and right to access Techlantic's documents

3. On December 4, 2023, MBL Administrative Agent II LLC (**"MBL"**) brought an application to appoint FTI as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

4. MBL alleged that the Debtors had defaulted on their obligations under a senior secured revolving credit agreement dated September 27, 2021 (the **"Global Facility"**)[1] by, among

[1] The Receiver's First Report incorrectly stated that the Global Facility is dated February 5, 2021. Some of the Debtors entered into a separate facility (the "Domestic Facility") on February 5, 2021. The Global Facility is dated September 27, 2021.

other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the established collection account. MBL is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders. The Lovy Affidavit describing the alleged diversion of funds from the collection accounts is attached hereto (without exhibits) as Appendix "**A**".

5. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence before or after the Receiver was appointed.

6. On December 22, 2023, Justice Cavanagh issued the Receivership Order appointing FTI as the Receiver, without security, of the Property. The Receivership Order is attached hereto as Appendix "**B**".

7. Pursuant to the Receivership Order, the Receiver was, among other things, specifically empowered and authorized to:

   (a) take possession and exercise control over the Property;

   (b) manage, operate and carry on the business of the Debtors, including Techlantic; and,

   (c) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings with respect to the Debtors, including Techlantic.

8. In connection with its business, Techlantic operated an e-mail server (the **"Techlantic Server"**) that Techlantic's employees and consultants used to send e-mails (the **"Techlantic E-mails"**) relating to Techlantic's business.

9. After the Receiver was appointed, it paid the fees required to operate the Techlantic Server and use and access the Techlantic E-mails. It made these payments in order to ensure that Techlantic's remaining employees could operate Techlantic's business and assist with the Receiver's realization efforts, and to preserve the Techlantic Server and the Techlantic E-mails.

10. After the Receivership Order, the Van Essen Companies did not ask for permission to use the Techlantic Servers. The Receiver did not know that they were doing so.

(ii) *Review of Techlantic's Documents*

11. Following the Receiver's appointment on December 22, 2023, the Receiver worked diligently to receive, preserve, protect and otherwise manage the Debtors' Property in accordance with the Receivership Order. In the course of the Receiver's efforts to manage the Debtors' Property, it became clear to the Receiver that the Debtors' books and records were, in some instances, not reliable and in other instances very difficult to understand.

12. By February 2024, the Receiver had identified a number of potential issues that required further investigation. Those issues are set out in the Second Report of the Receiver (the "**Second Report**") at paragraphs 26-34. The Second Report is attached hereto (without appendices) as Appendix "**C**".

13. Given the difficulties with the Debtors' records, and especially in light of MBL's evidence that funds had been improperly diverted by the Debtors, the Receiver determined that it was appropriate to conduct a more detailed review of the Debtors' electronic records, including the Techlantic E-mails and the documents stored on the Techlantic Server.

(iii) *The Receiver engaged FTI Forensic to assist with its Review*

14. On or around February 1, 2024, the Receiver and its counsel, Goodmans LLP (**"Goodmans"**) began to discuss engaging members of FTI's Forensic and Litigation Consulting group (**"FTI Forensic"**) to assist with the Receiver's investigation.

15. FTI Forensic operates a separate business line from the Receiver. Although both businesses are owned by FTI Consulting Canada Inc. (defined above as "**FTI**") they have separate internal reporting structures, internal profit and loss statements and information technology infrastructures. In the ordinary course, employees in FTI's Corporate Finance and Restructuring practice (including those working for the Receiver) cannot access documents stored on FTI Forensic's information storage and document management systems, and vice versa.

16. FTI Forensic prepared a budget estimate and proposal for approval by the Receiver before it began any work. The Receiver, in consultation with MBL, decided to engage FTI Forensic.

(iv) *E-mails from certain Techlantic employees – but not Wouter – added to Relativity Database on February 16, 2024*

17. In keeping with its mandate and the Receivership Order, the Receiver took steps to preserve the Techlantic Server, including the Techlantic E-mails, shortly after its appointment.

18. However, and as described below, the Receiver never reviewed the Techlantic Server or the Techlantic E-mails. All review of the Techlantic Server and Techlantic E-mails was conducted by either Goodmans or FTI Forensic, at the Receiver's request. To the extent

that the Receiver obtained information about documents on the Techlantic Server or Techlantic E-mails, this information was provided to it by either FTI Forensic or Goodmans.

19. The Techlantic Server and the Techlantic E-mails were hosted by a third party provider, MMO Techno. FTI Forensic asked MMO Techno to provide the contents of the mailboxes for the following e-mail addresses (the "**Initial Custodians**"):[2]

(a) eric@techlantic.com

(b) eric.vanessen@tradexport.com

(c) eric@tradexport.com

(d) june@techlantic.com

(e) michelle@techlantic.com

(f) ping@techlantic.com

(g) wouter@techlantic.com

20. The email inboxes from the Initial Custodians listed above were uploaded into a document management software called Relativity. In order to review the Techlantic E-mails, reviewers from either Goodmans or FTI Forensic had to login to the Relativity database (the **"Database"**).

[2] Other tradexport.com mailboxes were collected, but these mailboxes are not directly relevant to this motion.

21. Kamran Hamidi of the Receiver entered the Database only once, to click on one document as a "test" of his credentials.

(v) *The Receiver did not know that the Techlantic E-mails contained Van Essen Companies e-mails, let alone privileged emails*

22. The Van Essen Companies are operated by Wouter Van Essen (**"Wouter"**). Wouter is the father of Eric Van Essen (**"Eric"**), who was an officer and director of Techlantic when the Receiver was appointed.

23. Eric notified the Receiver of his resignation as a director and officer of Techlantic on January 2, 2024. Eric stayed on as a Techlantic employee until April 19, 2024.

24. When the Receiver's investigation began, it did not know (or have any reason to suspect) that the Van Essen Companies had used the Techlantic Server or the Techlantic E-mails for privileged communications. In fact, the Van Essen Companies did not tell the Receiver that they had used the Techlantic Server or the Techlantic E-mails for any business communication.

25. Importantly, the Van Essen Companies had represented to the Receiver that, despite the father/son relationship between Wouter and Eric, they dealt with Techlantic at arm's length. The Receiver assumed that this included operating the Van Essen Companies' business from a separate e-mail server that they paid for and controlled.

26. Because the Receiver did not know or suspect that the Van Essen Companies had any information (let alone privileged information) stored on the Techlantic Server, it did not

take any steps to identify or isolate any potentially privileged information that might belong to the Van Essen Companies.

27. It is not the Receiver's practice (nor, to the Receiver's knowledge, common practice among restructuring professionals) to screen a debtor's electronic records to determine whether privileged or confidential documents held by third parties might be stored there. Screening for potentially privileged documents without knowing anything about the documents (i.e., who sent them, when they were sent or what they a relate to) would be very difficult, and in some cases impossible. In order to find privileged documents, the Receiver would have had to know where to look. Before receiving the Van Essen Companies' e-mail on April 5, 2024, the Receiver had no reason to believe that there were any privileged documents belonging to a third party on the Techlantic Server.

28. If the Receiver had known that there were (or might be) privileged communications on the Techlantic Server, then it would have taken appropriate steps to ensure that those documents were not included in the Database or reviewed by anyone. However, the Receiver was not aware of any reason to implement these procedures when Goodmans and FTI Forensic began reviewing documents.

(vi) *Eric Tried to Delete Wouter's Emails from the Techlantic Server*

29. As described above, although Eric resigned as a director and officer shortly after the Receivership Order, he continued to work as an employee of Techlantic until April 19, 2024.

30. On or around February 7, 2024, without the Receiver's knowledge or permission, Eric instructed MMO Techno to remove certain users from the Techlantic Server, including Wouter. This request would have resulted in Wouter's e-mail account, and all of the data associated with it, being deleted. This e-mail is attached hereto as Appendix "**D**".

31. On or around February 16, 2024, Goodmans and FTI Forensic began to review documents in the Database. Shortly thereafter, Goodmans informed the Receiver that it had discovered through its preliminary review that Wouter had an e-mail account on the Techlantic Server.

32. After discovering this, FTI Forensic tried to collect Wouter's e-mails and add them to the Database. It was at this time that it learned, for the first time, that Eric had asked for Wouter's e-mail to be removed and deleted along with e-mails belonging to a number of Techlantic employees. Upon learning this, the Receiver instructed MMO Techno to disregard Eric's instructions and restore Wouter's email inbox. E-mails between the Receiver and MMO Techno are attached hereto as Appendix "**E**".

33. On February 21, 2024, Eric e-mailed the Receiver to advise that "Wouter suggested taking over some of the infrastructure costs" relating to the Techlantic Server. At no point during this correspondence did Eric indicate that there were privileged documents belonging to the Van Essen Companies on the Techlantic Server.

34. The Receiver wrote to Eric to clarify that the Receiver had to preserve Techlantic's historical records and that nothing should be deleted:

> I just sent you an invite for 1 pm with the agenda attached within the meeting invite. Re: Trade X and Techlantic infrastructure and historical records, we cannot make any changes and **we need to preserve that information for the Receiver's**

> **records so we cannot transfer those costs to any other party unless it relates to a sale of the business.**
>
> I understand there was a request made by you to delete certain user profiles from the Microsoft 365 server so **we need to ensure no changes or deletion of any Techlantic data is being made without the written consent of the Receiver.** [emphasis added]

35. A copy of this email is attached hereto as Exhibit "**F**".

(vii) *Documents Presented to the Receiver*

36. As described above, the Receiver did not conduct any document review. Document review relating to the Receiver's investigation was conducted by Goodmans or FTI Forensic. Specifically, FTI Forensic participated in its own separate review that focused primarily on investigating various financial transactions undertaken by the Debtors.

37. FTI Forensic communicated its findings to the Receiver and Goodmans through periodic presentations (the "**FTI Forensic Presentations**"). FTI Forensic also sent certain documents referenced in its presentations to the Receiver and Goodmans.

38. Many of the Techlantic documents referenced in the FTI Forensic Presentations were accounting documents, invoices and other financial documents relating to Techlantic's business. To the best of the Receiver's knowledge, the documents excerpted in the FTI Forensic Presentations are not documents alleged to be privileged. For greater clarity, none of the excerpted documents contain any correspondence between Wouter and Ms. Beale or Ms. Brinston, nor do they contain documents from within the "legal" folder in Wouter's inbox.

39. On March 28, 2024, FTI Forensic presented certain findings relating to Techlantic's purchase of vehicles from the Van Essen Companies in 2022. FTI Forensic subsequently sent certain supporting documents relating to its analysis. The Receiver was copied on FTI Forensic's e-mail to Goodmans, but did not review any of the supporting documents at any point in time.

40. On May 17, 2024, the Receiver was advised by Goodmans that the documents sent on March 28, 2024 included a potentially privileged e-mail. Upon being advised of this by Goodmans, the Receiver personnel copied on Ms. Patel's e-mail deleted the e-mails from Ms. Patel without reviewing them.

41. In order to facilitate certain information sharing relating to this project, the Receiver granted certain members of FTI Forensic access to a shared drive (the "**FTI Drive**"). FTI Forensic saved documents to the FTI Drive, but the Receiver did not access them.

42. For clarity, the only documents from the Database that have been reviewed by the Receiver are those documents presented to it in the FTI Forensic Presentations or appended to the Receiver's Reports.

C. The Van Essen Companies raise their privilege allegations for the first time on April 5, 2024

43. The Receiver delivered its Supplemental Report to the First Report on April 4, 2024 (the **"First Supplemental Report"**). The First Supplemental Report attached a number of e-mails sent and received by Wouter and Eric.

44. On April 5, 2024, Ms. Beale wrote to assert (for the first time) that the Van Essen Companies used the Techlantic Server for the purposes of "receiving legal advice

settlement-related discussion and litigation advice and strategy, including in relation to the litigation herein."

45. Ms. Beale also asserted that the Receiver had received and reviewed "all e-mails" sent from techlantic.com and many e-mails from techlanticconsulting.com. This is not correct. As noted above, the Receiver did not review any documents – all document review was conducted by either Goodmans or FTI Forensic.

46. Ms. Beale asked for a complete inventory of the Database and a copy of a "Document Collection and Review Protocol" that showed "measures taken to identify and exclude privileged information". The e-mail is attached hereto as Appendix "**G**".

47. As described above, the Receiver did not believe (or have any reason to believe) that any privileged material (other than potentially Techlantic's privileged material, which it was entitled to review) and so it did not implement any procedures for excluding such materials.

D. Conclusion

48. Since the Van Essen Companies initially raised their concerns about privilege, the Receiver has tried to work with the Van Essen Companies to address any legitimate concerns relating to the allegedly privileged documents in the Database. The Receiver does not believe that the Van Essen Companies should benefit from any inadvertent review of privileged documents that may have occurred, particularly given the Van Essen Companies' use of the Techlantic Server without the Receiver's permission, their delay in raising their privilege concerns, and the fact that the Receiver has not reviewed any privileged documents. In the Receiver's view, the Van Essen Companies would receive a significant benefit if their motion is granted by the Court, because substantial potential liabilities

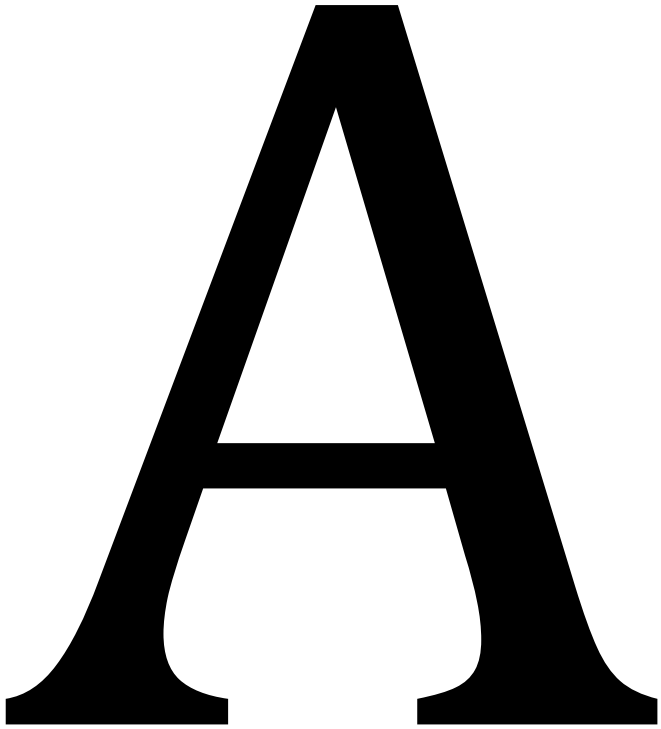
would be effectively eliminated without any hearing on the merits, and without any demonstration that the Van Essen Companies have actually suffered any prejudice. That benefit would come at the expense of Techlantic's stakeholders, and the Receiver does not believe that it is appropriate.

All of which is respectfully submitted,

FTI Consulting Inc., solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradeexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic LTD., and TX OPS Canada Corporation, and not in its personal or corporate capacity.

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director



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Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. and TX OPS CANADA CORPORATION

Respondents

AFFIDAVIT OF WESTIN LOVY
SWORN DECEMBER 4, 2023

I, **Westin Lovy**, of the City of Stamford, in the State of Connecticut, MAKE OATH AND SAY:

1. The Applicant is MBL Administrative Agent II LLC ("**MBL**" or the "**Applicant**"). I am a Managing Director of Post Road Group LP ("**PRG**"), which is the parent company to the Applicant. PRG is an alternative investment advisory firm based in Stamford, Connecticut, that focuses on private credit and private equity investments in digital infrastructure,

telecommunications, media, business services, real estate and specialty finance. Since February 2021, I have been responsible for the management of the credit facilities made available to the Respondents (defined below) and their affiliates, including communications and negotiations with the Borrowers (defined below) and collateral reporting.

2. By virtue of my position as Managing Director, I have personal knowledge of the matters deposed to herein. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and belief and I verily believe it to be true.

A. BACKGROUND AND OVERVIEW

3. I swear this Affidavit in support of an Application by MBL for the appointment of FTI Consulting Canada Inc. ("**FTI**") as a receiver and manager (the "**Receiver**") of substantially all of the assets, undertakings and property of each of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (collectively, the "**Respondents**"), including all proceeds thereof, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 101 of the *Courts of Justice Act* (Ontario).

4. The Respondents are part of a group of companies referred to throughout this Affidavit and defined below as the "**Trade X Group**". The Trade X Group are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada and other overseas markets. Over

the past two years, the Trade X Group has experienced declining revenues due to a decline in used automobile prices, rising expenses and an undisciplined acquisition and sales practice. Despite entering into a loan restructuring transaction with its creditors, the Trade X Group's revenues have continued to decline and those losses are expected to continue indefinitely to the detriment of MBL's security and collateral value.

5. In recent months, the Trade X Group have conducted their operations in a manner that has jeopardized the Collateral, materially breached the terms of their credit agreements with MBL and disregarded the interests of MBL as a senior secured creditor of the Respondents. Specifically, the Trade X Group have improperly diverted over US$7 million in funds payable to MBL, and instead used those funds for their working capital needs. These actions, among others, have given rise to a series of material defaults under the credit facilities that remain uncured and ongoing. In fact, as recently as November 4, 2023, the Trade X Group again, without notice, diverted funds that were payable to MBL and used them to fund payroll obligations instead.

6. The principal objective of these proceedings is to appoint the Receiver with the goal of preserving the collateral that is subject to MBL's security interest (defined in paragraph 41 below as the "**Collateral**") and ensuring an orderly liquidation of such Collateral.

7. As of November 30, 2023, the Respondents are indebted to MBL in the aggregate amount of US$15,256,504.16 (which includes principal and interest) on a secured basis (the "**Indebtedness**"). This amount remains unpaid and interest, fees, costs and expenses continue to accrue on the amounts owing.

8. MBL is the administrative agent under credit facilities made available to certain affiliates of the Respondents (defined and described below as the Borrowers). The Respondents are Canadian affiliates of the Borrowers and have guaranteed, on a secured basis, the obligations of the Borrowers. The Borrowers are in material default of their obligations under the credit facilities and MBL has notified the Borrowers of such Default and has accelerated the indebtedness owing thereunder. Consequently, MBL is in a position to enforce its security against the Respondents.

9. MBL has security on substantially all of the Respondents' property, assets and undertakings, other than one of the Respondents' affiliates, Wholesale Express (defined below). Rather, MBL has a security interest over the shares of Wholesale Express, but not its assets. Highcrest Lending Inc. ("**Highcrest**") is a creditor of Wholesale Express with priority security over all of its shares and assets (later defined as the "**Highcrest Collateral**") and has commenced an application under the *Companies' Creditors Arrangement Act* ("**CCAA**") in relation to the Highcrest Collateral. As such, MBL is not seeking receivership over Wholesale Express or its assets.

10. This Application is especially urgent given events that have occurred in the last several weeks. MBL learned that not only has the Trade X Group continued to improperly and unlawfully divert and misappropriate funds payable to MBL, but that the Trade X Group has quietly been slowing its operations in Ontario. As described in more detail below, MBL appointed a financial advisor to attend the premises of certain of the Respondents. On November 15, 2023, the financial advisor reported that there is no apparent business being operated by the Trade X Group in Canada. Further, on

November 28, 2023, MBL was notified that the Trade X Group defaulted on their lease obligations in respect of their office in Mississauga, Ontario.

11. In the circumstances, MBL has lost faith in the management of the Trade X Group and has serious concerns that the Collateral has been entirely depleted, or at best, is at risk of being further eroded unless the Receiver is appointed. The appointment of a Receiver is necessary to take control over the operations of the Respondents and recover any remaining Collateral for the benefit of MBL.

B. THE PARTIES

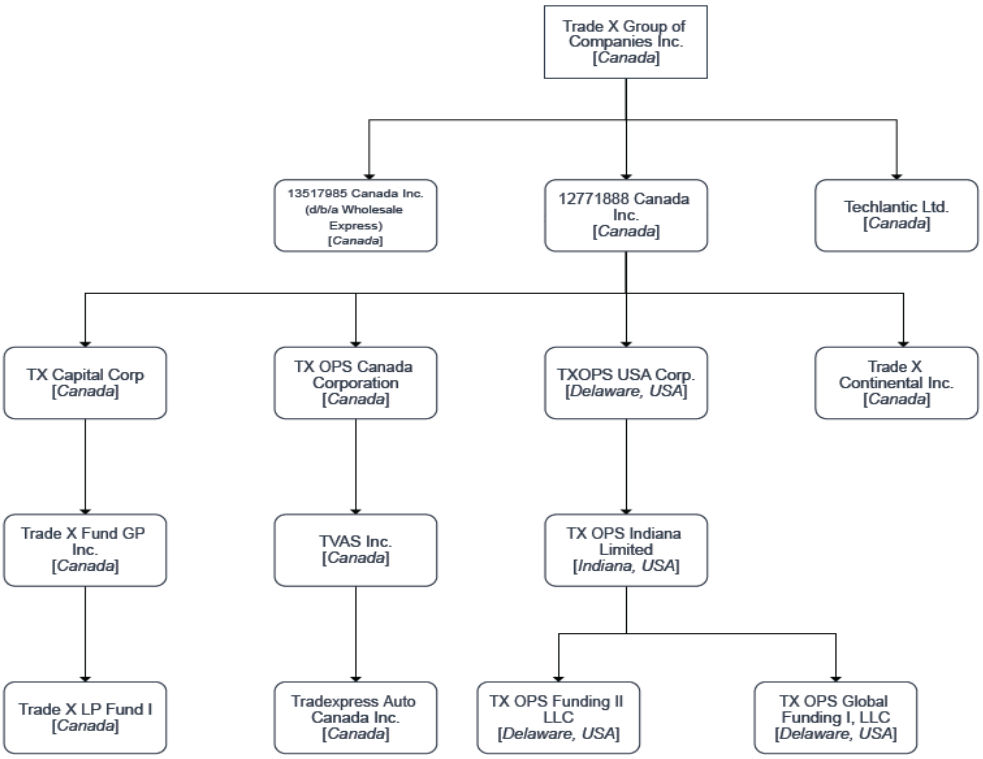
(i) The Applicant

12. MBL is the administrative agent for: (a) Post Road Specialty Lending Fund II LP (f/k/a Man Bridge Lane Specialty Lending Fund II (US) LP), and (b) Post Road Specialty Lending Fund (UMINN) LP (f/k/a Man Bridge Lane Specialty Lending Fund (UMINN) LP), lenders under the Global Facility and the Domestic Facility (each as defined below).The Lenders are each private investment funds managed by PRG. MBL is a Delaware limited liability company and a direct subsidiary of PRG.

(ii) The Respondents and their Business

13. Trade X Group of Companies Inc. ("**Trade X Parent**") is a private corporation formed under the federal laws of Canada. Trade X Parent is a holding company and is the direct and indirect parent company of the other Respondents.

14. A simplified[1] corporate organizational chart showing the ownership structure of Trade X Parent and its direct and indirect interest in the other Respondents is reproduced below:



15. The registered head office and principal place of business of Trade X Parent is located at 7401 Pacific Circle, Mississauga, Ontario, which is a leased premises (the "**Mississauga Location**"). All of the Respondents have their registered head office at the Mississauga Location.

[1] Trade X Parent also holds an indirect interest in TradeX Netherlands B.V., TXOPS USA Corp., TradeX Europe GmbH,, TX OPS Hong Kong Limited, China (Tianjin) Pilot Free Trade Zone Tiansi International Trade Co., Ltd., TX OPS Indiana Limited, TradeXpress Germany GmbH, TXP Tradexport Kenya Limited, TX OPS Mexico Limited, Tradexpress Auto, Inc., TX OPS Funding I, LLC, TX OPS Funding II, LLC (*i.e., Domestic Borrower*), TX OPS Funding III, LLC, TX OPS Global Funding I, LLC (*i.e., Global Borrower*), Tradexpress Auto Nigeria Ltd., TX OPS Japan G.K.

16. The Respondents and their subsidiaries (together with Trade X Parent, the "**Trade X Group**") are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from Canada and other overseas markets. The Trade X Group has allegedly built a fully automated platform to facilitate cross-border vehicle sales transactions. The Trade X Group's operations in Canada are predominantly conducted by three companies**:** (a) TX OPS Canada Corporation ("**TX Canada**"), (b) Techlantic Ltd. ("**Techlantic**"), and (c) 13517985 Canada Inc. ("**Wholesale Express**").

(a) TX Canada

17. TX Canada is a federal corporation. TX Canada operates an automotive trading platform connecting car dealerships located in the United States with sellers in Canada through a secure marketplace offering end to end service that handles procurement, foreign exchange, logistics and duties for vehicle acquisitions between Canada and the United States (the "**Trade X Platform**").

(b) Techlantic

18. Techlantic is a federal corporation that operates out of Oakville, Ontario. As described below, Techlantic is a borrower under the global credit facility made available by the Lenders. Techlantic supports a network of automobile exporters and offers similar services to TX Canada—although Techlantic support global sales and acquisitions of vehicles by car dealerships.

(c) Wholesale Express

19. 13517985 Canada Inc. ("**Wholesale Express**") is a federal corporation that operates out of Saint-Madeleine Quebec. Wholesale Express operates an online dealer-to-dealer auction platform for vehicles, whereby it acquires and sells pre-owned cars to registered dealers. MBL has a security interest in the shares of Wholesale Express by virtue of its security interest in all of the assets of Trade X Parent. However, MBL's interest in Wholesale Express is subordinated to Wholesale Express' senior secured creditor, Highcrest. Wholesale Express is not a Respondent in this Application.

(d) Employees

20. To the best of my knowledge, Trade X Parent and the other Respondents currently employ less than thirty individuals. Furthermore, to the best of my knowledge, the Respondents are not party to any collective agreements in respect of their employees and do not have any union contracts or pension plans in place with its employees.

(e) Assets

21. The Respondents do not own any real property. Rather, the Respondents all operate out of leased facilities located in Ontario. As discussed herein, the Respondents are currently in default of their lease obligations in respect of their facilities located in Ontario.

22. The primary assets of the Respondents are the vehicles they own, the contracts associated with the sale of those vehicles and the accounts receivable associated with vehicle sales. To the best of my knowledge, these accounts receivable are primarily

comprised of vehicles that have been committed for sale but not yet picked up and paid for the by the end buyer.

C. THE CREDIT FACILITIES

(i) The Credit Facilities Owing to the Lenders

23. The outstanding indebtedness owing to MBL arises pursuant to two separate credit agreements under which MBL acts as the administrative agent (collectively, the "**Credit Agreements**"):

(a) **Domestic Facility:** A US$ 30 million credit facility made available pursuant to a senior secured revolving credit agreement dated February 5, 2021[2] between Post Road Specialty Lending Fund II LP and Post Road Specialty Lending Fund (UMINN) LP, as lenders (collectively, the "**Domestic Lenders**" and together with the Global Lenders (defined below), the "**Lenders**") and TX OPS Funding II, LLC, as borrower (the "**Domestic Facility**");

(b) **Global Facility:** A US$ 30 million credit facility made available pursuant to a senior secured revolving credit agreement dated September 27, 2021[3] between Man Bridge Lane Specialty Lending Fund II (US) LP and Man Bridge Lane Specialty Lending Fund (UMINN) LP, as lenders (collectively,

[2] As amended by Amendment No. 1 dated as of June 8, 2021, Amendment No. 2 dated as of September 10, 2021, Amendment No. 3 dated as of December 20, 2021, Amendment No. 4 dated as of July 15, 2022 and as further amended under the Amendment No. 5 and Limited Waiver to dated Senior Secured Revolving Credit Agreement dated June 30, 2023.

[3] As amended by Amendment No. 1 dated as of December 30, 2021, Amendment No. 2 dated as of September 6, 2022 and further amended by the Amendment No. 3 and Limited Waiver to Senior Secured Revolving Credit Agreement dated December 23, 2022.

the "**Global Lenders**") and Techlantic and TX OPS Global Funding I, LLC, as borrowers (the "**Global Facility**" and together with the Domestic Facility, the "**Credit Facilities**"),

Attached to my Affidavit as **Exhibits "A"** and **"B"**, respectively, are the credit agreements forming the Domestic Facility and the Global Facility.

24. The borrower under the Domestic Facility is TX OPS Funding II, LLC (the "**Domestic Borrower**") a Delaware special purpose entity owned by TX OPS Indiana Limited, a U.S. subsidiary of the Respondents ("**TX Indiana**"). The borrowers under the Global Facility are Techlantic and TX OPS Global Funding I, LLC (the "**Global Borrowers**"). TX OPS Global Funding I, LLC is also a Delaware special purpose vehicle that is owned by TX Indiana. For the purposes of this Affidavit, the Domestic Borrower and Global Borrowers are collectively, referred to as the "**Borrowers**" and each, a "**Borrower**".

(ii) Advances under the Credit Facilities

25. The Credit Facilities extend advances to the Borrowers to facilitate the purchase and sale of vehicles by certain members of the Trade X Group for sale between Canada and the United States (in the case of the Domestic Facility) or globally (in the case of the Global Facility) and are based on collateral presented and monitored by a revolving borrowing base. As detailed below, the Borrower and Respondents have materially failed to comply with the terms of the Credit Facilities as they relate to these advances and their intentional and repeated misappropriation of such funds have jeopardized the Collateral and the Lenders' interest therein.

26. Under the Domestic Facility, TX Canada generally procures vehicles in Canada that are ultimately sold to TX Indiana and the Domestic Borrower, for sale to an end buyer in the United States. Advances under the Domestic Facility are used by the Borrower to repay TX Canada for the acquisition of such vehicles. Advances under the Global Facility are used to finance vehicle sales by TX Canada or Techlantic, as applicable, that are ultimately sold to TX Indiana and the Global Borrower, for sale to end buyers in the rest of the world.

27. A more detailed description of steps involved in connection with each Advance (as defined below) under the Credit Facilities is as follows:

(a) **Step 1:** A seller sells a vehicle (the "**Vehicle**") to TX Canada or Techlantic, as applicable (the "**TX Purchaser**"), via the Trade X Platform or through direct purchase agreements, pursuant to an electronic purchase and sale agreement between seller and the TX Purchaser (the "**First Tier Purchase Agreement**"). TX Purchaser funds the purchase price for the Vehicle using its own funds. TX Purchaser also arranges for the export of the Vehicle[4] to the destination of the ultimate buyer[5] of the vehicle (the "**End Buyer**"), including the payment of all taxes and duties on behalf of the End Buyer.

[4] In the case of TX Canada in the Domestic Facility, the Vehicle is generally exported from Canada. In the case of the Global Borrower in the Global Facility, the Vehicle may be exported from any jurisdiction that has been approved by the Global Lenders.

[5] The Credit Agreements require the End Buyer to be a car dealer with a valid dealer license and approved by TX Indiana. In the case of the Global Facility, the End Buyer is a car dealership located in approved jurisdictions outside of Canada and the United States whereas in the case of the Domestic Credit Facility, the End Buyer is a car dealership located in the United States.

(b) **Step 2:** TX Purchaser sells the Vehicle to TX Indiana, along with all of TX Purchaser's rights under the First Tier Purchase Agreement, pursuant to a purchase and sale agreement between TX Purchaser and TX Indiana (the "**Second Tier Purchase Agreement**").

(c) **Step 3**: TX Indiana sells the rights in the Vehicle to a Borrower, along with all of TX Purchaser's rights under the First Tier Purchase Agreement and the Second Tier Purchase Agreement pursuant to a sale agreement between TX Indiana and a Borrower (the "**Third Tier Purchase Agreement**"). TX Indiana also grants the Borrower a security interest in, among other things, the Vehicle acquired from TX Purchaser and its rights under the Second Tier Purchase Agreement.

(d) **Step 4**: After the parties enter into the Third Tier Purchase Agreement, the Borrower delivers an advance request to MBL in order to finance the purchase price for the Vehicle (the "**Advance**"). Among other things, as a condition to the Lenders making the requested Advance, the Vehicle must satisfy the definition of "**Eligible Asset**" in the applicable Credit Agreement, including the requirement that the Borrower acquired the Vehicle pursuant to the Third Tier Purchase Agreement and the Borrower has granted to MBL a valid and perfected first priority security interest in the Vehicle.

(e) **Step 5:** Upon satisfaction of the conditions outlined above in Step 4, the Lenders make the Advance to TX Purchaser on behalf of the Borrower. This is also when the Vehicle becomes a "**Financed Vehicle**" under the Credit

Facilities and forms part of the Collateral that is subject to the Security (defined below) and the Vehicle is added to the borrowing base of the Credit Facilities.

(f) **Step 6**: An End Buyer purchases the Financed Vehicle from TX Indiana through the Trade X Platform pursuant to an electronic purchase and sale agreement between TX Indiana and the End Buyer (the "**Fourth Tier Purchase Agreement**" and together with the First Tier Purchase Agreement, the Second Tier Purchase Agreement and the Third Tier Purchase Agreement, the "**Agreements**"). The End Buyer is required to pay a security deposit to TX Indiana upon the purchase of the Vehicle on the Trade X Platform and a fee for the use of the Trade X Platform. These monies are required to be deposited into a designated bank account that is subject to a deposit account control agreement in favour of MBL (the "**Collection Account**"). At this stage, the Borrower receives the economic interest in the Financed Vehicle and title remains with TX Indiana, the holder of the dealer license.

(g) **Step 7:** The Financed Vehicle is transported to the importing country and arrives at the destination port and cleared through customs. At this time, the End Buyer pays the balance of the purchase price for the Vehicle (minus the security deposit already paid to TX Indiana above in Step 6) to the Borrower (the security deposit and the purchase price and any other amounts payable by the End Buyer, collectively the "**End Buyer Payments**").

For such Vehicle to continue being characterized as an "Eligible Asset" under the applicable Credit Agreement, End Buyer Payments must be paid by the Borrower into the Collection Account no later than (i) in the case of the Domestic Facility, 90 days after the Vehicle officially[6] enters the United States; and (ii) in the case of the Global Facility, 60 days after the Vehicle arrives at the approved country of destination. Failure to deposit such amounts within the foregoing periods would lead to the Vehicle becoming an "Ineligible Asset" under the applicable Credit Facility.

(h) **Step 8**: The Borrower uses the End Buyer Payments held in the Collection Account to repay the Advance made by the Lenders under Step 4.

(i) **Step 9:** Once the Advance is repaid to the Lenders, the Borrower and MBL authorize TX Indiana to release the Vehicle to the End Buyer. TX Indiana retitles the Vehicle to the End Buyer and coordinates delivery.

28. Separately, if any Vehicles held in inventory by TX Canada or Techlantic constitute an "Ineligible Asset" under the applicable Credit Facility, meaning it is held in inventory but not sold to an End Buyer, then Tradexpress Auto Canada Inc. ("**Tradexpress**") an affiliate of TX Canada and a Respondent in this Application, is entitled to remarket and auction such Vehicles. The Credit Agreements also require Tradexpress to deposit receipts from any such Vehicle sales in the Collection Account.

[6] Meaning the Vehicle is placed under the U.S. Customs and Border Protection bond, as evidenced by the filing of a Form 7501 Entry Summary with respect to such Vehicle.

29. As described below under a description of the defaults, the Borrower and Respondents have repeatedly and intentionally failed to comply with the terms of the Credit Facilities as they relate to Advances and the steps outlined above. In particular, they have failed to, among other things, deposit End Buyer Payments into the Collection Account and have instead misappropriated such funds for their working capital purposes.

D. THE SECURITY HELD BY MBL

(i) The Collateral

30. MBL has a first ranking security over substantially all of the assets of the Borrowers and the Respondents pursuant to a series of security agreements, which are detailed below.

31. The Canadian collateral underpinning the Security is predominantly comprised of (a) Vehicles acquired by the TX Purchasers (being TX Canada and Techlantic) and ultimately sold to TX Indiana for sale to End Buyers, (b) the rights of TX Canada and Techlantic under purchase and sale agreements with sellers and TX Indiana, (c) cash, representing payments by the Borrowers by way of Advances for Financed Vehicles, (d) a harmonized sales tax receivable that is generated from the purchase of a Vehicle from TX Canada, Techlantic or Tradexpress (the "**HST Receivable**"); as part of its services, TX Canada, Techlantic or Tradexpress will pay the HST on the Vehicle on behalf of the End Buyer, and recover the HST for its own account, and (e) the equity interests of certain of the Respondents.

(ii) Borrower Security

32. As security for the Indebtedness under the applicable Credit Facilities, Techlantic and the other Borrowers granted MBL a security interest in all of their property on February 5, 2021, in respect of the Domestic Facility (the "**Domestic Security**") and September 27, 2021, in respect of the Global Facility (the "**Global Security**"). The Domestic Security is attached to my Affidavit as **Exhibit "C"**. The Global Security is attached to my Affidavit as **Exhibit "D"**.

(iii) Respondents' Security

33. TX Canada entered into guarantee and security agreements in connection with each of the Domestic Facility and the Global Facility on February 5, 2021 and September 27, 2021, respectively (collectively, the "**TX Canada Security**"). Pursuant to the TX Canada Security, TX Canada guaranteed the obligations of the Borrowers to MBL, for among other things, any loss arising out of any acts of misappropriation of misapplication of funds or proceeds of any Collateral ("**Guaranteed Obligations**"). The agreements forming the TX Canada Security are attached to my Affidavit as **Exhibits "E"** and **"F"**.

34. As security for the Guaranteed Obligations, TX Canada granted a security interest over the (a) HST Receivables, (b) the Financed Vehicles and all rights to payment or proceeds for any such vehicles and related Purchase Agreements, (c) all rights and obligations under the Purchase Agreements to which it is a party, and (d) any Vehicles owned by TX Canada that are not subject to Purchase Agreements (collectively, the "**TX Canada Collateral**").

(iv) The Canadian Guarantors

35. As part of the 2022 Loan Restructuring (described and defined in paragraph 57 below), each of the Respondents, other than TX Canada who was already a guarantor of each of the Credit Facilities (collectively, the "**Canadian Guarantors**"), entered into joinders of the Global Facility and the Domestic Facility which had the had the effect of (a) making each Canadian Guarantor a guarantor of the obligations of the Borrowers under the Credit Facilities and (b) causing each Canadian Guarantor to become party to the Domestic Security and the Global Security, pursuant to which they (i) granted in favour of MBL a security interest in all of their property, and (ii) pledged to MBL any equity directly owned by them in the shares of a member of the Trade X Group.

(v) Collection Accounts

36. The Borrowers, TX Canada, Techlantic and Tradexpress have entered into the following blocked accounts agreements or deposit account control agreements in favour of MBL with respect to the Collection Accounts (collectively, the "**DACAs**"):

(a) deposit account control agreements between the Borrowers and Silicon Valley Bank ("**SVB**") in favour of MBL;

(b) blocked account agreements between Tradexpress, TX Canada, Royal Bank of Canada and MBL dated September 14, 2021; and

(c) a blocked account agreement between Techlantic, MBL and RBC dated April 1, 2022,

Attached to my Affidavit as **Exhibits "G"** through **"K"** are copies of the DACAs.

37. As described in paragraph 29 above, TX Indiana and the Borrowers are required to deposit any amounts received by an End Buyer in respect of a Financed Vehicle into the Collection Account to repay the Advance made by the Lenders. TX Canada, Techlantic and Tradexpress are required to deposit all HST Receivables into the applicable Collection Account.

38. As a result of the Domestic Security, the Global Security, the TX Canada Security and the DACAs (collectively, the "**Security**"), MBL has security over (a) the TX Canada Collateral, (b) substantially all of the assets of the Canadian Guarantors, (c) the shares of the Respondents and Wholesale Express, some of which are perfected by possession, and (d) the Collection Account (collectively, the "**Collateral**").

E. THE PRIORITY OF THE SECURITY AND OTHER CREDITORS

(i) The MBL Security

39. As described below, MBL has first ranking security against all of the assets of the Respondents.

40. Attached to my Affidavit as **Exhibit "L"** are the *Personal Property Security Act* searches conducted against each of the Respondents in Ontario with a file currency date of October 26, 2023 (the "**PPSA Searches**"). PPSA Searches were also conducted in Saskatchewan against TX Canada and Tradexpress because they are extra-provincially registered in those jurisdictions.

41. The PPSA Searches show that MBL registered the Security against the Respondents in Ontario as follows:

(a) **TX Canada:** registrations against all of the property of TX Canada registered on February 4, 2021 and September 27, 2021;

(b) **Tradexpress:** registrations covering collateral identified as Accounts and Other against Davidson Motors Incorporated (former name of Tradexpress) on August 31, 2021, September 2, 2021 and September 27, 2021;

(c) **Techlantic:** registrations against all property of Techlantic registered on December 21, 2021 and December 23, 2022; and

(d) **Canadian Guarantors:** a registration against all of the property of the Canadian Guarantors, other than Tradexpress and Techlantic, registered on December 23, 2022.

42. As shown in the PPSA Searches, the following registrations rank equally or prior to the registrations of MBL against TX Canada: (a) TX Indiana and Congressional Bank both registered interests against TX Canada on September 27, 2021, and (b) Trade X LP Fund I, an affiliate of TX Canada, registered an interest against TX Canada on February 25, 2020. I am advised that Congressional Bank has released its interest and there is no indebtedness outstanding between TX Canada and Congressional Bank. I am further advised that each of the other parties, namely TX Indiana and Trade X LP Fund I, who are affiliates of the Respondents, will receive notice of this Application.

43. MBL, through its counsel, is also currently in possession of the following physical share certificates representing pledged shares of the following Respondents: Techlantic; TX Canada; 12771888 Canada Inc.; Trade X Continental Inc.; and TX Capital Corp.

(ii) Other Creditors

(a) Aimia Inc.

44. Trade X Parent is indebted to Aimia Inc. ("**Aimia**") pursuant to an amended and restated secured convertible note in the principal amount of US$25 million dated December 23, 2022 (the "**Aimia Note**"). The Aimia Note is attached to my Affidavit as **Exhibit "M"**.

45. The maturity date of the Aimia Note is dated December 8, 2023. As security for the Aimia Note, Trade X Parent has granted a subordinated security interest to Aimia in all of its property. The PPSA Searches show that this security was registered under the personal property regime in Ontario on January 3, 2023.

(b) Highcrest Lending Inc.

46. Pursuant to a Master Amended and Restated Loan and Security Agreement dated as of December 23, 2022 between Highcrest, as lender, Wholesale Express as borrower and Trade X Parent as guarantor (the "**Highcrest Loan and Security Agreement**"), Trade X Parent has pledged its interests in 100% of the equity of Wholesale Express and Wholesale Express has granted a security interest in all of its property to Highcrest (the "**Highcrest Collateral**"). A copy of the Highcrest Loan and Security Agreement is attached to my Affidavit as **Exhibit "N".**

47. As shown in the PPSA Searches, Highcrest has a registration dated December 8, 2022 against Trade X Parent under the personal property regime in Ontario against 'accounts' and 'other', as well as a registration under the personal property regime in Quebec against all of Wholesale Express' property. Wholesale Express is not a Canadian

Guarantor nor has it granted any security in favour of MBL. Rather, MBL holds a security interest in the shares of Wholesale Express by virtue of its security against all of the assets Trade X Parent.

48. On November 22, 2023, Highcrest obtained an initial order under the CCAA in respect of Wholesale Express, which is attached to my Affidavit as **Exhibit "O"** (the "**Initial Order**").

49. The Initial Order states that there is nothing preventing MBL from bringing an Application for receivership, provided that MBL does not seek control over the equity or assets of Wholesale Express. Accordingly, the Appointment Order sought by MBL does not extend to Trade X Parent's interest in Wholesale Express and, at this time, MBL has no intention of pursuing control over Wholesale Express.

F. THE EVENTS LEADING UP TO THIS RECEIVERSHIP APPLICATION

(i) The Deteriorating Financial Condition of the Respondents

50. Throughout 2020 and 2021, the market for used cars benefited from inventory restrictions due to semi-conductor shortages and supply chain issues caused by the COVID-19 pandemic. As a result, the Trade X Group gained significantly from an increase in demand for used vehicles.

51. During this period, the Trade X Group leveraged their trading platforms, particularly the Trade X Platform, to market itself as a tech company to attract venture capital and raised over US$45 million. At one point, the Trade X Group claimed it was valued at $250 million. However, the Trade X Group hired a bloated staff of over 150 people, many of whom were computer programmers and software engineers, with the aim of creating their

technology platform. Trade X began to incur large monthly expenses in part due to its oversized staff and operational inefficiencies.

52. Starting in 2022, as retail sales declined amid interest rate hikes, rising new vehicle availability, increased fuel prices and recessionary fears, demand for used vehicles retrenched and prices for vehicles dropped precipitously (an average of 14% in the U.S. alone). As a result, the Trade X Group began experiencing losses on Vehicles that it purchased without having conducted sufficient prior diligence and market research. Such losses were made worse by the incentive structure in place for Trade X Group staff, some of whom received bonuses based on the number of Vehicles acquired for inventory purposes, regardless of the price paid by the End Buyer (even if it was later sold at a loss). It is clear that the Trade X Group had prioritized their growth at the cost of prudent underwriting and responsible management of expenses.

53. These losses coincided with the general reduction of available capital in the investment community. As a result, Trade X Parent was not able to raise additional funds to subsidize the losses in the Trade X Group.

(ii) 2022 Loan Restructuring

54. In December 2022, the three largest creditors of the Trade X Group—Aimia, Highcrest and MBL—entered into a loan restructuring transaction (the "**2022 Loan Restructuring**") that amended and restated all loan documents and provided additional capital to Trade X Parent. In exchange, Trade X Parent agreed to sell Wholesale Express, use those proceeds as working capital in the Trade X Group and repay Highcrest. The Trade X Group also agreed to decrease its operating expenses and adopt a more rigorous

and disciplined approach to its Vehicle acquisition and sales practices in order to improve margins.

55. As part of the 2022 Loan Restructuring, (a) Trade X Parent issued the Aimia Note in favour of Aimia and granted a security interest in all of its property—prior to the 2022 Loan Restructuring, Aimia was an unsecured creditor, (b) Wholesale Express and Trade X Parent entered into the Highcrest Loan and Security Agreement and pledged Trade X Parent's interests in 100% of the equity of Wholesale Express and the assets of Wholesale Express in favour of Highcrest, and (c) the Canadian Guarantors became parties to the Domestic Security and Global Security and granted security in all of their assets in favour of MBL.

56. On December 23, 2022, Aimia, Highcrest, MBL, the Borrowers (with the exception of Techlantic), TX Indiana, TX Canada and TX Parent entered into an amended and restated intercreditor agreement (as amended and restated, the "**Intercreditor Agreement**"). A copy of the Intercreditor Agreement is attached to my Affidavit as **Exhibit "P"**.

57. Pursuant to the terms of the Intercreditor Agreement, the parties agreed that Highcrest has a priority security interest Wholesale Express and its shares, MBL has a priority security interest over all of the assets of Trade X Parent and its subsidiaries (other than Wholesale Express and its shares) and Aimia subordinated its interest for so long as any obligations to Highcrest or MBL remain outstanding.

G. THE BORROWERS DEFAULT ON THEIR OBLIGATIONS TO MBL

58. On or about October 9, 2023**,** I first became aware that the Borrowers failed to deposit End Buyer Payments into the Collection Account, as required by the Credit Facilities and, instead, used such End Buyer Payments to fund the Trade X Group operations and working capital needs.

59. I understand that between June and September, 2023, the Borrowers and the Respondents diverted approximately US$7 million of End Buyer Payments from the Lenders arising from Vehicle sales during this period. I understand that these were "collective decisions" taken by management of Trade X Parent, with the knowledge, approval and assistance of Ryan Davidson (former CEO and material shareholder), Eric Gosselin (CEO from June to November 2023), Brent Sawadsky (interim CFO), Lakshmi Suresh (Controller) and Eric van Essen (Manager for Techlantic), among other personnel.

60. Moreover, over the last several months, the Respondents have attempted to conceal this information from MBL, including, without limitation, by continuing to report the Vehicles as unsold on the borrowing base reports delivered to MBL, despite the fact such Vehicles had, in fact, been sold. When MBL inquired about the status of these Vehicles as part of regular collateral reporting on September 15, 2023, the Borrowers misrepresented to MBL that the applicable Vehicles had not been sold and requested additional Advances under the Global Facility, in part, on the basis of Vehicles it no longer owned. I believe these misrepresentations were made with the intent to avoid the required pay down of Advances that were made under the Credit Facilities.

61. As described in paragraphs 29 and 32 above, the Credit Facilities and the Security share the following features:

(a) the Collateral securing the Credit Facilities is predominantly comprised of the Vehicles, the rights of the Respondents under the Purchase Agreements and accounts receivable under those agreements;

(b) receivables for the Vehicles and other amounts payable by End Buyers are paid by the applicable Respondents into Collection Accounts over which MBL has security and which are subject to the DACAs; and

(c) both Credit Facilities are on a borrowing base, with Vehicles serving as the primary Collateral for calculating the borrowing base. Vehicles do not get included in the borrowing base unless, among other things, the Borrower has deposited the End Buyer Payments for a Vehicle into the Collections Account within a prescribed period of time after the Vehicle has been delivered to the destination of the End Buyer.

62. As a result, there are a series of material defaults (the "**Defaults**") arising from the intentional and wrongful diversion of the End Buyer Payments, which include the following:

(a) The failure of the Borrowers to deposit the End Buyer Payments into the Collection Account or hold such amounts in trust (subsections 8.01(b)(i) and (ii) of the Credit Agreements);

(b) Certain Financed Vehicles failing to qualify as "Eligible Assets" resulting in them being characterized "Ineligible Assets" due to, among other reasons, the Borrower's failure to deposit the End Buyer Payments for such Vehicles into the Collection Account within the period prescribed under the Credit Agreements, as further described in paragraph 29(g) above (sections 2.01(d) and Article IX(c) of the Credit Agreements); and

(c) The inability of the Borrower to deliver an accurate certification in respect of the borrowing base under the Credit Agreements owing to certain Vehicles failing to meet the definition of "Eligible Assets" (section 5.11(h) and Article IX(e) of the Credit Agreements).

63. The Defaults committed by the Borrowers trigger the obligations of TX Canada under the TX Canada Security and the obligations of the Canadian Guarantors under the Domestic Security and Global Security.

H. MBL TOOK STEPS FOLLOWING THE DEFAULTS

64. On October 13, 2023, MBL sent the Borrowers, TX Indiana and the Respondents notices of default and acceleration in respect of the Defaults. MBL advised that (a) the aggregate outstanding obligations under the Domestic Facility were US$2,329,813.97, and (b) the aggregate outstanding obligations under the Global Facility were US$17,858,401.20, in each case, as at October 13, 2023. Attached to my Affidavit as **Exhibits "Q"** and **"R"** are true copies of the notices of default and acceleration.

65. Subsequently, on October 16, 2023, MBL sent notices of activation to RBC under the DACAs. These notices of activation are attached to my Affidavit as **Exhibits "S"** through **"U"**.

66. The notices of activation notified RBC that they were to transfer all funds on deposit to a designated collections account over which MBL has control. Additionally, MBL sent a notice of exclusive control under each of the DACAs to SVB, pursuant to which MBL directed SVB to cease complying with instructions from the Borrowers (as applicable under each DACA). The notice of exclusive control sent to SVB is attached to my Affidavit as **Exhibit "V"**.

67. I am advised by MBL's counsel at Davies Ward Phillips & Vineberg LLP ("**Davies**") that, on November 11, 2023, Davies sent the Respondents notices of intention to enforce the Security under section 244 of the *Bankruptcy and Insolvency Act*. Copies of the section 244 notices are attached to my Affidavit as **Exhibits "W"** and **"X"**.

I. IT IS NECESSARY TO APPOINT A RECEIVER

(i) Trade X Management Has Admitted to Wilful Diversion of Payments

68. MBL has entirely lost confidence in the management of Trade X Parent and the other Respondents. Every level of Trade X Parent's management, from the Chairman, CEO, CFO, controller and accountants have admitted to me, or other representatives of MBL, that they have been complicit in the wilful diversion of payments properly owed to the Lenders under the Credit Agreements. In my view, the management of the Trade X Group has displayed a cavalier attitude and blatant disregard toward the covenants in the

Credit Facilities and Security, and have wilfully breached said contracts to the material detriment of MBL and the Lenders.

(ii) Trade X Group Has No Operating Capital and Has Effectively Ceased Operations

69. I have reason to believe that the Trade X Group has run out of operating capital, and is unable to fund its operations. On November 4, 2023, Highcrest advised MBL that Ryan Davidson, Chairman, former CEO and a material shareholder of Trade X Parent, admitted that he used funds payable to the Lenders under the Credit Facilities to satisfy payroll obligations at the Trade X companies, including Trade X Parent and Techlantic. Mr. Davidson admitted the same to me when I later asked.

70. I have recently learned that most of Trade X Group's employees resigned from their employment, leaving only a skeletal crew of volunteers operating the business of the Trade X Group. Indeed, on November 15, 2023, Eric Gosselin, the CEO of Trade X Parent since June 2023 resigned with immediate effect.

71. In light of these events, on November 15, 2023, MBL retained FTI as a financial advisor to conduct an inspection of the books and records of the Respondents, which is permitted under the terms of the Credit Agreements. I am advised that FTI attended at the Mississauga Location on November 15, 2023 and found only two bookkeeping employees working and only two Vehicles on site. FTI advised me that in their view, the Trade X Group is not operating an active business in Canada.

72. On November 27, 2023, the landlord under the Trade X Group's lease of its Mississauga Location, VS Verwaltungs GmbH (the "**Landlord**") served the Trade X

Group with a Lease Default Notice, stating that the tenant, the Trade X Group, was in default of its obligations pursuant to its Lease Agreement. The Lease Default Notice states that the Trade X Group owes $70,027.04 exclusive of all legal fees, disbursements and accrued and accruing interest in arrears to the Landlord. Attached to my Affidavit as **Exhibits "Y"** and **"Z"** are copies of the Lease Default Notice and the Landlord's waiver in favour of MBL, respectively. The Lease Default Notice confirms MBL's suspicions that the Trade X Group has been quietly shutting down its operations in Ontario.

73. The Trade X Group's blatant and unacceptable disregard for MBL's collateral and security interest continues unabated. On November 29, 2023, Eric van Essen, Manager of Techlantic, told me that the Trade X Group would be using their inbound funds to pay their "critical expenses" before repaying Lenders, which indicated to me that the Trade X Group intended to continue diverting funds payable to MBL to sustain their operations. Attached to my Affidavit as **Exhibit "AA"** is a copy of the email correspondence between Eric van Essen and myself.

(iii) Collateral is at Risk of Dissipating Further

74. In the circumstances, MBL has grave concerns about whether the Respondents are conducting any active business at all and whether there is any Collateral available to satisfy the Indebtedness. Given the complex nature of the intercompany payables, the online nature of the business and the fact that Vehicles are exported between jurisdictions with frequency, I have serious concerns that if there is Collateral available, it is at risk of further dissipating and again being improperly misappropriated and diverted.

75. The Defaults are uncured and remain ongoing and MBL holds a first ranking security interest over substantially all of the assets of the Respondents (other than TX Canada). As at November 30, 2023 the aggregate amount of the Indebtedness, inclusive of interest and principal is US$15,256,504.16. Both the Domestic Security and the Global Security provide that during an "Event of Default" (as defined in Article IX of the Credit Agreements) MBL may enforce the Security and sell the Collateral pursuant to court-appointed receivership proceedings.

76. The appointment of a receiver is necessary on an urgent basis to determine the status of the Trade X Group's operations in Canada, to preserve the remaining Collateral and to ensure adequate recovery on those assets. In light of the Defaults described above, the business and assets of the Respondents cannot be left in the hands of present management if the Collateral is to be preserved and further diversion and misappropriation is to be avoided.

77. To the extent there are still active business operations within the Trade X Group, FTI will provide the necessary oversight and controls to ensure an orderly liquidation of the Collateral. FTI has provided written consent to act as the Receiver in this proceeding, a copy of which will be attached to its pre-filing report.

J. THE RECEIVER'S CHARGE

78. MBL has agreed to a charge in favour of the Receiver, if appointed, and its counsel, as security for payment of their respective fees and disbursements, in each case at their standard rate and charges (the "**Receiver's Charge**"). The Receiver's Charge shall form

a first charge in priority to the claims of MBL as secured creditor. If appointed, the Receiver will also be empowered to borrow funds to finance the costs of the receivership.

K. FUNDING OF THE RECEIVERSHIP

79. It is contemplated that, if appointed, the Receiver will be empowered pursuant to the terms of the Court order appointing it (the "**Appointment Order**") to borrow funds from MBL for the purposes of, among other things, funding the costs and disbursements of the receivership. A condition to the financing would be the granting of a charge in favour of MBL over the Collateral. This charge would rank behind the Receiver's Charge.

80. Subject to the approval of the Court, it is proposed that any financing would be reflected in certificates substantially in the form attached to the draft Appointment Order.

L. THE APPOINTMENT OF THE RECEIVER IS JUST AND CONVENIENT

81. I believe that it is just and convenient for FTI to be appointed as Receiver on the terms set out in the proposed Appointment Order, particularly in circumstances where:

(a) Trade X Parent and its senior management have admitted that they have intentionally and repeatedly misappropriated funds that are due and owing to the Lenders;

(b) the Borrowers have repeatedly breached the terms of the Credit Agreements and the Defaults remain uncured;

(c) the obligations of the Respondents are due and owing under the Security as result of the Defaults;

(d) the Respondents have continually disregarded the interests of MBL as senior secured creditor and diverted funds from the Lenders;

(e) the Trade X Group appear to have abandoned or materially downsized their business operations in Canada;

(f) the Respondents were provided with the required notice of MBL's intention to enforce the Security under section 244 of the BIA and the 10-day period has lapsed; and

(g) the Respondents have no other secured creditors, other than related parties, and Highcrest, who is aware of this Application.

82. This Affidavit is sworn in support of the application by MBL for the appointment of a receiver over the Collateral and for no other or improper purpose.

SWORN by Westin Lovy in the City of Stamford, in the State of Connecticut, remotely before me in the City of Toronto, Province of Ontario, on this 4th of December, 2023 in accordance with O. Reg. 431/20: Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits
MAYA CHURILOV

Westin Lovy

Westin Lovy

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF WESTIN LOVY

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Lawyers for the Applicant, MBL Administrative Agent II LLC

B

Court File No. CV-23-00710413-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 22nd
	)	
JUSTICE CAVANAGH	)	DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, c. C.43, as amended,

B E T W E E N :

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the

"**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing FTI Consulting Canada Inc. as receiver and manager (the "**Receiver**") without security, of substantially all of the assets and undertakings of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, the supplementary affidavit of Westin Lovy sworn December 8, 2023 and the Exhibit thereto, the second supplementary affidavit of Westin Lovy sworn December 21, 2023 and the Exhibits thereto, the Endorsement of Justice Penny dated December 11, 2023, the Interim Order of this Court dated December 11, 2023, and the consent of FTI to act as the Receiver.

ON HEARING the submissions of counsel for the Applicant, counsel for FTI as proposed receiver, counsel for the Debtors, and counsel for Aimia Inc., and being advised that this Application is on consent of the Debtors, and on consent of Aimia Inc. on the condition that the shares of 13517985 Canada Inc. are not included in the Property over which the Receiver is appointed, and with counsel for Highcrest Lending Inc. having appeared before this Court and not opposed to this Application.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the following property (collectively, the "**Property**"):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("**Trade X Parent**") and TX OPS Canada Corporation ("**TX Canada**")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the TX Canada Collateral in the Affidavit of Westin Lovy sworn December 4, 2023.

RECEIVER'S POWERS

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

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to obtain and review information with respect to each of the bank accounts of each of the Debtors, including, but not limited to, bank accounts with the financial institutions set out in Schedule “B” (the

"**Bank Accounts**"), which includes all transaction activity, and, without limiting the generality of the other provisions of this Order, to take possession of, exercise control over, and withdraw or otherwise transfer amounts from the Bank Accounts, and each of the banks and/or financial institutions which maintain any Bank Accounts are hereby directed to promptly provide any and all such information, and otherwise cooperate with the Receiver with regards to the foregoing, at the request of the Receiver and/or its representatives;

(h) to settle, extend or compromise any indebtedness owing to the Debtors;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction provided that the aggregate consideration for all such transactions does not exceed $50,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes,

computer disks, or other data storage media or cloud-based storage containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to

observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, including, without limitation, set-off rights, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post

Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and

charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies (each, a "**Loan**") from time to time as it may consider necessary or desirable, provided that the aggregate outstanding principal amount of all of the Loans does not exceed $100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures.

The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the Loans, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

Website shall be established in accordance with the Protocol with the following URL https://ontariocourts.caselines.com/Case/Details?caseKey=34e91e5ee4f444be8cabe9a6507ad889.

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

GENERAL

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

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

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

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

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

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ■ day of December, 2023 (the "**Order**") made in an action having Court file number CV-23-00710413-00-CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

SCHEDULE "B"

BANK ACCOUNTS AND FINANCIAL INSTITUTIONS

In the course of its duties as Information Officer pursuant to the Order of Justice Penny dated December 11, 2023, FTI has discovered that the Respondents hold bank accounts with various financial institutions including, without limitation, the below listed banks, which do not comprise an exhaustive list, as FTI may discover additional financial institutions in the course of executing its duties as Receiver:

1. Royal Bank of Canada;

2. Silicon Valley Bank;

3. TD Bank;

4. National Bank of Canada;

5. China Minsheng Bank;

6. Commerzbank;

7. Standard Chartered Bank;

8. Zenith Bank;

9. Guaranty Trust Bank;

10. Banco Bilbao Vizcaya Argentaria;

11. Banreservas; and

12. Itaú Bank.

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant, MBL Administrative Agent II LLC

C

Court File No. CV-23-00710413-00CL

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

SECOND REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

March 27, 2024

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

TABLE OF CONTENTS

A. PURPOSE

1. This is the Second Report of FTI Consulting Canada Inc. ("**FTI Consulting**") in its capacity as receiver and manager (the "**Receiver**"), without security, of the following property (collectively the "**Property**") of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. ("**Techlantic**") and TX Ops Canada Corporation (collectively, "**Trade X**" or the "**Debtors**"):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("**Trade X Parent**") and TX OPS Canada Corporation ("**TX Canada**")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the "TX Canada Collateral" in the Affidavit of Westin Lovy sworn December 4, 2023 (the "**Lovy Affidavit**").

2. The Debtors were primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada, the United States and other overseas markets. Their operations were carried out by a number of entities.

3. By Order dated December 22, 2023 (the "**Receivership Order**"), the Receiver was appointed and authorized to, among other things, receive and preserve the Property and any proceeds thereof, operate and carry on the business of the Debtors, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

4. Since its appointment, the Receiver has, among other things, worked to liquidate the Debtors' remaining vehicle assets and collect amounts owed to the Debtors. That process is substantially complete.

5. To date, the Receiver has recovered approximately $1.8 million from the sales of remaining vehicles and collection of amounts owed to the Debtors.

6. The Receiver's attempt to collect on amounts owing to the Debtors has been complicated by the state of the Debtors' accounting records. Among other things, the Receiver has encountered the following challenges:

(a) the Receiver has received conflicting information from the Debtors and other parties about significant transactions involving the Debtors;

(b) the Debtors' books and records are complicated and involve a large number of accounting entries reflecting the transfer of vehicles (and potentially funds) between various Debtors and other parties for purposes that are unclear to the Receiver at this time;

(c) the Debtors engaged in a large number of transactions with companies owned or controlled by the Debtors' directors, officer and/or members of their immediate

families. The details of these transactions were not fully disclosed to the Receiver, and the Receiver learned important details about the transactions from its review of the Debtors' e-mails; and

(d) the Receiver has been contacted by individuals who claim to have invested in the Debtors, but who appear to have paid funds to entities controlled by the Debtors' founder and CEO, Ryan Davidson. The Receiver has been unable to determine whether (and how) these funds were actually provided to the Debtors or used in the Debtors' business.

7. The Receiver has tried to engage with certain of the Debtors' current and former directors, officers, employees and consultants to understand the foregoing transactions. Several such individuals have refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel.

8. The Receiver has also tried to obtain information from third parties (including potential related parties) that have engaged in transactions with the Debtors in order to understand those transactions. The Receiver has received incomplete responses and, in some cases, no response at all.

9. In light of the foregoing, the Receiver has determined that it requires expanded investigative powers in order to understand the Debtors' business and assets (including claims against other parties) that might provide additional recovery for the benefit of the Debtors' creditors. The Receiver served a Notice of Motion dated March 21, 2024 seeking, among other things, enhanced investigative powers, including the right to examine persons with relevant information under oath and compel the production of relevant documents.

10. In addition, the Receiver seeks the authority (but not the requirement) to assign one or more of the Debtors into bankruptcy in the event that such assignments are necessary or appropriate. The Debtors are insolvent and, based on the current facts and circumstances and information available to the Receiver, the Receiver does not believe that there is a realistic prospect of a going concern sale.

11. The Receiver believes that the powers of a trustee in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") may assist the investigation and ultimate recovery available to the Debtors. It is cognizant, however, of the additional potential administrative expenses associated with a bankruptcy and so it does not seek to make any bankruptcy assignments immediately. Instead, it seeks authority to assign some or all of the Debtors into bankruptcy at a later date if it determines that the assignment is likely to enhance stakeholder recovery.

B. BACKGROUND

12. A number of the Debtors entered into a senior secured revolving credit agreement dated September 27, 2021 (the "**Global Facility**"). MBL Administrative Agent II LLC ("**MBL**") is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the "**Lenders**"). A copy of the Global Facility is attached hereto as Appendix "1".

13. In addition, a number of Debtors entered into a separate senior secured revolving credit agreement dated February 5, 2021 (the "**Domestic Facility**" and, together with the Global Facility, the "**Facilities**"). MBL is also the administrative agent for a syndicate of Lenders that advanced funds under the Domestic Facility. A copy of the Domestic Facility is attached hereto as Appendix "2".

14. The Receiver understands that the Lenders are the Debtors' senior secured creditors, with a first ranking security interest over substantially all of the Debtors' assets.[1] Based on the recoveries to date, and the Receiver's assessment of the Debtors' remaining assets, the Lenders are unlikely to recover the full amounts owed to them unless the Receiver is able to successfully investigate and prosecute potential claims available to the Debtors (and subject to the proceeds of such claims being sufficient to satisfy the Lenders' claims). If the Lenders do not recover all amounts owed to them, then the Debtors unsecured creditors and equity claimants are not expected to recover any amounts.

15. In light of the foregoing, the Receiver has, in consultation with MBL on behalf of the Lenders, determined that it is important to conduct a further investigation into the Debtors' affairs to determine what (if any) claims should be pursued.

C. THE FACILITIES

16. In general terms, the Global Facility was intended to fund vehicles sold outside of the United States and the Domestic Facility was intended to fund vehicles sold inside the United States.

17. The Facilities are sophisticated agreements involving a number of related Debtors. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Facilities are summarized at a very high level below:

(a) the Debtors acquired vehicles for sale;

[1] Although the Receiver has not yet completed a formal security review, no party has disputed the validity of the Lenders' security.

(b) the Lenders provided an advance to pay the purchase price for the vehicles (the "**Advance**");

(c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the "**Borrowing Base**");

(d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the "**Collection Accounts**").

18. One of the Debtors that is important to the Receiver's investigation is Techlantic. Techlantic became a "Borrower" within the meaning of the Global Facility by an Amendment No. 1 and Joinder to Senior Secured Revolving Credit Agreement dated December 30, 2021, a copy of which is attached hereto as Appendix "3".

D. APPOINTMENT OF THE RECEIVER

19. On December 4, 2023, MBL brought an application to appoint FTI Consulting as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

20. MBL alleged that the Debtors had defaulted on their obligations under the Global Facility by, among other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the Collection Accounts. The Lovy Affidavit describing the alleged diversion of funds from the Collection Accounts is attached hereto (without exhibits) as Appendix "4".

21. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence.

22. On December 22, 2023, Cavanagh J. issued the Receivership Order appointing FTI Consulting as the Receiver, without security, of the Property.

23. Pursuant to the Receivership Order, the Receiver is empowered to, among other things, receive and preserve the Property and any proceeds thereof, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

E. DIFFICULTY UNDERSTANDING THE DEBTORS' RECORDS

24. Since the Receiver's appointment on December 22, 2023, the Receiver has worked diligently to receive, preserve, protect and otherwise manage the Debtor's Property in accordance with the Receivership Order. However, it has become clear to the Receiver through these efforts that the Debtors' books and records are, in some instances, not reliable and in other instances very difficult to understand.

25. The Receiver has made inquiries in respect of these issues to representatives of the Debtors, but it has not received satisfactory answers. The Receiver continues to investigate issues involving the Debtors, and is currently aware of a number of issues that it still investigating and in respect of which it requires additional information, including as summarized below.

(i) *Groupe Grégor Claim*

26. The Debtors may have a claim for approximately $8 million (the "**Groupe Grégor Claim**") against Groupe Grégor Inc. ("**Groupe Grégor**") in connection with the Debtors' purchase

of 13517985 Canada Inc., operating as Wholesale Express ("**Wholesale Express**") from Groupe Grégor.

27. The Receiver has reviewed the Debtors' records related to the Groupe Grégor Claim. Its understanding, based on that review, include the following:

(a) after the Debtors bought Wholesale Express, they were unable to take an immediate assignment of certain permits required to operate its business. To address this issue, Groupe Grégor continued to operate Wholesale Express on behalf of the Debtors and deposit funds generated by Wholesale Express into Groupe Grégor's bank account;

(b) the Debtors subsequently alleged that Groupe Grégor did not remit all of the funds generated by Wholesale Express to Wholesale Express;

(c) separately, Groupe Grégor advanced a claim against the Debtors for approximately $2.7 million allegedly owed for a working capital adjustment in connection with the Wholesale Express sale (which claim the Receiver understands was being disputed by the Debtors);

(d) financial statements for both the Debtors and Groupe Grégor indicated that Groupe Grégor owed approximately $8 million to the Debtors; and

(e) on October 24, 2023, Wholesale Express assigned the Groupe Grégor Claim to Trade X Parent pursuant to an Assignment of Credit dated October 24, 2023 (the "**Assignment**").

28. Wholesale Express is currently the subject of separate proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**Wholesale Express CCAA Proceedings**"), and its Monitor in the Wholesale Express CCAA Proceedings has filed a motion seeking to set-aside the Assignment of the Groupe Grégor Claim as a transfer at undervalue. Such motion is currently scheduled to be heard before the Quebec Superior Court of Justice in the Wholesale Express CCAA Proceedings on June 13, 2024. A copy of the Monitor's Notice of Motion in respect thereof is attached hereto as Appendix "5".

29. The Receiver requires further information about both the Groupe Grégor Claim and the Assignment in order to determine whether, and how, to respond to the Monitor's motion and advance the Groupe Grégor Claim on behalf of the Debtors.

(ii) ***Transactions and transfers involving the Debtors' founder and CEO***

30. The Receiver has also been contacted by certain individuals who claim to have invested funds in the Debtors; however, these individuals advised that they paid funds to a company owned and controlled by Mr. Davidson. The Receiver has been unable to determine why these funds were paid to Mr. Davidson's company and whether they were ever transferred to the Debtors. Correspondence relating to these issues is attached hereto as Appendix "6".

31. The Receiver requires additional and accurate information about the transactions between the Debtors, Mr. Davidson and the companies that Mr. Davidson controlled.

(iii) ***The Debtors' records show potential significant overpayments to Auto Credit Canada, a company controlled by one of the Debtors' former executives***

32. The Receiver understands that Auto Credit Canada is operated by Luciano Butera, a former officer of the Debtors, and owned by Mr. Butera or members of his family.

33. Trade X's records indicate that Trade X made overpayments totalling $1,535,016 to 1254382 Ontario Ltd o/a Auto Credit Canada ("**ACC**"). On January 18, 2024, the Receiver wrote to ACC and demanded, pursuant to the Receivership Order, that ACC transfer the amount of the overpayment to the Receiver immediately. This correspondence is attached hereto as Appendix "7".

34. By way of email dated January 26, 2024, and attached as Appendix "8", ACC responded stating that it had not received any overpayments from Trade X, but rather that ACC had provided "floorplan funding" to Trade X, through which Trade X purchased vehicles in the name of ACC. The Receiver has requested documentation of this purported floorplan funding agreement, which documentation has not been provided. This correspondence is attached as hereto Appendix "9".

F. TRANSACTIONS WITH TECHLANTIC AND THE VAN ESSEN COMPANIES

35. The Receiver has served a motion seeking to recover approximately $1.7 million received by the Van Essen Companies (as defined below), which amounts the Receiver believes were improperly taken by the Van Essen Companies (as discussed below and in the First Report of the Receiver dated February 1, 2024). The Receiver is also currently investigating other transactions involving the same individuals and entities; however, Techlantic's officers, employees and consultants have refused to meet with the Receiver to explain the transactions at issue.

(i) *Techlantic*

36. According to its website, Techlantic was founded in 1983 by Wouter Van Essen ("**Wouter**"). Wouter's twin brother, Tom Van Essen ("**Tom**"), joined Techlantic in 1986. A long-time employee, Robin Jones, became a Techlantic shareholder in 2001.

37. Techlantic's core business, based on a review of its website and its records, was the export of vehicles to foreign markets.

38. In August 2019, Wouter's son Eric Van Essen ("**Eric**") became a major Techlantic shareholder. When Techlantic announced Eric's new status as a "major shareholder" of Techlantic, it confirmed that "Tom and Wouter are still actively involved and likely will be for many years".

39. Relevant excerpts from Techlantic's website are attached hereto as Appendix "10".[2]

40. Trade X purchased Techlantic in August 2021. After that time, Eric was Techlantic's Managing Director and had overall responsibility for Techlantic's business operations. Eric was also a director of Techlantic. Trade X does not appear to have exercised control over Techlantic's day to day operations. Those operations were overseen by Eric with significant assistance from Wouter.

41. As described below, the Receiver's review of Techlantic's records showed that Wouter remained very heavily involved in Techlantic's business after Trade X bought Techlantic. He continued to be listed as a member of Techlantic's finance team, and its founder, on the Techlantic website, until the website ceased to operate.

(ii) ***The Van Essen Companies***

42. Techlantic engaged in a large number of complicated transactions with two companies 1309767 Ontario Ltd. ("**130 Ontario**") and 2601658 Ontario Ltd. ("**260 Ontario**", and together

[2] Techlantic's website appears to no longer be operational, but the attached screenshots were access through the internet archive at https://web.archive.org/

with 130 Ontario, the "**Van Essen Companies**") and certain other parties that have long-term business relationships with the Van Essens.

43. The Van Essen Companies had the same staff as Techlantic, and Eric was also an officer and director of Techlantic, however, the Eric and certain of Techlantic's remaining staff have refused to meet with the Receiver to help it understand the relevant transactions unless the Receiver funded legal counsel for them. Correspondence communicating this position is attached hereto as Appendix "11".

44. Wouter, through counsel, also declined to meet with the Receiver. Correspondence from Wouter's counsel is attached hereto as Appendix "12". Wouter's counsel has stated in subsequent correspondence that Wouter did not refuse to meet with the Receiver, since he intended to attend his scheduled cross-examination on the Receiver's motion.

(iii) ***Dispute between the Receiver and the Van Essen Companies***

45. Issues between the Receiver and the Van Essens began when the Van Essen Companies received approximately $1.7 million worth of proceeds from the sale of vehicles owned by Techlantic (the "**Techlantic Funds**"). Instead of paying these funds to Techlantic, the Van Essen Companies kept the funds.

46. Wouter claimed in an e-mail that the Van Essen Companies had set off the Techlantic Funds against a debt allegedly owed by Techlantic as a result of different vehicles sold by the Van Essen Companies to Techlantic in 2022 (the "**Purported Set Off**").

47. Wouter claims to have executed the Purported Set Off on December 20, 2023, two days before the Receiver was appointed, and nine days after Justice Penny issued an Order dated

December 11, 2023 (the "**Interim Order**") prohibiting any exercise of rights and remedies against the Debtors.

48. The Receiver has filed a motion, as amended, to recover the Techlantic Funds on the basis that the Purported Set Off was prohibited by the Interim Order and effected a preference contrary to s. 95 of the BIA. The Receiver's Notice of Motion is attached hereto as Appendix "13".

49. The Van Essen Companies served a cross-motion claiming that they were entitled to execute the Purported Set Off because they were owed approximately $1.9 million in connection with vehicles they sold to Techlantic in 2022 (the "**2022 Vehicles**"). The Van Essen Companies' cross-motion is attached hereto as Appendix "14".

50. In the course of advancing its motion, the Receiver has discovered a number of important facts relevant to its motion in respect of the Van Essen Companies, including:

(a) the Van Essen Companies and Techlantic routinely transferred vehicles and funds between them, and generated an enormous (and unusual) amount of accounting entries for individual vehicles in Techlantic's records;

(b) the Van Essen Companies and Techlantic shared the same employees and office;

(c) Eric, who was an officer and director at Techlantic, was also the President of the Van Essen Companies' parent company and personally advanced some of the funds that the Van Essen Companies used in their dealings with Techlantic;

(d) Wouter, who Techlantic claims to have engaged as a consultant, appears to have been involved in many aspects of Techlantic's business and decided when and how

much Techlantic should pay the Van Essen Companies. Wouter also determined when and how much Techlantic should pay its other creditors, including MBL; and

(e) based on the records reviewed by the Receiver, the Van Essen Companies may have acquired certain of the 2022 Vehicles from certain of the Debtors. The Van Essen Companies then transferred the 2022 Vehicles to Techlantic. Techlantic, in turn, transferred the 2022 Vehicles back to the Debtors that may have previously owned them. The purpose of these circular transactions is unclear.

51. Techlantic's relationship with the Van Essen Companies, and with Techlantic's major customers, is difficult to understand based solely on Techlantic's records and the information provided by Techlantic in writing.

52. The Van Essen Companies, Techlantic, the other Debtors and various customers entered into a large number of transactions with very complex accounting and unclear record keeping. By way of example, two vehicles reviewed by the Receiver were involved in a high number of internal accounting entries, each involving transactions between the Van Essen Companies, Techlantic and other Debtors. The purpose of these transactions, and whether any of them involved the movement of funds, is unclear. A copy of a spreadsheet detailing these transactions is attached hereto as Appendix "15".

53. Among other arguments, the Van Essen Companies have claimed that they provided money to Techlantic as part of a "Liquidity Support Plan". The Receiver notes that section 5.16(g) of Global Facility prohibited the Debtors, including Techlantic, from incurring any debt other than the amounts owing to MBL. Additionally, section 5.16(j) prohibited Techlantic from entering into

any agreement with an affiliate, shareholder or principal, except in certain circumstances, without the consent of MBL.

G. THE RECEIVER'S ATTEMPTS TO GAIN CLARITY IN RESPECT OF THESE TRANSACTIONS

54. The Receiver has reached out to representatives of the Debtors, such as Eric, to clarify the circumstances leading to the above-noted questions and discrepancies. The answers it has received in respect of these inquiries have not been satisfactory and often do not align with other information available to the Receiver.

55. As noted above, in an attempt to further clarify these issues, the Receiver asked to meet with Eric and two additional long-time Techlantic employees. Those meetings were scheduled to take place on March 6, 2024, and initially accepted by Eric and the two employees. However, they were subsequently declined by all three of them on the morning of March 6, 2024.

56. As also noted above, the Receiver has also asked, through counsel, to meet with Wouter to discuss certain issues relating to the Van Essen Companies. Wouter declined, through counsel, to meet with the Receiver. As described above, Wouter's counsel has stated that he intends to attend his scheduled cross-examination.

H. AUTHORITY TO ASSIGN INTO BANKRUPTCY

57. Based on the current facts and circumstances and information available to the Receiver, the Receiver does not at this time believe that there is a realistic prospect of a going concern sale in respect of the Debtors' business. Among other things, the Receiver placed a notice in the Financial Post on February 1 and February 6, 2024 and in the Globe and Mail newspaper on February 7, 2024 soliciting interest in the assets and business of Trade X and Techlantic, a copy

of which is attached hereto as Appendix "16". The Receiver received limited interest or inquiries to such notices, none of which resulted in any offers for any assets of the Debtors. The Receiver did receive offers for the Techlantic business from Mr. Eric Van Essen, which the Receiver, in consultation with MBL, believed was likely below the liquidation value of the remaining Techlantic assets.

58. As noted above, the Receiver continues to investigate the Debtors' affairs and evaluate potential claims. As that investigation progresses, the Receiver may determine that the enhanced powers available to a trustee in bankruptcy would facilitate matters and potentially benefit all stakeholders. For clarity, the Receiver has not yet made such a conclusion, and thus at this time only seeks the authority, and not the requirement, to assign one or more of the Debtors into bankruptcy. The Receiver is mindful of the potential additional administrative costs associated with bankruptcy assignments, and prior to proceeding with any potential bankruptcy assignment of any of the Debtors, the Receiver will assess whether such an assignment would likely provide benefits as compared to those available in these receivership proceedings.

I. CONCLUSION

59. The Receiver may be able to recover substantial amounts through commencing actions on behalf of the Debtors in respect of the transactions described herein. However, the Receiver requires additional and accurate information to better assess the viability of these claims and whether it is worthwhile to advance them.

60. The books and records and other information obtained by the Receiver do not appear to be at all times reliable or consistent, and the accounting records of the Debtors are complex and

difficult to interpret absent additional information and assistance from the Debtors' representatives and other parties, a number of whom have refused to meet with the Receiver to date.

61. The Receiver accordingly respectfully requests the relief set forth herein and in the Receiver's Notice of Motion dated March 21, 2024, so that it is able to obtain the additional information it requires to make appropriate assessments on potential additional recoveries that may be available to the Debtors for the benefit of their creditors.

62. Further, the Receiver believes that there is a likelihood that it may, at some point, be necessary or desirable to assign the Debtors' into bankruptcy for the benefit of the creditors as a whole.

Dated this 27th day of March, 2024.

FTI Consulting Canada Inc.,

solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic LTD., and TX OPS Canada Corporation, and not in its personal or corporate capacity

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director

D

From: Eric van Essen <eric@techlantic.com>
Date: Wednesday, February 7, 2024 at 1:19 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: RE: Invoice - #2665 MMO Techno

Yes. I'm not sure who Bittitan is though. Ok to remove, but perhaps lookup when and why that login was added.

Also, I have some other questions related to the azure server. When you have a moment, can you call me to discuss it?

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Sent: Wednesday, February 7, 2024 12:54 PM
To: Eric van Essen <eric@techlantic.com>
Subject: RE: Invoice - #2665 MMO Techno

Hi Eric

So I'll remove the following users:

Bittitan
Magriet
Tom
Wouter

And next week Bill

I would also suggest that we move the public folder to a shared mailbox at no cost.

Are you okay with those changes?

Oli

--

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Eric van Essen <eric@techlantic.com>
Sent: Wednesday, February 7, 2024 12:29 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: FW: Invoice - #2665 MMO Techno

Hi Olivier,

Please keep Karen's license active for time being as well. Also, I have some questions about moving the QB data. Let me know when you have a moment to chat about it.

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Eric van Essen
Sent: Wednesday, February 7, 2024 12:27 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Cc: facturation@mmotechno.com; June da Costa <june@techlantic.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Invoice - #2665 MMO Techno

Hi Oliver,

Can you please trim down licenses of Microsoft for Techlantic down to remaining staff members as well as any required credentials for you to access and help administer. Please redirect any other emails to myself and I will monitor on any topics that will help with the receivership process.

Also, can you please update Kamran's email as billing contact for Techlantic until further notice so he can coordinate payment directly once new invoices are issued.

Remaining staff members:

1. June
2. Eric
3. Michelle
4. Bill (last day is Friday so next week can you please automatically forwarder his emails to my email as well and turn off account as well)
5. Nikitia
6. Jaskiran
7. Carolyn

Regards,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: MMO Techno <quickbooks@notification.intuit.com>
Sent: Wednesday, February 7, 2024 11:09 AM
To: Eric van Essen <eric@techlantic.com>; June da Costa <june@techlantic.com>
Subject: Invoice - #2665 MMO Techno

INVOICE 2665

MMO Techno

DUE 31/01/2024

$615.08

Review and pay

Powered by QuickBooks

** English message below **

Ceci est un simple rappel que le paiement de votre facture est attendu aujourd'hui.

Si vous avez déjà envoyé votre paiement, nous vous remercions et ne tenez pas compte de cet avis.

N'hésitez pas à nous contacter si vous avez des questions.

Merci de choisir MMO Techno
L'équipe de facturation

This is a simple reminder that payment is due today for the invoice in object.

If you already sent payment for your invoice, we thank you and please disregard this message.

Do not hesitate to get in touch with us should you have any question.

Thank you for choosing MMO Techno
The billing team

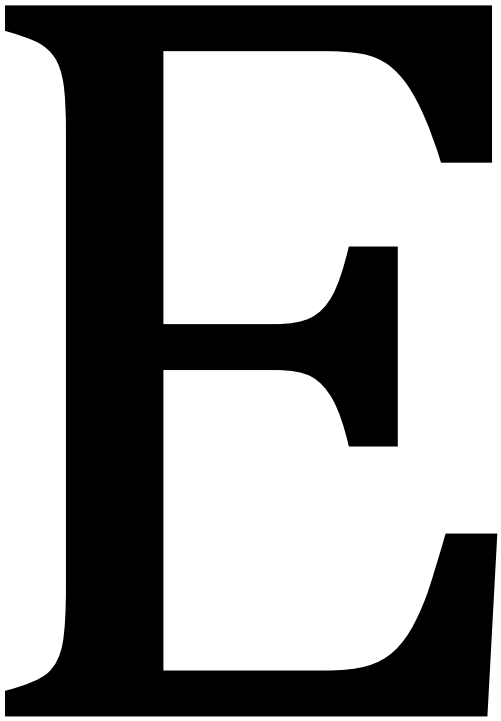
MMO Techno

3055 Boul. Saint-Martin Ouest, 5th floor Laval QC H7T 0J3

(855) 532-0189 facturation@mmotechno.com

If you receive an email that seems fraudulent, please check with the business owner before paying.

 Privacy | Security | Terms of Service



From: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Sent: Saturday, February 17, 2024 10:58 AM
To: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Subject: Re: [EXTERNAL] Re: Trade-X

No, but I can restore. I've removed it this week.
Well within the 30 days.

Oli

--

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Date: Saturday, February 17, 2024 at 10:51 AM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: Re: [EXTERNAL] Re: Trade-X

Do we have a back up some where?

Best Regards,
Isaac Tatineni

Sent from my iPhone

> On Feb 17, 2024, at 9:33 AM, Olivier L. Duguay <olivierl.duguay@mmotechno.com> wrote:
>
> Heloo Isaac,
>
> The account for Wouter was removed as per Eric's request.
> Did you want to back that data up as well with Exchange Online P2?
>
> Oli
>
> --

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Date: Friday, February 16, 2024 at 6:11 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: Trade-X

Privileged and Confidential

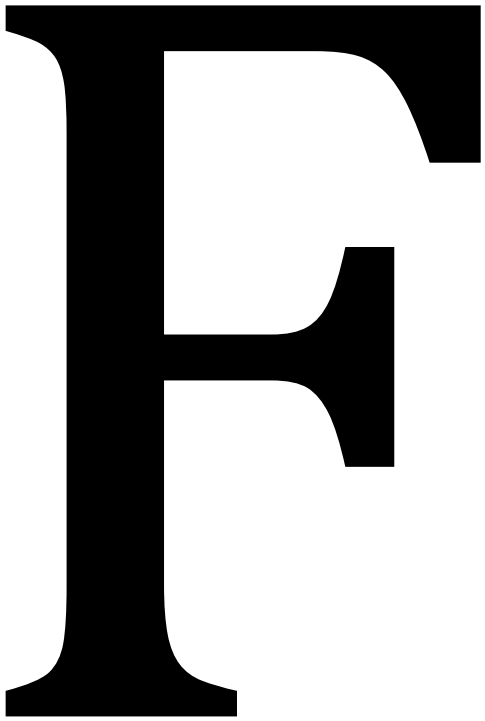
Hi Oli,

Can you please confirm where is the data for the **wouter@techlantic.com** account?
Thank you.

Isaac Tatineni

Digital Risk Management & Intelligence
FTI Consulting Technology LLC
+1.437.214.9683 M
isaac.tatineni@fticonsulting.com

79, Wellington St W, Suite 2010
Toronto, ON M5K 1B1 Canada
www.fticonsulting.com



From: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Sent: Wednesday, February 21, 2024 10:52 AM
To: Eric van Essen <eric@techlantic.com>
Subject: RE: Techlantic - Follow Up Matters

Hi Eric,

I just sent you an invite for 1 pm with the agenda attached within the meeting invite. Re: Trade X and Techlantic infrastructure and historical records, we cannot make any changes and we need to preserve that information for the Receiver's records so we cannot transfer those costs to any other party unless it relates to a sale of the business.

I understand there was a request made by you to delete certain user profiles from the Microsoft 365 server so we need to ensure no changes or deletion of any Techlantic data is being made without the written consent of the Receiver.

Thanks,
Kamran

Kamran Hamidi
647.400.7825

From: Eric van Essen <eric@techlantic.com>
Sent: Wednesday, February 21, 2024 9:22 AM
To: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: [EXTERNAL] RE: Techlantic - Follow Up Matters

Hi Kamran,

Are you available to talk practically through some of the next steps and action items today? I would like to set expectations well with team members so they aren't as surprised. I have told them to look for work as a warning but haven't told them when the end is expected. Also, from talking with Wouter he suggested taking over some of the infrastructure costs which I think make sense for Techlantic to reduce overhead as the final pieces fall in to place and gives less urgency on some of the issues that might take a while to sort out.

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182

www.techlantic.com

From: Eric van Essen
Sent: Friday, February 16, 2024 9:55 AM
To: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Techlantic - Follow Up Matters

Hi Kamran,

See some comments below. It's a little busy at home with PA day and kids. See latest on the G400 attached.

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Sent: Friday, February 16, 2024 8:53 AM
To: Eric van Essen <eric@techlantic.com>
Subject: Techlantic - Follow Up Matters

Hi Eric,

I would like to follow up on the below items as we look to wind down the operations:

1. RBC Account Closures – is there any reason to keep the bank accounts open? – I think it is unlikely we will get a surprise payment so once we redirect CRA it should be ok to close already.
2. CRA Accounts and Other Direct Deposits – can you please update the direct deposit details to reflect the Receiver's bank information? – I will do this today or Tuesday. Kids are a little demanding here at home as it's a PA day and Monday is a holiday.
3. Air Tax Refunds – have Jaskiran and Nikitia cleared the backlog and if so, when are the last refunds expected? I'd like to think ahead on the terminations to expedite the process (Feb. 23)? They are on track to complete the submissions by the end of February. The later months were lower values (few thousand each) but still worthwhile processing.
4. China 2x G400 – you forwarded me the emails yesterday which showed progress. When do we think we can collect on the cars to close this issue? Based on what I know, I think it will take approximately another couple days of work and then waiting for another couple weeks. Payment will arrive with Westchester Capital and they know to direct it to you but I will make that crystal clear.

5. Isha Gupta – I will send her the formal termination notice today. – Yes, that is fine. Whatever the legal requirements are if you can execute them would be great. If she connects with you for explanation, feel free to direct her to me to have a discussion.

Thanks,
Kamran

Kamran Hamidi, CPA, CA, CFA
Managing Director, Corporate Finance

FTI Consulting
416.649.8068 T | 647.400.7825 M
Kamran.Hamidi@fticonsulting.com

79 Wellington Street West | Suite 2010
Toronto, ON M5K 1G8, Canada

From: Alexis Beale
To: Dunn, Mark; Tee, Brittni; Descours, Caroline
Subject: Trade X Receivership
Date: Friday, April 5, 2024 1:08:36 PM

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

- Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
- Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

MBL ADMINISTRATIVE AGENT II LLC and TRADE X GROUP OF COMPANIES INC. et al. Court File No. CV-23-00710413-00CL

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

THIRD REPORT OF THE RECEIVER

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

1379-7743-3353

MBL ADMINISTRATIVE AGENT II LLC	-and-	TRADE X GROUP OF COMPANIES INC. et al
Applicant		Respondents

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD OF THE RECEIVER, FTI CONSULTING CANADA INC.

GOODMANS LLP
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Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver, FTI Consulting Canada Inc.

1414-4160-2572

Court File No. CV-23-00710413-00CL

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

THIRD REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

May 17, 2024

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

A. Introduction

1. This is the Third Report of FTI Consulting Canada Inc. (**"FTI"**) in its capacity as receiver and manager (the **"Receiver"**), without security, of the following property (collectively the **"Property"**) of Trade X Group of Companies Inc. ("**Trade X Parent**"), 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. (**"Techlantic"**) and TX Ops Canada Corporation (**"TX Canada"**, and collectively, the **"Debtors"**):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Parent and TX Canada acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the "TX Canada Collateral" in the Affidavit of Westin Lovy sworn December 4, 2023 (the **"Lovy Affidavit"**).

2. This Third Report is tendered in response to the motion brought by 1309767 Ontario Ltd. (**"130 Ontario"**) and 2601658 Ontario Ltd. (**"260 Ontario"**, and together with 130 Ontario, the **"Van Essen Companies"**) to (among other things) stay all present and future litigation against them in relation to the Debtors (the **"Stay Motion"**).

B. The Receiver's mandate and right to access Techlantic's documents

3. On December 4, 2023, MBL Administrative Agent II LLC (**"MBL"**) brought an application to appoint FTI as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

4. MBL alleged that the Debtors had defaulted on their obligations under a senior secured revolving credit agreement dated September 27, 2021 (the **"Global Facility"**)[1] by, among

[1] The Receiver's First Report incorrectly stated that the Global Facility is dated February 5, 2021. Some of the Debtors entered into a separate facility (the "Domestic Facility") on February 5, 2021. The Global Facility is dated September 27, 2021.

other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the established collection account. MBL is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders. The Lovy Affidavit describing the alleged diversion of funds from the collection accounts is attached hereto (without exhibits) as Appendix "**A**".

5. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence before or after the Receiver was appointed.

6. On December 22, 2023, Justice Cavanagh issued the Receivership Order appointing FTI as the Receiver, without security, of the Property. The Receivership Order is attached hereto as Appendix "**B**".

7. Pursuant to the Receivership Order, the Receiver was, among other things, specifically empowered and authorized to:

   (a) take possession and exercise control over the Property;

   (b) manage, operate and carry on the business of the Debtors, including Techlantic; and,

   (c) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings with respect to the Debtors, including Techlantic.

8. In connection with its business, Techlantic operated an e-mail server (the **"Techlantic Server"**) that Techlantic's employees and consultants used to send e-mails (the **"Techlantic E-mails"**) relating to Techlantic's business.

9. After the Receiver was appointed, it paid the fees required to operate the Techlantic Server and use and access the Techlantic E-mails. It made these payments in order to ensure that Techlantic's remaining employees could operate Techlantic's business and assist with the Receiver's realization efforts, and to preserve the Techlantic Server and the Techlantic E-mails.

10. After the Receivership Order, the Van Essen Companies did not ask for permission to use the Techlantic Servers. The Receiver did not know that they were doing so.

(ii) *Review of Techlantic's Documents*

11. Following the Receiver's appointment on December 22, 2023, the Receiver worked diligently to receive, preserve, protect and otherwise manage the Debtors' Property in accordance with the Receivership Order. In the course of the Receiver's efforts to manage the Debtors' Property, it became clear to the Receiver that the Debtors' books and records were, in some instances, not reliable and in other instances very difficult to understand.

12. By February 2024, the Receiver had identified a number of potential issues that required further investigation. Those issues are set out in the Second Report of the Receiver (the "**Second Report**") at paragraphs 26-34. The Second Report is attached hereto (without appendices) as Appendix "**C**".

13. Given the difficulties with the Debtors' records, and especially in light of MBL's evidence that funds had been improperly diverted by the Debtors, the Receiver determined that it was appropriate to conduct a more detailed review of the Debtors' electronic records, including the Techlantic E-mails and the documents stored on the Techlantic Server.

(iii) *The Receiver engaged FTI Forensic to assist with its Review*

14. On or around February 1, 2024, the Receiver and its counsel, Goodmans LLP (**"Goodmans"**) began to discuss engaging members of FTI's Forensic and Litigation Consulting group (**"FTI Forensic"**) to assist with the Receiver's investigation.

15. FTI Forensic operates a separate business line from the Receiver. Although both businesses are owned by FTI Consulting Canada Inc. (defined above as "**FTI**") they have separate internal reporting structures, internal profit and loss statements and information technology infrastructures. In the ordinary course, employees in FTI's Corporate Finance and Restructuring practice (including those working for the Receiver) cannot access documents stored on FTI Forensic's information storage and document management systems, and vice versa.

16. FTI Forensic prepared a budget estimate and proposal for approval by the Receiver before it began any work. The Receiver, in consultation with MBL, decided to engage FTI Forensic.

(iv) *E-mails from certain Techlantic employees – but not Wouter – added to Relativity Database on February 16, 2024*

17. In keeping with its mandate and the Receivership Order, the Receiver took steps to preserve the Techlantic Server, including the Techlantic E-mails, shortly after its appointment.

18. However, and as described below, the Receiver never reviewed the Techlantic Server or the Techlantic E-mails. All review of the Techlantic Server and Techlantic E-mails was conducted by either Goodmans or FTI Forensic, at the Receiver's request. To the extent

that the Receiver obtained information about documents on the Techlantic Server or Techlantic E-mails, this information was provided to it by either FTI Forensic or Goodmans.

19. The Techlantic Server and the Techlantic E-mails were hosted by a third party provider, MMO Techno. FTI Forensic asked MMO Techno to provide the contents of the mailboxes for the following e-mail addresses (the "**Initial Custodians**"):[2]

(a) eric@techlantic.com

(b) eric.vanessen@tradexport.com

(c) eric@tradexport.com

(d) june@techlantic.com

(e) michelle@techlantic.com

(f) ping@techlantic.com

(g) wouter@techlantic.com

20. The email inboxes from the Initial Custodians listed above were uploaded into a document management software called Relativity. In order to review the Techlantic E-mails, reviewers from either Goodmans or FTI Forensic had to login to the Relativity database (the **"Database"**).

[2] Other tradexport.com mailboxes were collected, but these mailboxes are not directly relevant to this motion.

21. Kamran Hamidi of the Receiver entered the Database only once, to click on one document as a "test" of his credentials.

(v) *The Receiver did not know that the Techlantic E-mails contained Van Essen Companies e-mails, let alone privileged emails*

22. The Van Essen Companies are operated by Wouter Van Essen (**"Wouter"**). Wouter is the father of Eric Van Essen (**"Eric"**), who was an officer and director of Techlantic when the Receiver was appointed.

23. Eric notified the Receiver of his resignation as a director and officer of Techlantic on January 2, 2024. Eric stayed on as a Techlantic employee until April 19, 2024.

24. When the Receiver's investigation began, it did not know (or have any reason to suspect) that the Van Essen Companies had used the Techlantic Server or the Techlantic E-mails for privileged communications. In fact, the Van Essen Companies did not tell the Receiver that they had used the Techlantic Server or the Techlantic E-mails for any business communication.

25. Importantly, the Van Essen Companies had represented to the Receiver that, despite the father/son relationship between Wouter and Eric, they dealt with Techlantic at arm's length. The Receiver assumed that this included operating the Van Essen Companies' business from a separate e-mail server that they paid for and controlled.

26. Because the Receiver did not know or suspect that the Van Essen Companies had any information (let alone privileged information) stored on the Techlantic Server, it did not

take any steps to identify or isolate any potentially privileged information that might belong to the Van Essen Companies.

27. It is not the Receiver's practice (nor, to the Receiver's knowledge, common practice among restructuring professionals) to screen a debtor's electronic records to determine whether privileged or confidential documents held by third parties might be stored there. Screening for potentially privileged documents without knowing anything about the documents (i.e., who sent them, when they were sent or what they a relate to) would be very difficult, and in some cases impossible. In order to find privileged documents, the Receiver would have had to know where to look. Before receiving the Van Essen Companies' e-mail on April 5, 2024, the Receiver had no reason to believe that there were any privileged documents belonging to a third party on the Techlantic Server.

28. If the Receiver had known that there were (or might be) privileged communications on the Techlantic Server, then it would have taken appropriate steps to ensure that those documents were not included in the Database or reviewed by anyone. However, the Receiver was not aware of any reason to implement these procedures when Goodmans and FTI Forensic began reviewing documents.

(vi) *Eric Tried to Delete Wouter's Emails from the Techlantic Server*

29. As described above, although Eric resigned as a director and officer shortly after the Receivership Order, he continued to work as an employee of Techlantic until April 19, 2024.

30. On or around February 7, 2024, without the Receiver's knowledge or permission, Eric instructed MMO Techno to remove certain users from the Techlantic Server, including Wouter. This request would have resulted in Wouter's e-mail account, and all of the data associated with it, being deleted. This e-mail is attached hereto as Appendix "**D**".

31. On or around February 16, 2024, Goodmans and FTI Forensic began to review documents in the Database. Shortly thereafter, Goodmans informed the Receiver that it had discovered through its preliminary review that Wouter had an e-mail account on the Techlantic Server.

32. After discovering this, FTI Forensic tried to collect Wouter's e-mails and add them to the Database. It was at this time that it learned, for the first time, that Eric had asked for Wouter's e-mail to be removed and deleted along with e-mails belonging to a number of Techlantic employees. Upon learning this, the Receiver instructed MMO Techno to disregard Eric's instructions and restore Wouter's email inbox. E-mails between the Receiver and MMO Techno are attached hereto as Appendix "**E**".

33. On February 21, 2024, Eric e-mailed the Receiver to advise that "Wouter suggested taking over some of the infrastructure costs" relating to the Techlantic Server. At no point during this correspondence did Eric indicate that there were privileged documents belonging to the Van Essen Companies on the Techlantic Server.

34. The Receiver wrote to Eric to clarify that the Receiver had to preserve Techlantic's historical records and that nothing should be deleted:

> I just sent you an invite for 1 pm with the agenda attached within the meeting invite. Re: Trade X and Techlantic infrastructure and historical records, we cannot make any changes and **we need to preserve that information for the Receiver's**

> **records so we cannot transfer those costs to any other party unless it relates to a sale of the business.**
>
> I understand there was a request made by you to delete certain user profiles from the Microsoft 365 server so **we need to ensure no changes or deletion of any Techlantic data is being made without the written consent of the Receiver.** [emphasis added]

35. A copy of this email is attached hereto as Exhibit "**F**".

(vii) *Documents Presented to the Receiver*

36. As described above, the Receiver did not conduct any document review. Document review relating to the Receiver's investigation was conducted by Goodmans or FTI Forensic. Specifically, FTI Forensic participated in its own separate review that focused primarily on investigating various financial transactions undertaken by the Debtors.

37. FTI Forensic communicated its findings to the Receiver and Goodmans through periodic presentations (the "**FTI Forensic Presentations**"). FTI Forensic also sent certain documents referenced in its presentations to the Receiver and Goodmans.

38. Many of the Techlantic documents referenced in the FTI Forensic Presentations were accounting documents, invoices and other financial documents relating to Techlantic's business. To the best of the Receiver's knowledge, the documents excerpted in the FTI Forensic Presentations are not documents alleged to be privileged. For greater clarity, none of the excerpted documents contain any correspondence between Wouter and Ms. Beale or Ms. Brinston, nor do they contain documents from within the "legal" folder in Wouter's inbox.

39. On March 28, 2024, FTI Forensic presented certain findings relating to Techlantic's purchase of vehicles from the Van Essen Companies in 2022. FTI Forensic subsequently sent certain supporting documents relating to its analysis. The Receiver was copied on FTI Forensic's e-mail to Goodmans, but did not review any of the supporting documents at any point in time.

40. On May 17, 2024, the Receiver was advised by Goodmans that the documents sent on March 28, 2024 included a potentially privileged e-mail. Upon being advised of this by Goodmans, the Receiver personnel copied on Ms. Patel's e-mail deleted the e-mails from Ms. Patel without reviewing them.

41. In order to facilitate certain information sharing relating to this project, the Receiver granted certain members of FTI Forensic access to a shared drive (the "**FTI Drive**"). FTI Forensic saved documents to the FTI Drive, but the Receiver did not access them.

42. For clarity, the only documents from the Database that have been reviewed by the Receiver are those documents presented to it in the FTI Forensic Presentations or appended to the Receiver's Reports.

C. The Van Essen Companies raise their privilege allegations for the first time on April 5, 2024

43. The Receiver delivered its Supplemental Report to the First Report on April 4, 2024 (the **"First Supplemental Report"**). The First Supplemental Report attached a number of e-mails sent and received by Wouter and Eric.

44. On April 5, 2024, Ms. Beale wrote to assert (for the first time) that the Van Essen Companies used the Techlantic Server for the purposes of "receiving legal advice

settlement-related discussion and litigation advice and strategy, including in relation to the litigation herein."

45. Ms. Beale also asserted that the Receiver had received and reviewed "all e-mails" sent from techlantic.com and many e-mails from techlanticconsulting.com. This is not correct. As noted above, the Receiver did not review any documents – all document review was conducted by either Goodmans or FTI Forensic.

46. Ms. Beale asked for a complete inventory of the Database and a copy of a "Document Collection and Review Protocol" that showed "measures taken to identify and exclude privileged information". The e-mail is attached hereto as Appendix "**G**".

47. As described above, the Receiver did not believe (or have any reason to believe) that any privileged material (other than potentially Techlantic's privileged material, which it was entitled to review) and so it did not implement any procedures for excluding such materials.

D. Conclusion

48. Since the Van Essen Companies initially raised their concerns about privilege, the Receiver has tried to work with the Van Essen Companies to address any legitimate concerns relating to the allegedly privileged documents in the Database. The Receiver does not believe that the Van Essen Companies should benefit from any inadvertent review of privileged documents that may have occurred, particularly given the Van Essen Companies' use of the Techlantic Server without the Receiver's permission, their delay in raising their privilege concerns, and the fact that the Receiver has not reviewed any privileged documents. In the Receiver's view, the Van Essen Companies would receive a significant benefit if their motion is granted by the Court, because substantial potential liabilities

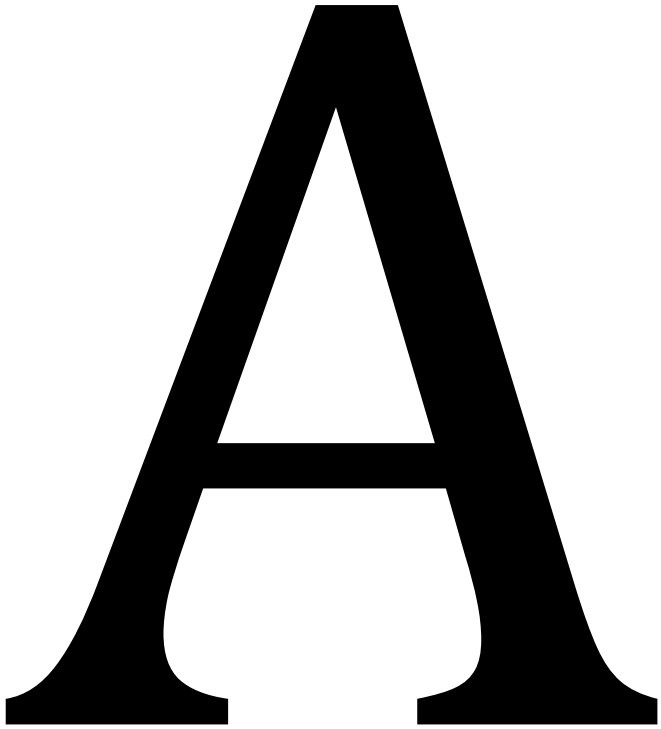
would be effectively eliminated without any hearing on the merits, and without any demonstration that the Van Essen Companies have actually suffered any prejudice. That benefit would come at the expense of Techlantic's stakeholders, and the Receiver does not believe that it is appropriate.

All of which is respectfully submitted,

FTI Consulting Inc., solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradeexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic LTD., and TX OPS Canada Corporation, and not in its personal or corporate capacity.

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director



Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

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

B E T W E E N:

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. and TX OPS CANADA CORPORATION

Respondents

AFFIDAVIT OF WESTIN LOVY
SWORN DECEMBER 4, 2023

I, **Westin Lovy**, of the City of Stamford, in the State of Connecticut, MAKE OATH AND SAY:

1. The Applicant is MBL Administrative Agent II LLC ("**MBL**" or the "**Applicant**"). I am a Managing Director of Post Road Group LP ("**PRG**"), which is the parent company to the Applicant. PRG is an alternative investment advisory firm based in Stamford, Connecticut, that focuses on private credit and private equity investments in digital infrastructure,

telecommunications, media, business services, real estate and specialty finance. Since February 2021, I have been responsible for the management of the credit facilities made available to the Respondents (defined below) and their affiliates, including communications and negotiations with the Borrowers (defined below) and collateral reporting.

2. By virtue of my position as Managing Director, I have personal knowledge of the matters deposed to herein. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and belief and I verily believe it to be true.

A. BACKGROUND AND OVERVIEW

3. I swear this Affidavit in support of an Application by MBL for the appointment of FTI Consulting Canada Inc. ("**FTI**") as a receiver and manager (the "**Receiver**") of substantially all of the assets, undertakings and property of each of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (collectively, the "**Respondents**"), including all proceeds thereof, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 101 of the *Courts of Justice Act* (Ontario).

4. The Respondents are part of a group of companies referred to throughout this Affidavit and defined below as the "**Trade X Group**". The Trade X Group are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada and other overseas markets. Over

the past two years, the Trade X Group has experienced declining revenues due to a decline in used automobile prices, rising expenses and an undisciplined acquisition and sales practice. Despite entering into a loan restructuring transaction with its creditors, the Trade X Group's revenues have continued to decline and those losses are expected to continue indefinitely to the detriment of MBL's security and collateral value.

5. In recent months, the Trade X Group have conducted their operations in a manner that has jeopardized the Collateral, materially breached the terms of their credit agreements with MBL and disregarded the interests of MBL as a senior secured creditor of the Respondents. Specifically, the Trade X Group have improperly diverted over US$7 million in funds payable to MBL, and instead used those funds for their working capital needs. These actions, among others, have given rise to a series of material defaults under the credit facilities that remain uncured and ongoing. In fact, as recently as November 4, 2023, the Trade X Group again, without notice, diverted funds that were payable to MBL and used them to fund payroll obligations instead.

6. The principal objective of these proceedings is to appoint the Receiver with the goal of preserving the collateral that is subject to MBL's security interest (defined in paragraph 41 below as the "**Collateral**") and ensuring an orderly liquidation of such Collateral.

7. As of November 30, 2023, the Respondents are indebted to MBL in the aggregate amount of US$15,256,504.16 (which includes principal and interest) on a secured basis (the "**Indebtedness**"). This amount remains unpaid and interest, fees, costs and expenses continue to accrue on the amounts owing.

8. MBL is the administrative agent under credit facilities made available to certain affiliates of the Respondents (defined and described below as the Borrowers). The Respondents are Canadian affiliates of the Borrowers and have guaranteed, on a secured basis, the obligations of the Borrowers. The Borrowers are in material default of their obligations under the credit facilities and MBL has notified the Borrowers of such Default and has accelerated the indebtedness owing thereunder. Consequently, MBL is in a position to enforce its security against the Respondents.

9. MBL has security on substantially all of the Respondents' property, assets and undertakings, other than one of the Respondents' affiliates, Wholesale Express (defined below). Rather, MBL has a security interest over the shares of Wholesale Express, but not its assets. Highcrest Lending Inc. ("**Highcrest**") is a creditor of Wholesale Express with priority security over all of its shares and assets (later defined as the "**Highcrest Collateral**") and has commenced an application under the *Companies' Creditors Arrangement Act* ("**CCAA**") in relation to the Highcrest Collateral. As such, MBL is not seeking receivership over Wholesale Express or its assets.

10. This Application is especially urgent given events that have occurred in the last several weeks. MBL learned that not only has the Trade X Group continued to improperly and unlawfully divert and misappropriate funds payable to MBL, but that the Trade X Group has quietly been slowing its operations in Ontario. As described in more detail below, MBL appointed a financial advisor to attend the premises of certain of the Respondents. On November 15, 2023, the financial advisor reported that there is no apparent business being operated by the Trade X Group in Canada. Further, on

November 28, 2023, MBL was notified that the Trade X Group defaulted on their lease obligations in respect of their office in Mississauga, Ontario.

11. In the circumstances, MBL has lost faith in the management of the Trade X Group and has serious concerns that the Collateral has been entirely depleted, or at best, is at risk of being further eroded unless the Receiver is appointed. The appointment of a Receiver is necessary to take control over the operations of the Respondents and recover any remaining Collateral for the benefit of MBL.

B. THE PARTIES

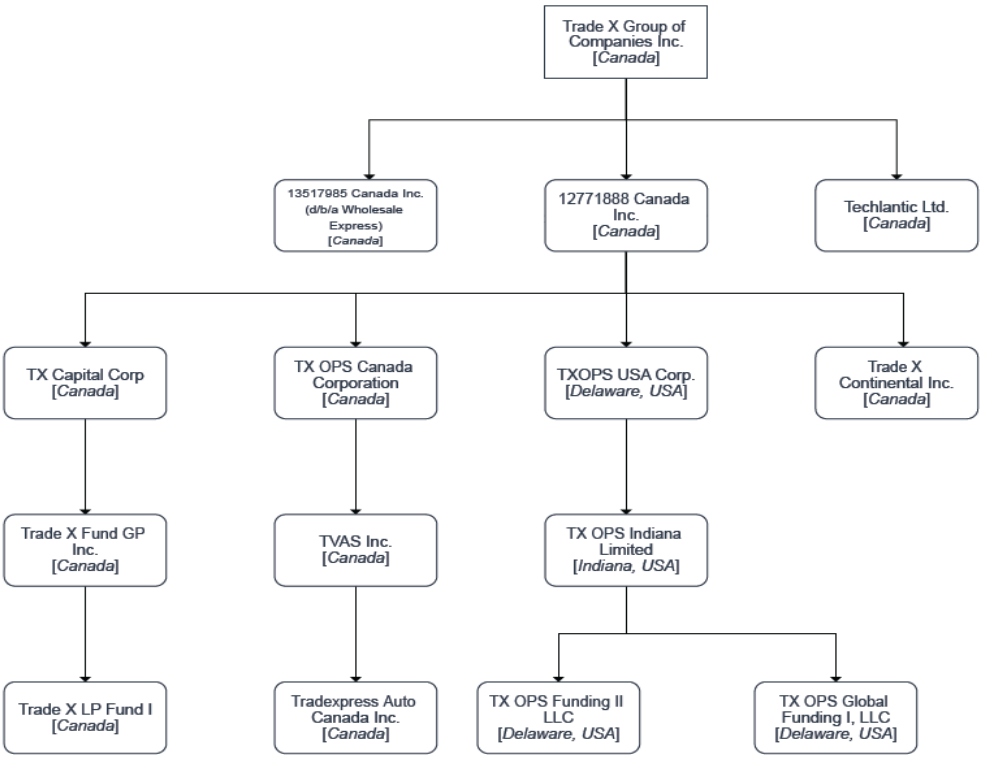
(i) The Applicant

12. MBL is the administrative agent for: (a) Post Road Specialty Lending Fund II LP (f/k/a Man Bridge Lane Specialty Lending Fund II (US) LP), and (b) Post Road Specialty Lending Fund (UMINN) LP (f/k/a Man Bridge Lane Specialty Lending Fund (UMINN) LP), lenders under the Global Facility and the Domestic Facility (each as defined below).The Lenders are each private investment funds managed by PRG. MBL is a Delaware limited liability company and a direct subsidiary of PRG.

(ii) The Respondents and their Business

13. Trade X Group of Companies Inc. ("**Trade X Parent**") is a private corporation formed under the federal laws of Canada. Trade X Parent is a holding company and is the direct and indirect parent company of the other Respondents.

14. A simplified[1] corporate organizational chart showing the ownership structure of Trade X Parent and its direct and indirect interest in the other Respondents is reproduced below:



15. The registered head office and principal place of business of Trade X Parent is located at 7401 Pacific Circle, Mississauga, Ontario, which is a leased premises (the "**Mississauga Location**"). All of the Respondents have their registered head office at the Mississauga Location.

[1] Trade X Parent also holds an indirect interest in TradeX Netherlands B.V., TXOPS USA Corp., TradeX Europe GmbH,, TX OPS Hong Kong Limited, China (Tianjin) Pilot Free Trade Zone Tiansi International Trade Co., Ltd., TX OPS Indiana Limited, TradeXpress Germany GmbH, TXP Tradexport Kenya Limited, TX OPS Mexico Limited, Tradexpress Auto, Inc., TX OPS Funding I, LLC, TX OPS Funding II, LLC (*i.e., Domestic Borrower*), TX OPS Funding III, LLC, TX OPS Global Funding I, LLC (*i.e., Global Borrower*), Tradexpress Auto Nigeria Ltd., TX OPS Japan G.K.

16. The Respondents and their subsidiaries (together with Trade X Parent, the "**Trade X Group**") are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from Canada and other overseas markets. The Trade X Group has allegedly built a fully automated platform to facilitate cross-border vehicle sales transactions. The Trade X Group's operations in Canada are predominantly conducted by three companies**:** (a) TX OPS Canada Corporation ("**TX Canada**"), (b) Techlantic Ltd. ("**Techlantic**"), and (c) 13517985 Canada Inc. ("**Wholesale Express**").

(a) TX Canada

17. TX Canada is a federal corporation. TX Canada operates an automotive trading platform connecting car dealerships located in the United States with sellers in Canada through a secure marketplace offering end to end service that handles procurement, foreign exchange, logistics and duties for vehicle acquisitions between Canada and the United States (the "**Trade X Platform**").

(b) Techlantic

18. Techlantic is a federal corporation that operates out of Oakville, Ontario. As described below, Techlantic is a borrower under the global credit facility made available by the Lenders. Techlantic supports a network of automobile exporters and offers similar services to TX Canada—although Techlantic support global sales and acquisitions of vehicles by car dealerships.

(c) Wholesale Express

19. 13517985 Canada Inc. ("**Wholesale Express**") is a federal corporation that operates out of Saint-Madeleine Quebec. Wholesale Express operates an online dealer-to-dealer auction platform for vehicles, whereby it acquires and sells pre-owned cars to registered dealers. MBL has a security interest in the shares of Wholesale Express by virtue of its security interest in all of the assets of Trade X Parent. However, MBL's interest in Wholesale Express is subordinated to Wholesale Express' senior secured creditor, Highcrest. Wholesale Express is not a Respondent in this Application.

(d) Employees

20. To the best of my knowledge, Trade X Parent and the other Respondents currently employ less than thirty individuals. Furthermore, to the best of my knowledge, the Respondents are not party to any collective agreements in respect of their employees and do not have any union contracts or pension plans in place with its employees.

(e) Assets

21. The Respondents do not own any real property. Rather, the Respondents all operate out of leased facilities located in Ontario. As discussed herein, the Respondents are currently in default of their lease obligations in respect of their facilities located in Ontario.

22. The primary assets of the Respondents are the vehicles they own, the contracts associated with the sale of those vehicles and the accounts receivable associated with vehicle sales. To the best of my knowledge, these accounts receivable are primarily

comprised of vehicles that have been committed for sale but not yet picked up and paid for the by the end buyer.

C. THE CREDIT FACILITIES

(i) The Credit Facilities Owing to the Lenders

23. The outstanding indebtedness owing to MBL arises pursuant to two separate credit agreements under which MBL acts as the administrative agent (collectively, the "**Credit Agreements**"):

(a) **Domestic Facility:** A US$ 30 million credit facility made available pursuant to a senior secured revolving credit agreement dated February 5, 2021[2] between Post Road Specialty Lending Fund II LP and Post Road Specialty Lending Fund (UMINN) LP, as lenders (collectively, the "**Domestic Lenders**" and together with the Global Lenders (defined below), the "**Lenders**") and TX OPS Funding II, LLC, as borrower (the "**Domestic Facility**");

(b) **Global Facility:** A US$ 30 million credit facility made available pursuant to a senior secured revolving credit agreement dated September 27, 2021[3] between Man Bridge Lane Specialty Lending Fund II (US) LP and Man Bridge Lane Specialty Lending Fund (UMINN) LP, as lenders (collectively,

[2] As amended by Amendment No. 1 dated as of June 8, 2021, Amendment No. 2 dated as of September 10, 2021, Amendment No. 3 dated as of December 20, 2021, Amendment No. 4 dated as of July 15, 2022 and as further amended under the Amendment No. 5 and Limited Waiver to dated Senior Secured Revolving Credit Agreement dated June 30, 2023.

[3] As amended by Amendment No. 1 dated as of December 30, 2021, Amendment No. 2 dated as of September 6, 2022 and further amended by the Amendment No. 3 and Limited Waiver to Senior Secured Revolving Credit Agreement dated December 23, 2022.

the "**Global Lenders**") and Techlantic and TX OPS Global Funding I, LLC, as borrowers (the "**Global Facility**" and together with the Domestic Facility, the "**Credit Facilities**"),

Attached to my Affidavit as **Exhibits "A"** and **"B"**, respectively, are the credit agreements forming the Domestic Facility and the Global Facility.

24. The borrower under the Domestic Facility is TX OPS Funding II, LLC (the "**Domestic Borrower**") a Delaware special purpose entity owned by TX OPS Indiana Limited, a U.S. subsidiary of the Respondents ("**TX Indiana**"). The borrowers under the Global Facility are Techlantic and TX OPS Global Funding I, LLC (the "**Global Borrowers**"). TX OPS Global Funding I, LLC is also a Delaware special purpose vehicle that is owned by TX Indiana. For the purposes of this Affidavit, the Domestic Borrower and Global Borrowers are collectively, referred to as the "**Borrowers**" and each, a "**Borrower**".

(ii) Advances under the Credit Facilities

25. The Credit Facilities extend advances to the Borrowers to facilitate the purchase and sale of vehicles by certain members of the Trade X Group for sale between Canada and the United States (in the case of the Domestic Facility) or globally (in the case of the Global Facility) and are based on collateral presented and monitored by a revolving borrowing base. As detailed below, the Borrower and Respondents have materially failed to comply with the terms of the Credit Facilities as they relate to these advances and their intentional and repeated misappropriation of such funds have jeopardized the Collateral and the Lenders' interest therein.

26. Under the Domestic Facility, TX Canada generally procures vehicles in Canada that are ultimately sold to TX Indiana and the Domestic Borrower, for sale to an end buyer in the United States. Advances under the Domestic Facility are used by the Borrower to repay TX Canada for the acquisition of such vehicles. Advances under the Global Facility are used to finance vehicle sales by TX Canada or Techlantic, as applicable, that are ultimately sold to TX Indiana and the Global Borrower, for sale to end buyers in the rest of the world.

27. A more detailed description of steps involved in connection with each Advance (as defined below) under the Credit Facilities is as follows:

(a) **Step 1:** A seller sells a vehicle (the "**Vehicle**") to TX Canada or Techlantic, as applicable (the "**TX Purchaser**"), via the Trade X Platform or through direct purchase agreements, pursuant to an electronic purchase and sale agreement between seller and the TX Purchaser (the "**First Tier Purchase Agreement**"). TX Purchaser funds the purchase price for the Vehicle using its own funds. TX Purchaser also arranges for the export of the Vehicle[4] to the destination of the ultimate buyer[5] of the vehicle (the "**End Buyer**"), including the payment of all taxes and duties on behalf of the End Buyer.

[4] In the case of TX Canada in the Domestic Facility, the Vehicle is generally exported from Canada. In the case of the Global Borrower in the Global Facility, the Vehicle may be exported from any jurisdiction that has been approved by the Global Lenders.

[5] The Credit Agreements require the End Buyer to be a car dealer with a valid dealer license and approved by TX Indiana. In the case of the Global Facility, the End Buyer is a car dealership located in approved jurisdictions outside of Canada and the United States whereas in the case of the Domestic Credit Facility, the End Buyer is a car dealership located in the United States.

(b) **Step 2:** TX Purchaser sells the Vehicle to TX Indiana, along with all of TX Purchaser's rights under the First Tier Purchase Agreement, pursuant to a purchase and sale agreement between TX Purchaser and TX Indiana (the "**Second Tier Purchase Agreement**").

(c) **Step 3**: TX Indiana sells the rights in the Vehicle to a Borrower, along with all of TX Purchaser's rights under the First Tier Purchase Agreement and the Second Tier Purchase Agreement pursuant to a sale agreement between TX Indiana and a Borrower (the "**Third Tier Purchase Agreement**"). TX Indiana also grants the Borrower a security interest in, among other things, the Vehicle acquired from TX Purchaser and its rights under the Second Tier Purchase Agreement.

(d) **Step 4**: After the parties enter into the Third Tier Purchase Agreement, the Borrower delivers an advance request to MBL in order to finance the purchase price for the Vehicle (the "**Advance**"). Among other things, as a condition to the Lenders making the requested Advance, the Vehicle must satisfy the definition of "**Eligible Asset**" in the applicable Credit Agreement, including the requirement that the Borrower acquired the Vehicle pursuant to the Third Tier Purchase Agreement and the Borrower has granted to MBL a valid and perfected first priority security interest in the Vehicle.

(e) **Step 5:** Upon satisfaction of the conditions outlined above in Step 4, the Lenders make the Advance to TX Purchaser on behalf of the Borrower. This is also when the Vehicle becomes a "**Financed Vehicle**" under the Credit

Facilities and forms part of the Collateral that is subject to the Security (defined below) and the Vehicle is added to the borrowing base of the Credit Facilities.

(f) **Step 6**: An End Buyer purchases the Financed Vehicle from TX Indiana through the Trade X Platform pursuant to an electronic purchase and sale agreement between TX Indiana and the End Buyer (the "**Fourth Tier Purchase Agreement**" and together with the First Tier Purchase Agreement, the Second Tier Purchase Agreement and the Third Tier Purchase Agreement, the "**Agreements**"). The End Buyer is required to pay a security deposit to TX Indiana upon the purchase of the Vehicle on the Trade X Platform and a fee for the use of the Trade X Platform. These monies are required to be deposited into a designated bank account that is subject to a deposit account control agreement in favour of MBL (the "**Collection Account**"). At this stage, the Borrower receives the economic interest in the Financed Vehicle and title remains with TX Indiana, the holder of the dealer license.

(g) **Step 7:** The Financed Vehicle is transported to the importing country and arrives at the destination port and cleared through customs. At this time, the End Buyer pays the balance of the purchase price for the Vehicle (minus the security deposit already paid to TX Indiana above in Step 6) to the Borrower (the security deposit and the purchase price and any other amounts payable by the End Buyer, collectively the "**End Buyer Payments**").

For such Vehicle to continue being characterized as an "Eligible Asset" under the applicable Credit Agreement, End Buyer Payments must be paid by the Borrower into the Collection Account no later than (i) in the case of the Domestic Facility, 90 days after the Vehicle officially[6] enters the United States; and (ii) in the case of the Global Facility, 60 days after the Vehicle arrives at the approved country of destination. Failure to deposit such amounts within the foregoing periods would lead to the Vehicle becoming an "Ineligible Asset" under the applicable Credit Facility.

(h) **Step 8**: The Borrower uses the End Buyer Payments held in the Collection Account to repay the Advance made by the Lenders under Step 4.

(i) **Step 9:** Once the Advance is repaid to the Lenders, the Borrower and MBL authorize TX Indiana to release the Vehicle to the End Buyer. TX Indiana retitles the Vehicle to the End Buyer and coordinates delivery.

28. Separately, if any Vehicles held in inventory by TX Canada or Techlantic constitute an "Ineligible Asset" under the applicable Credit Facility, meaning it is held in inventory but not sold to an End Buyer, then Tradexpress Auto Canada Inc. ("**Tradexpress**") an affiliate of TX Canada and a Respondent in this Application, is entitled to remarket and auction such Vehicles. The Credit Agreements also require Tradexpress to deposit receipts from any such Vehicle sales in the Collection Account.

[6] Meaning the Vehicle is placed under the U.S. Customs and Border Protection bond, as evidenced by the filing of a Form 7501 Entry Summary with respect to such Vehicle.

29. As described below under a description of the defaults, the Borrower and Respondents have repeatedly and intentionally failed to comply with the terms of the Credit Facilities as they relate to Advances and the steps outlined above. In particular, they have failed to, among other things, deposit End Buyer Payments into the Collection Account and have instead misappropriated such funds for their working capital purposes.

D. THE SECURITY HELD BY MBL

(i) The Collateral

30. MBL has a first ranking security over substantially all of the assets of the Borrowers and the Respondents pursuant to a series of security agreements, which are detailed below.

31. The Canadian collateral underpinning the Security is predominantly comprised of (a) Vehicles acquired by the TX Purchasers (being TX Canada and Techlantic) and ultimately sold to TX Indiana for sale to End Buyers, (b) the rights of TX Canada and Techlantic under purchase and sale agreements with sellers and TX Indiana, (c) cash, representing payments by the Borrowers by way of Advances for Financed Vehicles, (d) a harmonized sales tax receivable that is generated from the purchase of a Vehicle from TX Canada, Techlantic or Tradexpress (the "**HST Receivable**"); as part of its services, TX Canada, Techlantic or Tradexpress will pay the HST on the Vehicle on behalf of the End Buyer, and recover the HST for its own account, and (e) the equity interests of certain of the Respondents.

(ii) Borrower Security

32. As security for the Indebtedness under the applicable Credit Facilities, Techlantic and the other Borrowers granted MBL a security interest in all of their property on February 5, 2021, in respect of the Domestic Facility (the "**Domestic Security**") and September 27, 2021, in respect of the Global Facility (the "**Global Security**"). The Domestic Security is attached to my Affidavit as **Exhibit "C"**. The Global Security is attached to my Affidavit as **Exhibit "D"**.

(iii) Respondents' Security

33. TX Canada entered into guarantee and security agreements in connection with each of the Domestic Facility and the Global Facility on February 5, 2021 and September 27, 2021, respectively (collectively, the "**TX Canada Security**"). Pursuant to the TX Canada Security, TX Canada guaranteed the obligations of the Borrowers to MBL, for among other things, any loss arising out of any acts of misappropriation of misapplication of funds or proceeds of any Collateral ("**Guaranteed Obligations**"). The agreements forming the TX Canada Security are attached to my Affidavit as **Exhibits "E"** and **"F"**.

34. As security for the Guaranteed Obligations, TX Canada granted a security interest over the (a) HST Receivables, (b) the Financed Vehicles and all rights to payment or proceeds for any such vehicles and related Purchase Agreements, (c) all rights and obligations under the Purchase Agreements to which it is a party, and (d) any Vehicles owned by TX Canada that are not subject to Purchase Agreements (collectively, the "**TX Canada Collateral**").

(iv) The Canadian Guarantors

35. As part of the 2022 Loan Restructuring (described and defined in paragraph 57 below), each of the Respondents, other than TX Canada who was already a guarantor of each of the Credit Facilities (collectively, the "**Canadian Guarantors**"), entered into joinders of the Global Facility and the Domestic Facility which had the had the effect of (a) making each Canadian Guarantor a guarantor of the obligations of the Borrowers under the Credit Facilities and (b) causing each Canadian Guarantor to become party to the Domestic Security and the Global Security, pursuant to which they (i) granted in favour of MBL a security interest in all of their property, and (ii) pledged to MBL any equity directly owned by them in the shares of a member of the Trade X Group.

(v) Collection Accounts

36. The Borrowers, TX Canada, Techlantic and Tradexpress have entered into the following blocked accounts agreements or deposit account control agreements in favour of MBL with respect to the Collection Accounts (collectively, the "**DACAs**"):

(a) deposit account control agreements between the Borrowers and Silicon Valley Bank ("**SVB**") in favour of MBL;

(b) blocked account agreements between Tradexpress, TX Canada, Royal Bank of Canada and MBL dated September 14, 2021; and

(c) a blocked account agreement between Techlantic, MBL and RBC dated April 1, 2022,

Attached to my Affidavit as **Exhibits "G"** through **"K"** are copies of the DACAs.

37. As described in paragraph 29 above, TX Indiana and the Borrowers are required to deposit any amounts received by an End Buyer in respect of a Financed Vehicle into the Collection Account to repay the Advance made by the Lenders. TX Canada, Techlantic and Tradexpress are required to deposit all HST Receivables into the applicable Collection Account.

38. As a result of the Domestic Security, the Global Security, the TX Canada Security and the DACAs (collectively, the "**Security**"), MBL has security over (a) the TX Canada Collateral, (b) substantially all of the assets of the Canadian Guarantors, (c) the shares of the Respondents and Wholesale Express, some of which are perfected by possession, and (d) the Collection Account (collectively, the "**Collateral**").

E. THE PRIORITY OF THE SECURITY AND OTHER CREDITORS

(i) The MBL Security

39. As described below, MBL has first ranking security against all of the assets of the Respondents.

40. Attached to my Affidavit as **Exhibit "L"** are the *Personal Property Security Act* searches conducted against each of the Respondents in Ontario with a file currency date of October 26, 2023 (the "**PPSA Searches**"). PPSA Searches were also conducted in Saskatchewan against TX Canada and Tradexpress because they are extra-provincially registered in those jurisdictions.

41. The PPSA Searches show that MBL registered the Security against the Respondents in Ontario as follows:

(a) **TX Canada:** registrations against all of the property of TX Canada registered on February 4, 2021 and September 27, 2021;

(b) **Tradexpress:** registrations covering collateral identified as Accounts and Other against Davidson Motors Incorporated (former name of Tradexpress) on August 31, 2021, September 2, 2021 and September 27, 2021;

(c) **Techlantic:** registrations against all property of Techlantic registered on December 21, 2021 and December 23, 2022; and

(d) **Canadian Guarantors:** a registration against all of the property of the Canadian Guarantors, other than Tradexpress and Techlantic, registered on December 23, 2022.

42. As shown in the PPSA Searches, the following registrations rank equally or prior to the registrations of MBL against TX Canada: (a) TX Indiana and Congressional Bank both registered interests against TX Canada on September 27, 2021, and (b) Trade X LP Fund I, an affiliate of TX Canada, registered an interest against TX Canada on February 25, 2020. I am advised that Congressional Bank has released its interest and there is no indebtedness outstanding between TX Canada and Congressional Bank. I am further advised that each of the other parties, namely TX Indiana and Trade X LP Fund I, who are affiliates of the Respondents, will receive notice of this Application.

43. MBL, through its counsel, is also currently in possession of the following physical share certificates representing pledged shares of the following Respondents: Techlantic; TX Canada; 12771888 Canada Inc.; Trade X Continental Inc.; and TX Capital Corp.

(ii) Other Creditors

(a) Aimia Inc.

44. Trade X Parent is indebted to Aimia Inc. ("**Aimia**") pursuant to an amended and restated secured convertible note in the principal amount of US$25 million dated December 23, 2022 (the "**Aimia Note**"). The Aimia Note is attached to my Affidavit as **Exhibit "M"**.

45. The maturity date of the Aimia Note is dated December 8, 2023. As security for the Aimia Note, Trade X Parent has granted a subordinated security interest to Aimia in all of its property. The PPSA Searches show that this security was registered under the personal property regime in Ontario on January 3, 2023.

(b) Highcrest Lending Inc.

46. Pursuant to a Master Amended and Restated Loan and Security Agreement dated as of December 23, 2022 between Highcrest, as lender, Wholesale Express as borrower and Trade X Parent as guarantor (the "**Highcrest Loan and Security Agreement**"), Trade X Parent has pledged its interests in 100% of the equity of Wholesale Express and Wholesale Express has granted a security interest in all of its property to Highcrest (the "**Highcrest Collateral**"). A copy of the Highcrest Loan and Security Agreement is attached to my Affidavit as **Exhibit "N".**

47. As shown in the PPSA Searches, Highcrest has a registration dated December 8, 2022 against Trade X Parent under the personal property regime in Ontario against 'accounts' and 'other', as well as a registration under the personal property regime in Quebec against all of Wholesale Express' property. Wholesale Express is not a Canadian

Guarantor nor has it granted any security in favour of MBL. Rather, MBL holds a security interest in the shares of Wholesale Express by virtue of its security against all of the assets Trade X Parent.

48. On November 22, 2023, Highcrest obtained an initial order under the CCAA in respect of Wholesale Express, which is attached to my Affidavit as **Exhibit "O"** (the "**Initial Order**").

49. The Initial Order states that there is nothing preventing MBL from bringing an Application for receivership, provided that MBL does not seek control over the equity or assets of Wholesale Express. Accordingly, the Appointment Order sought by MBL does not extend to Trade X Parent's interest in Wholesale Express and, at this time, MBL has no intention of pursuing control over Wholesale Express.

F. THE EVENTS LEADING UP TO THIS RECEIVERSHIP APPLICATION

(i) The Deteriorating Financial Condition of the Respondents

50. Throughout 2020 and 2021, the market for used cars benefited from inventory restrictions due to semi-conductor shortages and supply chain issues caused by the COVID-19 pandemic. As a result, the Trade X Group gained significantly from an increase in demand for used vehicles.

51. During this period, the Trade X Group leveraged their trading platforms, particularly the Trade X Platform, to market itself as a tech company to attract venture capital and raised over US$45 million. At one point, the Trade X Group claimed it was valued at $250 million. However, the Trade X Group hired a bloated staff of over 150 people, many of whom were computer programmers and software engineers, with the aim of creating their

technology platform. Trade X began to incur large monthly expenses in part due to its oversized staff and operational inefficiencies.

52. Starting in 2022, as retail sales declined amid interest rate hikes, rising new vehicle availability, increased fuel prices and recessionary fears, demand for used vehicles retrenched and prices for vehicles dropped precipitously (an average of 14% in the U.S. alone). As a result, the Trade X Group began experiencing losses on Vehicles that it purchased without having conducted sufficient prior diligence and market research. Such losses were made worse by the incentive structure in place for Trade X Group staff, some of whom received bonuses based on the number of Vehicles acquired for inventory purposes, regardless of the price paid by the End Buyer (even if it was later sold at a loss). It is clear that the Trade X Group had prioritized their growth at the cost of prudent underwriting and responsible management of expenses.

53. These losses coincided with the general reduction of available capital in the investment community. As a result, Trade X Parent was not able to raise additional funds to subsidize the losses in the Trade X Group.

(ii) 2022 Loan Restructuring

54. In December 2022, the three largest creditors of the Trade X Group—Aimia, Highcrest and MBL—entered into a loan restructuring transaction (the "**2022 Loan Restructuring**") that amended and restated all loan documents and provided additional capital to Trade X Parent. In exchange, Trade X Parent agreed to sell Wholesale Express, use those proceeds as working capital in the Trade X Group and repay Highcrest. The Trade X Group also agreed to decrease its operating expenses and adopt a more rigorous

and disciplined approach to its Vehicle acquisition and sales practices in order to improve margins.

55. As part of the 2022 Loan Restructuring, (a) Trade X Parent issued the Aimia Note in favour of Aimia and granted a security interest in all of its property—prior to the 2022 Loan Restructuring, Aimia was an unsecured creditor, (b) Wholesale Express and Trade X Parent entered into the Highcrest Loan and Security Agreement and pledged Trade X Parent's interests in 100% of the equity of Wholesale Express and the assets of Wholesale Express in favour of Highcrest, and (c) the Canadian Guarantors became parties to the Domestic Security and Global Security and granted security in all of their assets in favour of MBL.

56. On December 23, 2022, Aimia, Highcrest, MBL, the Borrowers (with the exception of Techlantic), TX Indiana, TX Canada and TX Parent entered into an amended and restated intercreditor agreement (as amended and restated, the "**Intercreditor Agreement**"). A copy of the Intercreditor Agreement is attached to my Affidavit as **Exhibit "P"**.

57. Pursuant to the terms of the Intercreditor Agreement, the parties agreed that Highcrest has a priority security interest Wholesale Express and its shares, MBL has a priority security interest over all of the assets of Trade X Parent and its subsidiaries (other than Wholesale Express and its shares) and Aimia subordinated its interest for so long as any obligations to Highcrest or MBL remain outstanding.

G. THE BORROWERS DEFAULT ON THEIR OBLIGATIONS TO MBL

58. On or about October 9, 2023**,** I first became aware that the Borrowers failed to deposit End Buyer Payments into the Collection Account, as required by the Credit Facilities and, instead, used such End Buyer Payments to fund the Trade X Group operations and working capital needs.

59. I understand that between June and September, 2023, the Borrowers and the Respondents diverted approximately US$7 million of End Buyer Payments from the Lenders arising from Vehicle sales during this period. I understand that these were "collective decisions" taken by management of Trade X Parent, with the knowledge, approval and assistance of Ryan Davidson (former CEO and material shareholder), Eric Gosselin (CEO from June to November 2023), Brent Sawadsky (interim CFO), Lakshmi Suresh (Controller) and Eric van Essen (Manager for Techlantic), among other personnel.

60. Moreover, over the last several months, the Respondents have attempted to conceal this information from MBL, including, without limitation, by continuing to report the Vehicles as unsold on the borrowing base reports delivered to MBL, despite the fact such Vehicles had, in fact, been sold. When MBL inquired about the status of these Vehicles as part of regular collateral reporting on September 15, 2023, the Borrowers misrepresented to MBL that the applicable Vehicles had not been sold and requested additional Advances under the Global Facility, in part, on the basis of Vehicles it no longer owned. I believe these misrepresentations were made with the intent to avoid the required pay down of Advances that were made under the Credit Facilities.

61. As described in paragraphs 29 and 32 above, the Credit Facilities and the Security share the following features:

(a) the Collateral securing the Credit Facilities is predominantly comprised of the Vehicles, the rights of the Respondents under the Purchase Agreements and accounts receivable under those agreements;

(b) receivables for the Vehicles and other amounts payable by End Buyers are paid by the applicable Respondents into Collection Accounts over which MBL has security and which are subject to the DACAs; and

(c) both Credit Facilities are on a borrowing base, with Vehicles serving as the primary Collateral for calculating the borrowing base. Vehicles do not get included in the borrowing base unless, among other things, the Borrower has deposited the End Buyer Payments for a Vehicle into the Collections Account within a prescribed period of time after the Vehicle has been delivered to the destination of the End Buyer.

62. As a result, there are a series of material defaults (the "**Defaults**") arising from the intentional and wrongful diversion of the End Buyer Payments, which include the following:

(a) The failure of the Borrowers to deposit the End Buyer Payments into the Collection Account or hold such amounts in trust (subsections 8.01(b)(i) and (ii) of the Credit Agreements);

(b) Certain Financed Vehicles failing to qualify as "Eligible Assets" resulting in them being characterized "Ineligible Assets" due to, among other reasons, the Borrower's failure to deposit the End Buyer Payments for such Vehicles into the Collection Account within the period prescribed under the Credit Agreements, as further described in paragraph 29(g) above (sections 2.01(d) and Article IX(c) of the Credit Agreements); and

(c) The inability of the Borrower to deliver an accurate certification in respect of the borrowing base under the Credit Agreements owing to certain Vehicles failing to meet the definition of "Eligible Assets" (section 5.11(h) and Article IX(e) of the Credit Agreements).

63. The Defaults committed by the Borrowers trigger the obligations of TX Canada under the TX Canada Security and the obligations of the Canadian Guarantors under the Domestic Security and Global Security.

H. MBL TOOK STEPS FOLLOWING THE DEFAULTS

64. On October 13, 2023, MBL sent the Borrowers, TX Indiana and the Respondents notices of default and acceleration in respect of the Defaults. MBL advised that (a) the aggregate outstanding obligations under the Domestic Facility were US$2,329,813.97, and (b) the aggregate outstanding obligations under the Global Facility were US$17,858,401.20, in each case, as at October 13, 2023. Attached to my Affidavit as **Exhibits "Q"** and **"R"** are true copies of the notices of default and acceleration.

65. Subsequently, on October 16, 2023, MBL sent notices of activation to RBC under the DACAs. These notices of activation are attached to my Affidavit as **Exhibits "S"** through **"U"**.

66. The notices of activation notified RBC that they were to transfer all funds on deposit to a designated collections account over which MBL has control. Additionally, MBL sent a notice of exclusive control under each of the DACAs to SVB, pursuant to which MBL directed SVB to cease complying with instructions from the Borrowers (as applicable under each DACA). The notice of exclusive control sent to SVB is attached to my Affidavit as **Exhibit "V"**.

67. I am advised by MBL's counsel at Davies Ward Phillips & Vineberg LLP ("**Davies**") that, on November 11, 2023, Davies sent the Respondents notices of intention to enforce the Security under section 244 of the *Bankruptcy and Insolvency Act*. Copies of the section 244 notices are attached to my Affidavit as **Exhibits "W"** and **"X"**.

I. IT IS NECESSARY TO APPOINT A RECEIVER

(i) Trade X Management Has Admitted to Wilful Diversion of Payments

68. MBL has entirely lost confidence in the management of Trade X Parent and the other Respondents. Every level of Trade X Parent's management, from the Chairman, CEO, CFO, controller and accountants have admitted to me, or other representatives of MBL, that they have been complicit in the wilful diversion of payments properly owed to the Lenders under the Credit Agreements. In my view, the management of the Trade X Group has displayed a cavalier attitude and blatant disregard toward the covenants in the

Credit Facilities and Security, and have wilfully breached said contracts to the material detriment of MBL and the Lenders.

(ii) Trade X Group Has No Operating Capital and Has Effectively Ceased Operations

69. I have reason to believe that the Trade X Group has run out of operating capital, and is unable to fund its operations. On November 4, 2023, Highcrest advised MBL that Ryan Davidson, Chairman, former CEO and a material shareholder of Trade X Parent, admitted that he used funds payable to the Lenders under the Credit Facilities to satisfy payroll obligations at the Trade X companies, including Trade X Parent and Techlantic. Mr. Davidson admitted the same to me when I later asked.

70. I have recently learned that most of Trade X Group's employees resigned from their employment, leaving only a skeletal crew of volunteers operating the business of the Trade X Group. Indeed, on November 15, 2023, Eric Gosselin, the CEO of Trade X Parent since June 2023 resigned with immediate effect.

71. In light of these events, on November 15, 2023, MBL retained FTI as a financial advisor to conduct an inspection of the books and records of the Respondents, which is permitted under the terms of the Credit Agreements. I am advised that FTI attended at the Mississauga Location on November 15, 2023 and found only two bookkeeping employees working and only two Vehicles on site. FTI advised me that in their view, the Trade X Group is not operating an active business in Canada.

72. On November 27, 2023, the landlord under the Trade X Group's lease of its Mississauga Location, VS Verwaltungs GmbH (the "**Landlord**") served the Trade X

Group with a Lease Default Notice, stating that the tenant, the Trade X Group, was in default of its obligations pursuant to its Lease Agreement. The Lease Default Notice states that the Trade X Group owes $70,027.04 exclusive of all legal fees, disbursements and accrued and accruing interest in arrears to the Landlord. Attached to my Affidavit as **Exhibits "Y"** and **"Z"** are copies of the Lease Default Notice and the Landlord's waiver in favour of MBL, respectively. The Lease Default Notice confirms MBL's suspicions that the Trade X Group has been quietly shutting down its operations in Ontario.

73. The Trade X Group's blatant and unacceptable disregard for MBL's collateral and security interest continues unabated. On November 29, 2023, Eric van Essen, Manager of Techlantic, told me that the Trade X Group would be using their inbound funds to pay their "critical expenses" before repaying Lenders, which indicated to me that the Trade X Group intended to continue diverting funds payable to MBL to sustain their operations. Attached to my Affidavit as **Exhibit "AA"** is a copy of the email correspondence between Eric van Essen and myself.

(iii) Collateral is at Risk of Dissipating Further

74. In the circumstances, MBL has grave concerns about whether the Respondents are conducting any active business at all and whether there is any Collateral available to satisfy the Indebtedness. Given the complex nature of the intercompany payables, the online nature of the business and the fact that Vehicles are exported between jurisdictions with frequency, I have serious concerns that if there is Collateral available, it is at risk of further dissipating and again being improperly misappropriated and diverted.

75. The Defaults are uncured and remain ongoing and MBL holds a first ranking security interest over substantially all of the assets of the Respondents (other than TX Canada). As at November 30, 2023 the aggregate amount of the Indebtedness, inclusive of interest and principal is US$15,256,504.16. Both the Domestic Security and the Global Security provide that during an "Event of Default" (as defined in Article IX of the Credit Agreements) MBL may enforce the Security and sell the Collateral pursuant to court-appointed receivership proceedings.

76. The appointment of a receiver is necessary on an urgent basis to determine the status of the Trade X Group's operations in Canada, to preserve the remaining Collateral and to ensure adequate recovery on those assets. In light of the Defaults described above, the business and assets of the Respondents cannot be left in the hands of present management if the Collateral is to be preserved and further diversion and misappropriation is to be avoided.

77. To the extent there are still active business operations within the Trade X Group, FTI will provide the necessary oversight and controls to ensure an orderly liquidation of the Collateral. FTI has provided written consent to act as the Receiver in this proceeding, a copy of which will be attached to its pre-filing report.

J. THE RECEIVER'S CHARGE

78. MBL has agreed to a charge in favour of the Receiver, if appointed, and its counsel, as security for payment of their respective fees and disbursements, in each case at their standard rate and charges (the "**Receiver's Charge**"). The Receiver's Charge shall form

a first charge in priority to the claims of MBL as secured creditor. If appointed, the Receiver will also be empowered to borrow funds to finance the costs of the receivership.

K. FUNDING OF THE RECEIVERSHIP

79. It is contemplated that, if appointed, the Receiver will be empowered pursuant to the terms of the Court order appointing it (the "**Appointment Order**") to borrow funds from MBL for the purposes of, among other things, funding the costs and disbursements of the receivership. A condition to the financing would be the granting of a charge in favour of MBL over the Collateral. This charge would rank behind the Receiver's Charge.

80. Subject to the approval of the Court, it is proposed that any financing would be reflected in certificates substantially in the form attached to the draft Appointment Order.

L. THE APPOINTMENT OF THE RECEIVER IS JUST AND CONVENIENT

81. I believe that it is just and convenient for FTI to be appointed as Receiver on the terms set out in the proposed Appointment Order, particularly in circumstances where:

(a) Trade X Parent and its senior management have admitted that they have intentionally and repeatedly misappropriated funds that are due and owing to the Lenders;

(b) the Borrowers have repeatedly breached the terms of the Credit Agreements and the Defaults remain uncured;

(c) the obligations of the Respondents are due and owing under the Security as result of the Defaults;

(d) the Respondents have continually disregarded the interests of MBL as senior secured creditor and diverted funds from the Lenders;

(e) the Trade X Group appear to have abandoned or materially downsized their business operations in Canada;

(f) the Respondents were provided with the required notice of MBL's intention to enforce the Security under section 244 of the BIA and the 10-day period has lapsed; and

(g) the Respondents have no other secured creditors, other than related parties, and Highcrest, who is aware of this Application.

82. This Affidavit is sworn in support of the application by MBL for the appointment of a receiver over the Collateral and for no other or improper purpose.

SWORN by Westin Lovy in the City of Stamford, in the State of Connecticut, remotely before me in the City of Toronto, Province of Ontario, on this 4th of December, 2023 in accordance with O. Reg. 431/20: Administering Oath or Declaration Remotely

Commissioner for Taking Affidavits
MAYA CHURILOV

Westin Lovy

Westin Lovy

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF WESTIN LOVY

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Lawyers for the Applicant, MBL Administrative Agent II LLC

B

Court File No. CV-23-00710413-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 22nd
	)	
JUSTICE CAVANAGH	)	DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, c. C.43, as amended,

B E T W E E N :

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the

"**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing FTI Consulting Canada Inc. as receiver and manager (the "**Receiver**") without security, of substantially all of the assets and undertakings of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, the supplementary affidavit of Westin Lovy sworn December 8, 2023 and the Exhibit thereto, the second supplementary affidavit of Westin Lovy sworn December 21, 2023 and the Exhibits thereto, the Endorsement of Justice Penny dated December 11, 2023, the Interim Order of this Court dated December 11, 2023, and the consent of FTI to act as the Receiver.

ON HEARING the submissions of counsel for the Applicant, counsel for FTI as proposed receiver, counsel for the Debtors, and counsel for Aimia Inc., and being advised that this Application is on consent of the Debtors, and on consent of Aimia Inc. on the condition that the shares of 13517985 Canada Inc. are not included in the Property over which the Receiver is appointed, and with counsel for Highcrest Lending Inc. having appeared before this Court and not opposed to this Application.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the following property (collectively, the "**Property**"):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("**Trade X Parent**") and TX OPS Canada Corporation ("**TX Canada**")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the TX Canada Collateral in the Affidavit of Westin Lovy sworn December 4, 2023.

RECEIVER'S POWERS

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

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to obtain and review information with respect to each of the bank accounts of each of the Debtors, including, but not limited to, bank accounts with the financial institutions set out in Schedule “B” (the

"**Bank Accounts**"), which includes all transaction activity, and, without limiting the generality of the other provisions of this Order, to take possession of, exercise control over, and withdraw or otherwise transfer amounts from the Bank Accounts, and each of the banks and/or financial institutions which maintain any Bank Accounts are hereby directed to promptly provide any and all such information, and otherwise cooperate with the Receiver with regards to the foregoing, at the request of the Receiver and/or its representatives;

(h) to settle, extend or compromise any indebtedness owing to the Debtors;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction provided that the aggregate consideration for all such transactions does not exceed $50,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes,

computer disks, or other data storage media or cloud-based storage containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to

observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, including, without limitation, set-off rights, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post

Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and

charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies (each, a "**Loan**") from time to time as it may consider necessary or desirable, provided that the aggregate outstanding principal amount of all of the Loans does not exceed $100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures.

The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the Loans, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

Website shall be established in accordance with the Protocol with the following URL https://ontariocourts.caselines.com/Case/Details?caseKey=34e91e5ee4f444be8cabe9a6507ad889.

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

GENERAL

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

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

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

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

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

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ■ day of December, 2023 (the "**Order**") made in an action having Court file number CV-23-00710413-00-CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

SCHEDULE "B"

BANK ACCOUNTS AND FINANCIAL INSTITUTIONS

In the course of its duties as Information Officer pursuant to the Order of Justice Penny dated December 11, 2023, FTI has discovered that the Respondents hold bank accounts with various financial institutions including, without limitation, the below listed banks, which do not comprise an exhaustive list, as FTI may discover additional financial institutions in the course of executing its duties as Receiver:

1. Royal Bank of Canada;
2. Silicon Valley Bank;
3. TD Bank;
4. National Bank of Canada;
5. China Minsheng Bank;
6. Commerzbank;
7. Standard Chartered Bank;
8. Zenith Bank;
9. Guaranty Trust Bank;
10. Banco Bilbao Vizcaya Argentaria;
11. Banreservas; and
12. Itaú Bank.

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant, MBL Administrative Agent II LLC

C

Court File No. CV-23-00710413-00CL

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

SECOND REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

March 27, 2024

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

TABLE OF CONTENTS

A. PURPOSE

1. This is the Second Report of FTI Consulting Canada Inc. ("**FTI Consulting**") in its capacity as receiver and manager (the "**Receiver**"), without security, of the following property (collectively the "**Property**") of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. ("**Techlantic**") and TX Ops Canada Corporation (collectively, "**Trade X**" or the "**Debtors**"):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("**Trade X Parent**") and TX OPS Canada Corporation ("**TX Canada**")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the "TX Canada Collateral" in the Affidavit of Westin Lovy sworn December 4, 2023 (the "**Lovy Affidavit**").

2. The Debtors were primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada, the United States and other overseas markets. Their operations were carried out by a number of entities.

3. By Order dated December 22, 2023 (the "**Receivership Order**"), the Receiver was appointed and authorized to, among other things, receive and preserve the Property and any proceeds thereof, operate and carry on the business of the Debtors, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

4. Since its appointment, the Receiver has, among other things, worked to liquidate the Debtors' remaining vehicle assets and collect amounts owed to the Debtors. That process is substantially complete.

5. To date, the Receiver has recovered approximately $1.8 million from the sales of remaining vehicles and collection of amounts owed to the Debtors.

6. The Receiver's attempt to collect on amounts owing to the Debtors has been complicated by the state of the Debtors' accounting records. Among other things, the Receiver has encountered the following challenges:

(a) the Receiver has received conflicting information from the Debtors and other parties about significant transactions involving the Debtors;

(b) the Debtors' books and records are complicated and involve a large number of accounting entries reflecting the transfer of vehicles (and potentially funds) between various Debtors and other parties for purposes that are unclear to the Receiver at this time;

(c) the Debtors engaged in a large number of transactions with companies owned or controlled by the Debtors' directors, officer and/or members of their immediate

families. The details of these transactions were not fully disclosed to the Receiver, and the Receiver learned important details about the transactions from its review of the Debtors' e-mails; and

(d) the Receiver has been contacted by individuals who claim to have invested in the Debtors, but who appear to have paid funds to entities controlled by the Debtors' founder and CEO, Ryan Davidson. The Receiver has been unable to determine whether (and how) these funds were actually provided to the Debtors or used in the Debtors' business.

7. The Receiver has tried to engage with certain of the Debtors' current and former directors, officers, employees and consultants to understand the foregoing transactions. Several such individuals have refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel.

8. The Receiver has also tried to obtain information from third parties (including potential related parties) that have engaged in transactions with the Debtors in order to understand those transactions. The Receiver has received incomplete responses and, in some cases, no response at all.

9. In light of the foregoing, the Receiver has determined that it requires expanded investigative powers in order to understand the Debtors' business and assets (including claims against other parties) that might provide additional recovery for the benefit of the Debtors' creditors. The Receiver served a Notice of Motion dated March 21, 2024 seeking, among other things, enhanced investigative powers, including the right to examine persons with relevant information under oath and compel the production of relevant documents.

10. In addition, the Receiver seeks the authority (but not the requirement) to assign one or more of the Debtors into bankruptcy in the event that such assignments are necessary or appropriate. The Debtors are insolvent and, based on the current facts and circumstances and information available to the Receiver, the Receiver does not believe that there is a realistic prospect of a going concern sale.

11. The Receiver believes that the powers of a trustee in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") may assist the investigation and ultimate recovery available to the Debtors. It is cognizant, however, of the additional potential administrative expenses associated with a bankruptcy and so it does not seek to make any bankruptcy assignments immediately. Instead, it seeks authority to assign some or all of the Debtors into bankruptcy at a later date if it determines that the assignment is likely to enhance stakeholder recovery.

B. BACKGROUND

12. A number of the Debtors entered into a senior secured revolving credit agreement dated September 27, 2021 (the "**Global Facility**"). MBL Administrative Agent II LLC ("**MBL**") is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the "**Lenders**"). A copy of the Global Facility is attached hereto as Appendix "1".

13. In addition, a number of Debtors entered into a separate senior secured revolving credit agreement dated February 5, 2021 (the "**Domestic Facility**" and, together with the Global Facility, the "**Facilities**"). MBL is also the administrative agent for a syndicate of Lenders that advanced funds under the Domestic Facility. A copy of the Domestic Facility is attached hereto as Appendix "2".

14. The Receiver understands that the Lenders are the Debtors' senior secured creditors, with a first ranking security interest over substantially all of the Debtors' assets.[1] Based on the recoveries to date, and the Receiver's assessment of the Debtors' remaining assets, the Lenders are unlikely to recover the full amounts owed to them unless the Receiver is able to successfully investigate and prosecute potential claims available to the Debtors (and subject to the proceeds of such claims being sufficient to satisfy the Lenders' claims). If the Lenders do not recover all amounts owed to them, then the Debtors unsecured creditors and equity claimants are not expected to recover any amounts.

15. In light of the foregoing, the Receiver has, in consultation with MBL on behalf of the Lenders, determined that it is important to conduct a further investigation into the Debtors' affairs to determine what (if any) claims should be pursued.

C. THE FACILITIES

16. In general terms, the Global Facility was intended to fund vehicles sold outside of the United States and the Domestic Facility was intended to fund vehicles sold inside the United States.

17. The Facilities are sophisticated agreements involving a number of related Debtors. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Facilities are summarized at a very high level below:

(a) the Debtors acquired vehicles for sale;

[1] Although the Receiver has not yet completed a formal security review, no party has disputed the validity of the Lenders' security.

(b) the Lenders provided an advance to pay the purchase price for the vehicles (the "**Advance**");

(c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the "**Borrowing Base**");

(d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the "**Collection Accounts**").

18. One of the Debtors that is important to the Receiver's investigation is Techlantic. Techlantic became a "Borrower" within the meaning of the Global Facility by an Amendment No. 1 and Joinder to Senior Secured Revolving Credit Agreement dated December 30, 2021, a copy of which is attached hereto as Appendix "3".

D. APPOINTMENT OF THE RECEIVER

19. On December 4, 2023, MBL brought an application to appoint FTI Consulting as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

20. MBL alleged that the Debtors had defaulted on their obligations under the Global Facility by, among other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the Collection Accounts. The Lovy Affidavit describing the alleged diversion of funds from the Collection Accounts is attached hereto (without exhibits) as Appendix "4".

21. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence.

22. On December 22, 2023, Cavanagh J. issued the Receivership Order appointing FTI Consulting as the Receiver, without security, of the Property.

23. Pursuant to the Receivership Order, the Receiver is empowered to, among other things, receive and preserve the Property and any proceeds thereof, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

E. DIFFICULTY UNDERSTANDING THE DEBTORS' RECORDS

24. Since the Receiver's appointment on December 22, 2023, the Receiver has worked diligently to receive, preserve, protect and otherwise manage the Debtor's Property in accordance with the Receivership Order. However, it has become clear to the Receiver through these efforts that the Debtors' books and records are, in some instances, not reliable and in other instances very difficult to understand.

25. The Receiver has made inquiries in respect of these issues to representatives of the Debtors, but it has not received satisfactory answers. The Receiver continues to investigate issues involving the Debtors, and is currently aware of a number of issues that it still investigating and in respect of which it requires additional information, including as summarized below.

(i) *Groupe Grégor Claim*

26. The Debtors may have a claim for approximately $8 million (the "**Groupe Grégor Claim**") against Groupe Grégor Inc. ("**Groupe Grégor**") in connection with the Debtors' purchase

of 13517985 Canada Inc., operating as Wholesale Express ("**Wholesale Express**") from Groupe Grégor.

27. The Receiver has reviewed the Debtors' records related to the Groupe Grégor Claim. Its understanding, based on that review, include the following:

(a) after the Debtors bought Wholesale Express, they were unable to take an immediate assignment of certain permits required to operate its business. To address this issue, Groupe Grégor continued to operate Wholesale Express on behalf of the Debtors and deposit funds generated by Wholesale Express into Groupe Grégor's bank account;

(b) the Debtors subsequently alleged that Groupe Grégor did not remit all of the funds generated by Wholesale Express to Wholesale Express;

(c) separately, Groupe Grégor advanced a claim against the Debtors for approximately $2.7 million allegedly owed for a working capital adjustment in connection with the Wholesale Express sale (which claim the Receiver understands was being disputed by the Debtors);

(d) financial statements for both the Debtors and Groupe Grégor indicated that Groupe Grégor owed approximately $8 million to the Debtors; and

(e) on October 24, 2023, Wholesale Express assigned the Groupe Grégor Claim to Trade X Parent pursuant to an Assignment of Credit dated October 24, 2023 (the "**Assignment**").

28. Wholesale Express is currently the subject of separate proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**Wholesale Express CCAA Proceedings**"), and its Monitor in the Wholesale Express CCAA Proceedings has filed a motion seeking to set-aside the Assignment of the Groupe Grégor Claim as a transfer at undervalue. Such motion is currently scheduled to be heard before the Quebec Superior Court of Justice in the Wholesale Express CCAA Proceedings on June 13, 2024. A copy of the Monitor's Notice of Motion in respect thereof is attached hereto as Appendix "5".

29. The Receiver requires further information about both the Groupe Grégor Claim and the Assignment in order to determine whether, and how, to respond to the Monitor's motion and advance the Groupe Grégor Claim on behalf of the Debtors.

(ii) ***Transactions and transfers involving the Debtors' founder and CEO***

30. The Receiver has also been contacted by certain individuals who claim to have invested funds in the Debtors; however, these individuals advised that they paid funds to a company owned and controlled by Mr. Davidson. The Receiver has been unable to determine why these funds were paid to Mr. Davidson's company and whether they were ever transferred to the Debtors. Correspondence relating to these issues is attached hereto as Appendix "6".

31. The Receiver requires additional and accurate information about the transactions between the Debtors, Mr. Davidson and the companies that Mr. Davidson controlled.

(iii) ***The Debtors' records show potential significant overpayments to Auto Credit Canada, a company controlled by one of the Debtors' former executives***

32. The Receiver understands that Auto Credit Canada is operated by Luciano Butera, a former officer of the Debtors, and owned by Mr. Butera or members of his family.

33. Trade X's records indicate that Trade X made overpayments totalling $1,535,016 to 1254382 Ontario Ltd o/a Auto Credit Canada ("**ACC**"). On January 18, 2024, the Receiver wrote to ACC and demanded, pursuant to the Receivership Order, that ACC transfer the amount of the overpayment to the Receiver immediately. This correspondence is attached hereto as Appendix "7".

34. By way of email dated January 26, 2024, and attached as Appendix "8", ACC responded stating that it had not received any overpayments from Trade X, but rather that ACC had provided "floorplan funding" to Trade X, through which Trade X purchased vehicles in the name of ACC. The Receiver has requested documentation of this purported floorplan funding agreement, which documentation has not been provided. This correspondence is attached as hereto Appendix "9".

F. TRANSACTIONS WITH TECHLANTIC AND THE VAN ESSEN COMPANIES

35. The Receiver has served a motion seeking to recover approximately $1.7 million received by the Van Essen Companies (as defined below), which amounts the Receiver believes were improperly taken by the Van Essen Companies (as discussed below and in the First Report of the Receiver dated February 1, 2024). The Receiver is also currently investigating other transactions involving the same individuals and entities; however, Techlantic's officers, employees and consultants have refused to meet with the Receiver to explain the transactions at issue.

(i) *Techlantic*

36. According to its website, Techlantic was founded in 1983 by Wouter Van Essen ("**Wouter**"). Wouter's twin brother, Tom Van Essen ("**Tom**"), joined Techlantic in 1986. A long-time employee, Robin Jones, became a Techlantic shareholder in 2001.

37. Techlantic's core business, based on a review of its website and its records, was the export of vehicles to foreign markets.

38. In August 2019, Wouter's son Eric Van Essen ("**Eric**") became a major Techlantic shareholder. When Techlantic announced Eric's new status as a "major shareholder" of Techlantic, it confirmed that "Tom and Wouter are still actively involved and likely will be for many years".

39. Relevant excerpts from Techlantic's website are attached hereto as Appendix "10".[2]

40. Trade X purchased Techlantic in August 2021. After that time, Eric was Techlantic's Managing Director and had overall responsibility for Techlantic's business operations. Eric was also a director of Techlantic. Trade X does not appear to have exercised control over Techlantic's day to day operations. Those operations were overseen by Eric with significant assistance from Wouter.

41. As described below, the Receiver's review of Techlantic's records showed that Wouter remained very heavily involved in Techlantic's business after Trade X bought Techlantic. He continued to be listed as a member of Techlantic's finance team, and its founder, on the Techlantic website, until the website ceased to operate.

(ii) ***The Van Essen Companies***

42. Techlantic engaged in a large number of complicated transactions with two companies 1309767 Ontario Ltd. ("**130 Ontario**") and 2601658 Ontario Ltd. ("**260 Ontario**", and together

[2] Techlantic's website appears to no longer be operational, but the attached screenshots were access through the internet archive at https://web.archive.org/

with 130 Ontario, the "**Van Essen Companies**") and certain other parties that have long-term business relationships with the Van Essens.

43. The Van Essen Companies had the same staff as Techlantic, and Eric was also an officer and director of Techlantic, however, the Eric and certain of Techlantic's remaining staff have refused to meet with the Receiver to help it understand the relevant transactions unless the Receiver funded legal counsel for them. Correspondence communicating this position is attached hereto as Appendix "11".

44. Wouter, through counsel, also declined to meet with the Receiver. Correspondence from Wouter's counsel is attached hereto as Appendix "12". Wouter's counsel has stated in subsequent correspondence that Wouter did not refuse to meet with the Receiver, since he intended to attend his scheduled cross-examination on the Receiver's motion.

(iii) ***Dispute between the Receiver and the Van Essen Companies***

45. Issues between the Receiver and the Van Essens began when the Van Essen Companies received approximately $1.7 million worth of proceeds from the sale of vehicles owned by Techlantic (the "**Techlantic Funds**"). Instead of paying these funds to Techlantic, the Van Essen Companies kept the funds.

46. Wouter claimed in an e-mail that the Van Essen Companies had set off the Techlantic Funds against a debt allegedly owed by Techlantic as a result of different vehicles sold by the Van Essen Companies to Techlantic in 2022 (the "**Purported Set Off**").

47. Wouter claims to have executed the Purported Set Off on December 20, 2023, two days before the Receiver was appointed, and nine days after Justice Penny issued an Order dated

December 11, 2023 (the "**Interim Order**") prohibiting any exercise of rights and remedies against the Debtors.

48. The Receiver has filed a motion, as amended, to recover the Techlantic Funds on the basis that the Purported Set Off was prohibited by the Interim Order and effected a preference contrary to s. 95 of the BIA. The Receiver's Notice of Motion is attached hereto as Appendix "13".

49. The Van Essen Companies served a cross-motion claiming that they were entitled to execute the Purported Set Off because they were owed approximately $1.9 million in connection with vehicles they sold to Techlantic in 2022 (the "**2022 Vehicles**"). The Van Essen Companies' cross-motion is attached hereto as Appendix "14".

50. In the course of advancing its motion, the Receiver has discovered a number of important facts relevant to its motion in respect of the Van Essen Companies, including:

(a) the Van Essen Companies and Techlantic routinely transferred vehicles and funds between them, and generated an enormous (and unusual) amount of accounting entries for individual vehicles in Techlantic's records;

(b) the Van Essen Companies and Techlantic shared the same employees and office;

(c) Eric, who was an officer and director at Techlantic, was also the President of the Van Essen Companies' parent company and personally advanced some of the funds that the Van Essen Companies used in their dealings with Techlantic;

(d) Wouter, who Techlantic claims to have engaged as a consultant, appears to have been involved in many aspects of Techlantic's business and decided when and how

much Techlantic should pay the Van Essen Companies. Wouter also determined when and how much Techlantic should pay its other creditors, including MBL; and

(e) based on the records reviewed by the Receiver, the Van Essen Companies may have acquired certain of the 2022 Vehicles from certain of the Debtors. The Van Essen Companies then transferred the 2022 Vehicles to Techlantic. Techlantic, in turn, transferred the 2022 Vehicles back to the Debtors that may have previously owned them. The purpose of these circular transactions is unclear.

51. Techlantic's relationship with the Van Essen Companies, and with Techlantic's major customers, is difficult to understand based solely on Techlantic's records and the information provided by Techlantic in writing.

52. The Van Essen Companies, Techlantic, the other Debtors and various customers entered into a large number of transactions with very complex accounting and unclear record keeping. By way of example, two vehicles reviewed by the Receiver were involved in a high number of internal accounting entries, each involving transactions between the Van Essen Companies, Techlantic and other Debtors. The purpose of these transactions, and whether any of them involved the movement of funds, is unclear. A copy of a spreadsheet detailing these transactions is attached hereto as Appendix "15".

53. Among other arguments, the Van Essen Companies have claimed that they provided money to Techlantic as part of a "Liquidity Support Plan". The Receiver notes that section 5.16(g) of Global Facility prohibited the Debtors, including Techlantic, from incurring any debt other than the amounts owing to MBL. Additionally, section 5.16(j) prohibited Techlantic from entering into

any agreement with an affiliate, shareholder or principal, except in certain circumstances, without the consent of MBL.

G. THE RECEIVER'S ATTEMPTS TO GAIN CLARITY IN RESPECT OF THESE TRANSACTIONS

54. The Receiver has reached out to representatives of the Debtors, such as Eric, to clarify the circumstances leading to the above-noted questions and discrepancies. The answers it has received in respect of these inquiries have not been satisfactory and often do not align with other information available to the Receiver.

55. As noted above, in an attempt to further clarify these issues, the Receiver asked to meet with Eric and two additional long-time Techlantic employees. Those meetings were scheduled to take place on March 6, 2024, and initially accepted by Eric and the two employees. However, they were subsequently declined by all three of them on the morning of March 6, 2024.

56. As also noted above, the Receiver has also asked, through counsel, to meet with Wouter to discuss certain issues relating to the Van Essen Companies. Wouter declined, through counsel, to meet with the Receiver. As described above, Wouter's counsel has stated that he intends to attend his scheduled cross-examination.

H. AUTHORITY TO ASSIGN INTO BANKRUPTCY

57. Based on the current facts and circumstances and information available to the Receiver, the Receiver does not at this time believe that there is a realistic prospect of a going concern sale in respect of the Debtors' business. Among other things, the Receiver placed a notice in the Financial Post on February 1 and February 6, 2024 and in the Globe and Mail newspaper on February 7, 2024 soliciting interest in the assets and business of Trade X and Techlantic, a copy

of which is attached hereto as Appendix "16". The Receiver received limited interest or inquiries to such notices, none of which resulted in any offers for any assets of the Debtors. The Receiver did receive offers for the Techlantic business from Mr. Eric Van Essen, which the Receiver, in consultation with MBL, believed was likely below the liquidation value of the remaining Techlantic assets.

58. As noted above, the Receiver continues to investigate the Debtors' affairs and evaluate potential claims. As that investigation progresses, the Receiver may determine that the enhanced powers available to a trustee in bankruptcy would facilitate matters and potentially benefit all stakeholders. For clarity, the Receiver has not yet made such a conclusion, and thus at this time only seeks the authority, and not the requirement, to assign one or more of the Debtors into bankruptcy. The Receiver is mindful of the potential additional administrative costs associated with bankruptcy assignments, and prior to proceeding with any potential bankruptcy assignment of any of the Debtors, the Receiver will assess whether such an assignment would likely provide benefits as compared to those available in these receivership proceedings.

I. CONCLUSION

59. The Receiver may be able to recover substantial amounts through commencing actions on behalf of the Debtors in respect of the transactions described herein. However, the Receiver requires additional and accurate information to better assess the viability of these claims and whether it is worthwhile to advance them.

60. The books and records and other information obtained by the Receiver do not appear to be at all times reliable or consistent, and the accounting records of the Debtors are complex and

difficult to interpret absent additional information and assistance from the Debtors' representatives and other parties, a number of whom have refused to meet with the Receiver to date.

61. The Receiver accordingly respectfully requests the relief set forth herein and in the Receiver's Notice of Motion dated March 21, 2024, so that it is able to obtain the additional information it requires to make appropriate assessments on potential additional recoveries that may be available to the Debtors for the benefit of their creditors.

62. Further, the Receiver believes that there is a likelihood that it may, at some point, be necessary or desirable to assign the Debtors' into bankruptcy for the benefit of the creditors as a whole.

Dated this 27th day of March, 2024.

FTI Consulting Canada Inc.,

solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic LTD., and TX OPS Canada Corporation, and not in its personal or corporate capacity

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director

D

From: Eric van Essen <eric@techlantic.com>
Date: Wednesday, February 7, 2024 at 1:19 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: RE: Invoice - #2665 MMO Techno

Yes. I'm not sure who Bittitan is though. Ok to remove, but perhaps lookup when and why that login was added.

Also, I have some other questions related to the azure server. When you have a moment, can you call me to discuss it?

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Sent: Wednesday, February 7, 2024 12:54 PM
To: Eric van Essen <eric@techlantic.com>
Subject: RE: Invoice - #2665 MMO Techno

Hi Eric

So I'll remove the following users:

Bittitan
Magriet
Tom
Wouter

And next week Bill

I would also suggest that we move the public folder to a shared mailbox at no cost.

Are you okay with those changes?

Oli

--

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Eric van Essen <eric@techlantic.com>
Sent: Wednesday, February 7, 2024 12:29 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: FW: Invoice - #2665 MMO Techno

Hi Olivier,

Please keep Karen's license active for time being as well. Also, I have some questions about moving the QB data. Let me know when you have a moment to chat about it.

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Eric van Essen
Sent: Wednesday, February 7, 2024 12:27 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Cc: facturation@mmotechno.com; June da Costa <june@techlantic.com>; Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Invoice - #2665 MMO Techno

Hi Oliver,

Can you please trim down licenses of Microsoft for Techlantic down to remaining staff members as well as any required credentials for you to access and help administer. Please redirect any other emails to myself and I will monitor on any topics that will help with the receivership process.

Also, can you please update Kamran's email as billing contact for Techlantic until further notice so he can coordinate payment directly once new invoices are issued.

Remaining staff members:

1. June
2. Eric
3. Michelle
4. Bill (last day is Friday so next week can you please automatically forwarder his emails to my email as well and turn off account as well)
5. Nikitia
6. Jaskiran
7. Carolyn

Regards,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: MMO Techno <quickbooks@notification.intuit.com>
Sent: Wednesday, February 7, 2024 11:09 AM
To: Eric van Essen <eric@techlantic.com>; June da Costa <june@techlantic.com>
Subject: Invoice - #2665 MMO Techno

INVOICE 2665

MMO Techno

DUE 31/01/2024

$615.08

Review and pay

Powered by QuickBooks

** English message below **

Ceci est un simple rappel que le paiement de votre facture est attendu aujourd'hui.

Si vous avez déjà envoyé votre paiement, nous vous remercions et ne tenez pas compte de cet avis.

N'hésitez pas à nous contacter si vous avez des questions.

Merci de choisir MMO Techno
L'équipe de facturation

This is a simple reminder that payment is due today for the invoice in object.

If you already sent payment for your invoice, we thank you and please disregard this message.

Do not hesitate to get in touch with us should you have any question.

Thank you for choosing MMO Techno
The billing team

MMO Techno

3055 Boul. Saint-Martin Ouest, 5th floor Laval QC H7T 0J3

(855) 532-0189 facturation@mmotechno.com

If you receive an email that seems fraudulent, please check with the business owner before paying.

 Privacy | Security | Terms of Service

E

From: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Sent: Saturday, February 17, 2024 10:58 AM
To: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Subject: Re: [EXTERNAL] Re: Trade-X

No, but I can restore. I've removed it this week.
Well within the 30 days.

Oli

--

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Date: Saturday, February 17, 2024 at 10:51 AM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: Re: [EXTERNAL] Re: Trade-X

Do we have a back up some where?

Best Regards,
Isaac Tatineni

Sent from my iPhone

> On Feb 17, 2024, at 9:33 AM, Olivier L. Duguay <olivierl.duguay@mmotechno.com> wrote:
>
> Heloo Isaac,
>
> The account for Wouter was removed as per Eric's request.
> Did you want to back that data up as well with Exchange Online P2?
>
> Oli
>
> --

Olivier L. Duguay

V-P Operations

t: 1-855-532-0189 x103

w: www.mmotechno.com

From: Tatineni, Isaac <Isaac.Tatineni@fticonsulting.com>
Date: Friday, February 16, 2024 at 6:11 PM
To: Olivier L. Duguay <olivierl.duguay@mmotechno.com>
Subject: Trade-X

Privileged and Confidential

Hi Oli,

Can you please confirm where is the data for the **wouter@techlantic.com** account?
Thank you.

Isaac Tatineni

Digital Risk Management & Intelligence
FTI Consulting Technology LLC
+1.437.214.9683 M
isaac.tatineni@fticonsulting.com

79, Wellington St W, Suite 2010
Toronto, ON M5K 1B1 Canada
www.fticonsulting.com

F

From: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Sent: Wednesday, February 21, 2024 10:52 AM
To: Eric van Essen <eric@techlantic.com>
Subject: RE: Techlantic - Follow Up Matters

Hi Eric,

I just sent you an invite for 1 pm with the agenda attached within the meeting invite. Re: Trade X and Techlantic infrastructure and historical records, we cannot make any changes and we need to preserve that information for the Receiver's records so we cannot transfer those costs to any other party unless it relates to a sale of the business.

I understand there was a request made by you to delete certain user profiles from the Microsoft 365 server so we need to ensure no changes or deletion of any Techlantic data is being made without the written consent of the Receiver.

Thanks,
Kamran

Kamran Hamidi
647.400.7825

From: Eric van Essen <eric@techlantic.com>
Sent: Wednesday, February 21, 2024 9:22 AM
To: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: [EXTERNAL] RE: Techlantic - Follow Up Matters

Hi Kamran,

Are you available to talk practically through some of the next steps and action items today? I would like to set expectations well with team members so they aren't as surprised. I have told them to look for work as a warning but haven't told them when the end is expected. Also, from talking with Wouter he suggested taking over some of the infrastructure costs which I think make sense for Techlantic to reduce overhead as the final pieces fall in to place and gives less urgency on some of the issues that might take a while to sort out.

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182

www.techlantic.com

From: Eric van Essen
Sent: Friday, February 16, 2024 9:55 AM
To: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Techlantic - Follow Up Matters

Hi Kamran,

See some comments below. It's a little busy at home with PA day and kids. See latest on the G400 attached.

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

From: Hamidi, Kamran <Kamran.Hamidi@fticonsulting.com>
Sent: Friday, February 16, 2024 8:53 AM
To: Eric van Essen <eric@techlantic.com>
Subject: Techlantic - Follow Up Matters

Hi Eric,

I would like to follow up on the below items as we look to wind down the operations:

1. RBC Account Closures – is there any reason to keep the bank accounts open? – I think it is unlikely we will get a surprise payment so once we redirect CRA it should be ok to close already.
2. CRA Accounts and Other Direct Deposits – can you please update the direct deposit details to reflect the Receiver's bank information? – I will do this today or Tuesday. Kids are a little demanding here at home as it's a PA day and Monday is a holiday.
3. Air Tax Refunds – have Jaskiran and Nikitia cleared the backlog and if so, when are the last refunds expected? I'd like to think ahead on the terminations to expedite the process (Feb. 23)? They are on track to complete the submissions by the end of February. The later months were lower values (few thousand each) but still worthwhile processing.
4. China 2x G400 – you forwarded me the emails yesterday which showed progress. When do we think we can collect on the cars to close this issue? Based on what I know, I think it will take approximately another couple days of work and then waiting for another couple weeks. Payment will arrive with Westchester Capital and they know to direct it to you but I will make that crystal clear.

5. Isha Gupta – I will send her the formal termination notice today. – Yes, that is fine. Whatever the legal requirements are if you can execute them would be great. If she connects with you for explanation, feel free to direct her to me to have a discussion.

Thanks,
Kamran

Kamran Hamidi, CPA, CA, CFA
Managing Director, Corporate Finance

FTI Consulting
416.649.8068 T | 647.400.7825 M
Kamran.Hamidi@fticonsulting.com

79 Wellington Street West | Suite 2010
Toronto, ON M5K 1G8, Canada

From: Alexis Beale
To: Dunn, Mark; Tee, Brittni; Descours, Caroline
Subject: Trade X Receivership
Date: Friday, April 5, 2024 1:08:36 PM

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

- Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
- Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

MBL ADMINISTRATIVE AGENT II LLC and TRADE X GROUP OF COMPANIES INC. et al. Court File No. CV-23-00710413-00CL

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

THIRD REPORT OF THE RECEIVER

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn LSO No. 55510L
mdunn@goodmans.ca

Caroline Descours LSO No. 58251A
cdescours@goodmans.ca

Brittni Tee LSO No. 85001P
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

1379-7743-3353

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

AFFIDAVIT OF MARK DUNN

I, Mark Dunn, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

I. INTRODUCTION AND OVERVIEW

1. I am a partner in the Litigation and Dispute Resolution group at Goodmans LLP ("**Goodmans**") and counsel to the Receiver, FTI Consulting Canada Inc. ("**FTI**") in this matter. As such, I have personal knowledge of the matters addressed in the affidavit. To

the extent that information has been provided to me by others, I have specified the source of that information. In each such case, I believe the information to be true.

2. I was called to the bar in 2008, and have practiced at Goodmans since that time. During this time, I have worked on a number of significant insolvency litigation mandates. Among other things, I have acted for court-appointed officers, creditors and other stakeholders in complex litigation and restructuring proceedings. I have also acted on a number of mandates involving complex privilege issues.

3. I swear this affidavit in response to the motion by 1309767 Ontario Ltd ("**130**") and 2601658 Ontario Ltd. (together, the "**Van Essen Companies**") to (among other things) stay all proceedings against them (the "**Stay Motion**"), and specifically to the affidavits of Wouter Van Essen ("**Wouter**") sworn April 16, 2024 (the "**First Wouter Affidavit**") and May 10, 2024 (the "**Second Wouter Affidavit**" and collectively, the "**Wouter Affidavits**").

4. In the Wouter Affidavits, Wouter alleges that Goodmans and the Receiver used "unauthorized access" to certain allegedly privileged documents (the "**Allegedly Privileged Documents**") to gain an advantage in litigation against the Van Essen Companies.

5. This is not what happened.

6. As described below, this Court granted the Receiver "unfettered access" to the Debtors' electronic records. The Van Essen Companies were aware of the Receivership Order for

more than three months before they raised any concern that the Debtors' records included any of their privileged documents.

7. The Receiver used the access granted pursuant to the Receivership Order to carry out its mandate, including by having Goodmans and members of FTI's Forensic and Litigation Consulting group ("**FTI Forensic**") conduct certain searches of the Debtors' records.

8. In February 2024, I communicated to the Van Essen Companies' counsel, Alexis Beale, orally and in writing that we were reviewing e-mails (the "**Techlantic E-mails**") stored on Techlantic's server (the "**Techlantic Server**") and advised her about some of what we had found. Ms. Beale did not tell me that the Van Essen Companies had (or might have) privileged e-mails on the Techlantic Server.

9. Goodmans and FTI Forensic carried out our respective reviews as part of the Receiver's mandate to seek to realize upon assets that are (or might be) available to satisfy the Debtors' obligations to various stakeholders. We did not – and would not – knowingly access or review any privileged documents. If we had known that any Allegedly Privileged Documents belonging to the Van Essen Companies were included in the Database (as defined below) we would have immediately taken steps to segregate those documents to ensure that they were not reviewed. To the extent that any actually privileged documents were reviewed, I believe (based on my personal knowledge and on information and belief from others that participated in the review) that the review was inadvertent and that no such documents were relied upon by the Receiver in carrying out its mandate.

10. I was personally involved in every significant discussion relating to the Receiver's litigation strategy. I worked, together with my colleagues, to formulate that strategy and

recommend it to the Receiver. I can definitively state that we did not use any privileged documents to inform our litigation strategy.

11. The remainder of this affidavit is divided into three parts:

(a) Part II provides background information about the Receiver's mandate, its investigation and its litigation with the Van Essen Companies;

(b) Part III provides an overview of the document review and my communications with Ms. Beale about that review;

(c) Part IV provides my evidence in response to the Van Essen Companies' assertion that the Receiver used the Allegedly Privileged Documents to gain some sort of unfair advantage in the litigation process.

II. BACKGROUND

12. In order to provide context for my evidence below, I have outlined my understanding of certain aspects of the litigation and the legal framework that governs it. To the extent that I make such comments, I am not seeking to make legal arguments or give opinion evidence about the likely outcome of the litigation. I am providing my understanding of the legal issues that frame and contextualize the events relevant to the Stay Motion.

A. The Receiver's appointment

13. On December 4, 2023, MBL Administrative Agent II LLC ("**MBL**") brought an application (the "**Receivership Application**") to appoint FTI as the Receiver of the assets, undertakings and properties acquired for, or used in relation to a business carried on by

certain debtors pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the "***BIA***") and section 101 of the *Courts of Justice Act* (Ontario), as amended.

14. The Receivership Application was originally returnable on December 11, 2023. By Order of Justice Penny dated December 11, 2024 (the "**Interim Order**"), which is attached as Exhibit "**A**", the hearing of the Receivership Application was postponed to December 22, 2023 (the "**Postponed Hearing**"). Importantly, as described below, the Interim Order prohibited the exercise of any rights or remedies against the Debtors.

15. On December 22, 2023, Justice Cavanagh issued an order (the "**Receivership Order**") appointing FTI as the Receiver, without security, of the following property (collectively the "**Property**") of Trade X Group of Companies Inc. ("**Trade X Parent**") , 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. ("**Techlantic**") and TX Ops Canada Corporation ("**TX Canada**", and collectively, "**Trade X**" or the "**Debtors**"):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Parent and TX Canada acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the "TX Canada Collateral" in the Affidavit of Westin Lovy sworn December 4, 2023 (the "**Lovy Affidavit**").

16. A copy of the Receivership Order is attached hereto as Exhibit "**B**".

B. Goodmans' mandate

17. Goodmans has acted as counsel to the Receiver since its appointment. Caroline Descours, a partner in Goodmans' insolvency department, has had carriage of this matter since its inception. Ms. Descours did not participate in the document review that gave rise to the Stay Motion.

18. Ms. Descours consulted me about this matter on or around January 17, 2024. Since that time, I have been the partner primarily responsible for the litigation aspects of this mandate. Brittni Tee, an associate in Goodmans' litigation department, has worked with me for most of that time. As described below, Josh Sloan (an articling student at Goodmans) also participated in the document review.

19. I have taken instructions on this matter from: Paul Bishop, a Senior Managing Director at the Receiver, and Kamran Hamidi, a Managing Director at the Receiver. I did not take instructions from the FTI Forensic employees that conducted the document review described below.

20. Acting for a court officer is, in many important respects, different from acting for an ordinary client. Given my extensive prior experience in insolvency and restructuring mandates, I understood these differences from the outset of Goodmans' mandate. Perhaps

most importantly, for present purposes, the Receiver does not have any financial stake in the outcome of litigation with the Van Essen Companies (or anyone else). We did not approach the issues with the Van Essen Companies (or other stakeholders) to achieve a specific outcome. We wanted to preserve any assets or claims that were (or might be) properly available to the Debtors and understand the facts so that we could take appropriate steps. If we had investigated the matter and concluded that the Debtors did not have any claims against the Van Essen Companies then we would not have pursued the matter any further.

C. Background to the Receiver's dispute with the Van Essen Companies

(i) The Van Essen Companies

21. The complicated relationship between the Van Essen Companies and one of the Debtors, Techlantic Ltd., is important to the Stay Motion. The Receiver's current understanding of the relationship between Techlantic and the Van Essen Companies is set out in its First Supplemental Report to its First Report (the "**First Supplemental Report**"), which is attached without Appendices as Exhibit "**C**". I have briefly summarized that understanding below.

22. According to its website, Techlantic was founded in 1983 by Wouter. Wouter's son, Eric Van Essen ("**Eric**"), became a Techlantic shareholder in August 2019. In 2021, Wouter, Eric and the other owners of Techlantic sold it to the Trade X Group of Companies Inc. Following this sale, Eric continued to work for Techlantic as the company's Managing

Director. Eric was Techlantic's most senior employee, and was also a director of Techlantic.[1]

(ii) The Global Facility

23. The Debtors were primarily involved in operating a business-to-business vehicle-trading platform for car dealerships to purchase inventory from or sell inventory to Canada and overseas markets. Their operations were carried out by a number of entities, including Techlantic.

24. Certain of the Debtors entered into a senior secured revolving credit agreement dated September 27, 2021 (the "**Global Facility**"). MBL Administrative Agent II LLC ("**MBL**") is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the "**Lenders**"). The Global Facility is attached hereto as Exhibit "**D**".

25. Before it was acquired by Trade X, Techlantic had a $12 million line of credit from Royal Bank of Canada (the "**RBC Line**"). Pursuant to Amendment No. 1 and Joinder to the Senior Secured Revolving Credit Agreement as of December 30, 2021 (the "**Joinder**") with the Lenders, Techlantic borrowed funds under the Global Facility to repay the RBC Line. The Joinder is attached as Exhibit "**E**". Pursuant to the Joinder, Techlantic became a "Borrower" under the Global Facility.

26. The Global Facility is a complex agreement. In simple terms, Techlantic agreed that its only business would be buying vehicles (the "**Financed Vehicles**") using funds advanced

[1] Eric communicated his intention to resign on January 2, 2024.

by the Lenders. It also agreed to deposit proceeds from the sale of vehicles into specified "Collection Accounts" so they could be used to repay the Lenders.

(iii) The Purported Set-Off

27. In late 2023, Techlantic borrowed money from the Lenders to buy certain vehicles (the "**2023 Vehicles**"). Techlantic sold the 2023 Vehicles to a long-time customer named Stephen Zhou. For reasons that remain unclear, the proceeds from the sale of the 2023 Vehicles were not paid to Techlantic and deposited in the Collection Accounts for re-payment to the Lenders, as required by the Global Facility. Instead, Mr. Zhou paid approximately $1.7 million (the "**Techlantic Funds**") for the 2023 Vehicles to the Van Essen Companies.

28. On January 2, 2024, Wouter wrote to Eric and others at Techlantic to say that the Van Essen Companies would keep the Techlantic Funds and apply them as a set-off against debts allegedly owed by Techlantic in respect of different vehicles that the Van Essen Companies sold to Techlantic in 2022 (the "**Purported Set-Off**"). The e-mail is attached as Exhibit "**F**". Wouter sent the e-mail from the e-mail address "wouter@techlanticconsulting.com".

29. Wouter claimed to have executed the Purported Set Off on December 20, 2023, two days before the Receiver was appointed, and nine days after Justice Penny issued the Interim Order that prohibited any exercise of rights and remedies against the Debtors. The relevant passage from the Interim Order is set out below:

> 4. **THIS COURT ORDERS** **that during the Stay Period**, and subject to, *inter alia*, section 101 of the CJA, **all rights and remedies** of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association,

> organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") **against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court. [emphasis added]**

30. When I was first consulted about this case, the Purported Set-Off raised obvious red flags. Eric was Techlantic's most senior employee and the Techlantic Funds were paid to a company operated by Eric's father contrary to the terms of the Global Facility. The Purported Set-Off was executed on the eve of the return of the Receivership Application in respect of, among others, Techlantic. By executing the Purported Set-Off, the Van Essen Companies partially satisfied an alleged unsecured debt that ranks behind the Lenders. Finally, the Purported Set-Off was executed in the face of the Interim Order, which prohibited the exercise of any rights or remedies.

(iv) The Receiver's attempt to preserve the Techlantic Funds

31. Based on these facts, the Receiver decided that it had to investigate the Purported Set-Off and take steps to preserve the Techlantic Funds, for the benefit of Techlantic's stakeholders, while that investigation was pending.

32. On February 2, 2024, the Receiver served a motion seeking the preservation of the Techlantic Funds pending a determination about (among other things) the validity of the Purported Set-Off. The Notice of Motion is attached as Exhibit "**G**".

33. Neither the Receiver nor its counsel had reviewed any of the Techlantic E-mails (except for e-mails sent to the Receiver by Techlantic employees) or any other documents on the Techlantic Server when it served this motion. Its conclusion that the Purported Set-Off was a breach of the Interim Order does not depend on any such review.

34. On February 7, 2024, the Van Essen Companies served a Notice of Cross-Motion asserting that the Van Essen Companies were entitled to the Techlantic Funds (the "**Cross-Motion**"). Among other things, the Cross-Motion asserted that all dealings between Techlantic and the Van Essen Companies occurred "at arm's length" and indicated that following the sale of Techlantic to Trade X, Wouter served Techlantic only in a "consulting capacity through Techlantic Consulting Ltd." The Cross-Motion is attached hereto as Exhibit "**H**".

35. The Receiver sought to have its motion scheduled on an expedited basis, because it wanted to preserve the Techlantic Funds until it could fully understand the facts relating to the Purported Set-Off. The Van Essen Companies opposed an expedited schedule, and sought to have the Cross-Motion (which sought a final declaration that the Van Essen Companies were entitled to the Techlantic Funds) heard at the same time as the Motion.

36. By Endorsement dated February 9, 2024, Justice Cavanagh scheduled the Motion and the Cross-Motion for a hearing on April 3, 2024.

III. THE DOCUMENT REVIEW

37. When the Receiver brought the Motion, and was served with the Cross-Motion, it had not yet conducted any review of Techlantic's electronic records. As described below, the Receiver had access to (and control of) those records and it decided to review those records in order to understand various issues relating to Techlantic's business. I communicated (through counsel) with the Van Essen Companies about this review, but they did not raise any privilege issues.

A. The Receiver was granted "unfettered access" to Techlantic's electronic records

38. The Receivership Order grants the Receiver very broad rights to use Techlantic's property, access its records and operate its business. The relevant terms of the Receivership Order are based on the Commercial List User's Committee Model Order. These terms are, in my experience, common to most receiverships. It is difficult to understand or operate most modern businesses without access to their electronic records.

39. Certain relevant paragraphs of the Receivership Order are summarized below, for convenience.

40. Pursuant to paragraph 2 of the Receivership Order, the Receiver was appointed Receiver over the Property of the Debtors, including the Property of Techlantic. The Receiver was specifically empowered and authorized to, among other things:

    (a) take possession and exercise control over the Property;

    (b) manage, operate and carry on the business of the Debtors, including Techlantic; and

    (c) initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings with respect to the Debtors, including Techlantic.

41. Techlantic operated the Techlantic Server as part of its business. Its employees and consultants, including Wouter, were authorized to use the Techlantic Server to send and receive e-mails relating to the Techlantic's business (the "**Techlantic Emails**"). The server was an asset of Techlantic, and therefore it was "Property" within the meaning of the Order.

42. Paragraph 5 of the Receivership Order also requires that any "Person", which is broadly defined to include "any current and former directors, officers, employees….and all other persons acting on their instructions and behalf", advise the Receiver of the existence of any documents and "records and information of any kind related to the business or affairs of the Debtors" including any "data storage media or loud-based storage containing any such information (the foregoing, collectively, the "**Records**")".

43. The Receiver's right to access Records is supplemented by paragraph 6 of the Receivership Order, which states that "**if any Records are stored or otherwise contained on a computer or other electronic or cloud-based system of information storage**, whether by independent service provider or otherwise, **all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver**…"[2][emphasis added].

44. The foregoing paragraphs give the Receiver the right to control the Techlantic Servers and have unfettered access to any information that is stored on them. I did not (and do not) believe that the Receiver required further permission from anyone to access that information.

B. The Van Essen Companies Were Aware of the Terms of the Receivership Order

45. The Van Essen Companies have been involved in this Receivership since December 22, 2023, the day that the Receiver was appointed.

46. On that date, Alexis Beale of Rosemount Law wrote to Goodmans to indicate that she would like to be added to the service list for the Receivership, as she had "just been

[2] paragraph 5 of the Receivership Order clarifies that no person is required to deliver records that may not be disclosed due to privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

retained" by the Van Essen Companies and was "in the process of getting up to speed." This e-mail is attached as Exhibit "**I**". As discussed further below, Ms. Beale has recently advised that she has been exchanging privileged information with the Van Essen Companies since October 2023.

47. On January 3, 2024, Ms. Beale wrote to Goodmans asserting that the Van Essen Companies were entitled to conduct the Purported Set-Off. Ms. Beale's e-mail is dated January 3, 2024. This e-mail is attached as Exhibit "**J**".

48. Andrew Harmes (a restructuring lawyer at Goodmans) responded to Ms. Beale's email on January 4, 2024. The letter requested that the Van Essen Companies immediately return the Techlantic Funds and any and all additional Property of Techlantic, or any of the other Debtors, to the Receiver. It also directed Ms. Beale to a copy of the Receivership Order, which had been available on the Receiver's website since December 22, 2023. Mr. Harmes' correspondence is attached as Exhibit "**K**".

49. As described above, the Receivership Order granted control of the Property of the Debtors, including the Techlantic Server, to the Receiver. I therefore believed at all times that Ms. Beale and the Van Essen Companies knew, or reasonably ought to have known, that the Receiver had access to all emails on the Techlantic Server. In light of this, it never occurred to me that Ms. Beale (or any other lawyer) might be using the Techlantic Server to exchange privileged information (or any information) with the Van Essen Companies.

C. The Van Essen Companies represented that they operated at arm's length from Techlantic

50. Ms. Beale spoke to me and my colleagues several times in January 2024. We also exchanged correspondence with her about the Purported Set-Off. She did not tell us that the Van Essen Companies might have privileged information stored on the Techlantic Servers or that the Van Essen Companies had been using the Techlantic Servers to exchange privileged correspondence.

51. By e-mail dated January 30, 2024, Ms. Beale asserted that despite the father/son relationship between Eric and Wouter, the Purported Set-Off constituted a "legal set-off" between companies – namely, the Van Essen Companies and Techlantic – "operating at arm's length." As described below, Ms. Beale reiterated that the Van Essen Companies operated "at arm's length" from Techlantic repeatedly in her subsequent conversations with me. Ms. Beale's e-mail is attached as Exhibit "**L**".

52. In summary, throughout the period from December 22, 2023 and February 2, 2024, the Van Essen Companies presented themselves as arm's length companies that did business with Techlantic. They even alleged that Techlantic had misappropriated vehicles from them, which further enforced the perception that the Van Essen Companies and Techlantic carried on separate businesses. The Van Essen Companies did not tell the Receiver that they used the Techlantic Server for any purpose, and they certainly did not tell the Receiver that they might have privileged material stored on the Techlantic Servers.

D. The Receiver's engagement of FTI Forensic

53. By February 2024, Goodmans and the Receiver had identified a number of potential issues that required further investigation. Those issues are set out in the Second Report of the

Receiver (the "**Second Report**") at paragraphs 26-34. The Second Report is attached, without appendices, at Exhibit "**M**".

54. Given the difficulties with the Debtors' records, the Receiver, in consultation with Goodmans, determined that it was appropriate to conduct a more detailed review of the Debtors' electronic records. This review included, but was not limited to, issues related to the Van Essen Companies.

55. To assist with the Receiver's review, the Receiver and Goodmans decided to engage a team from FTI Forensic. The Receiver engaged a team lead by Anita Patel, a Senior Managing Director at FTI Forensic with a speciality in forensic and investigative accounting to assist with this review.

56. FTI Forensic did not participate in my discussions with the Receiver about litigation strategy. I understood that FTI was (and treated it as) separate from the Receiver in terms of how it operated. FTI Forensic communicated with the Receiver by making periodic presentations. I have reviewed the presentations that FTI Forensic made (which I have not attached because they contain privileged and confidential information about FTI Forensic's ongoing investigation) and the documents that FTI Forensic excerpted or referenced in its presentations were not Allegedly Privileged Documents.

E. The Database set-up

57. In early January and February 2024, the Receiver instructed FTI Forensic to collect certain electronic documents held on the Techlantic Servers including e-mails sent to or received by certain custodians.

58. The documents collected by FTI Forensic (which were a subset of the documents stored on the Techlantic Servers) were loaded into a document database maintained by FTI Forensic using Relativity document review software (the "**Database**"). In total, the Database contained approximately one million documents.

59. I am advised by Pat Cahill, a Director of eDiscovery with FTI Forensic's technical team that the Database included e-mail inboxes collected from the following custodians:[3]

(a) eric@techlantic.com

(b) eric.vanessen@tradexport.com

(c) eric@tradexport.com

(d) june@techlantic.com

(e) michelle@techlantic.com

(f) ping@techlantic.com

(g) wouter@techlantic.com

60. Contrary to the allegation in the First Wouter Affidavit, I am advised by Mr. Cahill, and believe, that FTI Forensic did not collect any e-mails from the domain "techlanticconsulting.com". In the Second Wouter Affidavit, Wouter appears to concede this point.

[3] Trade X custodians were also collected, but those custodians are not directly relevant to this issue and have accordingly been excluded from the list above.

61. I am advised by Mr. Cahill that, apart from Wouter's inbox, all e-mail inboxes listed above were collected on January 11, February 14 and February 16, 2024. The collection of Wouter's inbox occurred later, on February 22 and 23, 2024. Wouter's emails were processed and became available for review in the Database on February 28, 2024.

62. As described below, Wouter's inbox was collected later than the other inboxes because we did not know that Wouter had an @techlantic.com e-mail address.

63. In the Second Wouter Affidavit, Wouter seems to say that the Receiver's request for the meeting and reference to the production of Records meant that it would not review the Techlantic Server or the Techlantic E-mails. The Receiver never made any such commitment. The Receiver reserved the right to compel production of records from the Van Essen Companies because it did not know that any records belonging to the Van Essen Companies were stored on the Techlantic Servers. We assumed that the Van Essen Companies operated using their own infrastructure, because they said they dealt with Techlantic at arm's length.

F. The Receiver tried to meet with Wouter to better understand Techlantic's business, but he refused

64. By letter dated February 15, 2024, the Receiver wrote to advise that it intended to amend its notice of motion to seek not just the preservation of funds, but given the delay in arguing the motion, a final determination with respect to the validity of the Purported Set-Off. With the motion now scheduled for April 3, 2024, the intervening period would allow the Receiver to "obtain, review and assess additional information necessary to make a final determination." The Receiver also asked in its February 15 letter to meet with Wouter to

gain a better understanding of the relationship between Techlantic and the Van Essen Companies. The Receiver's letter is attached as Exhibit "**N**".

65. By responding letter dated February 19, 2024, Ms. Beale wrote that since the Motion and the Cross-Motion were pending, all information would be exchanged in accordance with the Rules of Civil Procedure. Ms. Beale's February 19, 2024 letter also attached a "Request to Inspect" seeking production of various documents. This letter, with its attachment, is attached as Exhibit "**O**".

G. The Receiver did not know that there might be privileged documents on the Techlantic Server

66. When we began to review documents in the Database, neither Goodmans, FTI Forensic nor the Receiver knew that the Database might contain privileged documents – or any documents – that belonged to the Van Essen Companies. The Van Essen Companies knew that the Allegedly Privileged Documents were on the Techlantic Server, but they did not tell us. This had important consequences to our document review.

67. I have been involved in a number of cases involving the review of document sets that included (or might include) privileged documents. These cases range from the routine production of documents in civil actions (where each side reviews its own material and produces relevant and non-privileged documents) to much more complicated cases involving the seizure of records (potentially including privileged records) pursuant to search warrants in criminal and quasi-criminal matters.

68. Identifying and segregating potentially privileged documents in a data set is complex and expensive. It is also very difficult – and in many cases impossible – for one party to identify

the privileged documents that belong to another party. A privilege review can only proceed effectively if the reviewing party knows what it is looking for. Correspondence with counsel can only be identified effectively (or at all) if the searching party knows how to search for that counsel. Correspondence created for the dominant purpose of litigation can only be identified effectively (or at all) if the searching party knows what litigation a party was engaged in or contemplating.

69. The Van Essen Companies have suggested in correspondence that the Receiver could or should have taken steps to identify the Allegedly Privileged Documents. I do not agree. The Receiver was entitled to access the Techlantic Servers, including Techlantic's privileged documents. Without knowing that the Van Essen Companies – supposedly, arm's length entities – were using the Techlantic Servers to store the Allegedly Privileged Documents, or any information about the Allegedly Privileged Documents, the Receiver had no reason to conduct a privilege search and no practical ability to conduct an effective search.

70. If the Van Essen Companies had told the Receiver that they had been using the Techlantic Servers to store and exchange allegedly privileged documents, then we could and would have taken steps to identify any actually privileged documents and remove them from the database. By way of example, Ms. Beale claims to have corresponded with the Van Essen Companies using the Techlantic Servers. If we had known about this correspondence, it could have been identified and segregated. We could also have worked with the Van Essen Companies to identify other potentially privileged documents and establish a protocol to review them.

71. To be absolutely clear, Goodmans, the Receiver and FTI Forensic would have taken steps to avoid seeing the Allegedly Privileged Documents if we knew they were on the Techlantic Servers. We did not want to see any privileged information. Importantly, Goodmans and the Receiver have obligations to the Court and the litigation process. We take those obligations seriously, understand the importance of privilege and would not intentionally undermine privilege protections. In addition, as described below, Goodmans and the Receiver did not (and would not) use privileged information to gain any benefit in the litigation. But we have spent more than a month trying to determine what the Allegedly Privileged Documents are and whether anyone viewed them. This is time that the Receiver could have spent working to advance its mandate. Meanwhile, the Van Essen Companies seek to use the alleged access to the Allegedly Privileged Documents to shield themselves from any liability in connection with their dealings with Techlantic. The motion, if granted, will significantly undermine the Receiver's work to maximize stakeholder recoveries.

72. All of this could have been avoided if the Van Essen Companies had told us, in a timely manner, that the Allegedly Privileged Documents were on the Techlantic Server. They did not.

H. Goodmans' initial searches and review

73. The first set of e-mails, which were uploaded from Eric's e-mails (the "**Eric E-mails**") were available to Goodmans on Saturday, February 17, 2024. In order to facilitate Goodmans' review, FTI Forensic ran a series of search terms, the specifics of which are subject to privilege.

74. Goodmans' initial review focused on understanding the relationship between the Van Essen Companies and Techlantic. Since the Cross-Motion asserted that Wouter was responsible for operating the Van Essen Companies and Eric was Techlantic's Managing Director, Goodmans began its review by focusing on e-mails that were:

(a) stored in Eric's inbox; and,

(b) sent to or from Wouter.

75. Ms. Tee and I reviewed certain e-mails, based on the search terms run by FTI Forensic, between February 18, 2024 and February 25, 2024. Because we were focused on addressing specific issues, and had concerns about both time and cost, Ms. Tee and I did not conduct a full document review. Ms. Tee and I did not review each document in the Database or each document in any subset of a Database. We looked for specific documents to address specific issues relating to the litigation, as opposed to reviewing each document for relevance.

I. My review and discussions with Ms. Beale

76. I began my review of the Database on February 19, 2024. I was struck immediately by Wouter's level of involvement in Techlantic's business. As noted above, the Van Essen Companies had held themselves out as arm's length companies operated by Wouter. They said that Wouter provided "consulting services" to Techlantic, but did not specify the nature or extent of those services.

77. My impression, from my initial document review, was that Wouter was, for all practical purposes, a senior Techlantic executive. It was only at this time that we asked FTI Forensic

to download Wouter's Techlantic email address from the Techlantic Server. Wouter had a techlantic.com e-mail address (which we did not previously know) and seemed to be copied on virtually every important e-mail relating to Techlantic's business. A more detailed description of Wouter's role and other related conclusions are described in the Receiver's First Supplemental Report attached above as Exhibit "**C**".

78. I spoke to Ms. Beale the afternoon of February 23, 2024. By that time, Goodmans' document review had progressed significantly and we had discovered a number of important facts about Techlantic.

79. Ms. Beale asked for the February 23, 2024 discussion because she wanted to know what documents the Receiver planned to produce in response to the Van Essen Companies' request to inspect. We discussed this issue, and I also took the opportunity to provide an update on the progress of the Receiver's investigation. I provided details about that investigation because I wanted to be transparent about the Receiver's investigation and because I thought that telling Ms. Beale what we had found would help the matter move forward efficiently.

80. I remember telling Ms. Beale that, based on my review of Techlantic's e-mails, I was surprised by how involved Wouter was in Techlantic's business and how intertwined Techlantic and the Van Essen Companies were. I also remember telling Ms. Beale that I had seen e-mails from Wouter to Techlantic staff giving instructions about whether to use sale proceeds to pay the Lenders or the Van Essen Companies.

81. I also remember telling Ms. Beale that, early in these proceedings, she often said (in our discussions and in the Van Essen Companies' court submissions) that the Van Essen

Companies had been fully transparent with the Receiver. I told her that I did not believe that these submissions were fair or accurate because I only learned about the scope of Wouter's involvement in Techlantic and the true nature of the relationship between Techlantic and the Van Essen Companies from reviewing Techlantic's e-mails.

82. I made it very clear during my discussion with Ms. Beale that Goodmans was reviewing the Techlantic E-mails, including e-mails sent and received by Wouter. Ms. Beale did not raise any concerns that the Techlantic Server might contain any Allegedly Privileged Documents.

J. I wrote to Ms. Beale to tell her about Goodmans' review of the Techlantic E-mails

83. On February 27, 2024, I wrote to Ms. Beale to provide a further update on the Receiver's investigation and to serve an Amended Notice of Motion with respect to the Receiver's motion to recover the Techlantic Funds.

84. The primary change in the Amended Notice of Motion was the addition of a request for a declaration that the Purported Set-Off was void as against the Receiver as a preference, pursuant to s.95 of the *Bankruptcy and Insolvency Act* (the "**BIA**").

85. In my February 27, 2024 correspondence, I advised Ms. Beale that this amendment stemmed from the Receiver's review of the "contemporaneous documents", which showed that Techlantic did not deal at arm's length with the Van Essen Companies. I summarized the Receiver's conclusions, including that:

(a) Wouter remained intimately involved in Techlantic's business at all material times and, among other things, instructed Techlantic's accounting staff with respect to whether available funds should be paid to 130 or to MBL;

(b) 130 and Techlantic were operated as an integrated business;

(c) Eric was a shareholder and the president of 130's parent company, Techlantic Consulting Ltd.;

(d) Eric directed Techlantic staff to purchase vehicles for 130;

(e) in the fall of 2023, Eric told Techlantic staff to conduct transactions through 130 instead of Techlantic; and

(f) there is no evidence of any negotiations between Techlantic and 130 with respect to any of the transactions at issues.

86. In an e-mail exchange later in the day on February 27, 2024, I specifically told Ms. Beale that the Receiver intended to serve a supplementary report that would be primarily based on e-mails sent and received by the Van Essen Companies and located in Techlantic's records:

> **We are preparing a supplementary report, based on the information located in Techlantic's records. It will primarily attach e-mails sent to or received by your clients**. We are aiming to deliver the supplementary report this week, although that depends on our ongoing review and how much additional material we find. [emphasis added]

87. This e-mail is attached as Exhibit "**P**". Ms. Beale did not raise any concerns about our review of the Database, or tell us that the Allegedly Privileged Documents were on the Techlantic Server.

K. Wouter's e-mails were not available for review until February 28, 2024

88. The Wouter Affidavits only refer to documents stored in Wouter's mailbox (the "**Wouter E-mails**"). It is therefore relevant to note that when we reached the conclusions set out in my February 27, 2024 letter, the Wouter E-mails were not yet available for review.

89. In the Second Wouter Affidavit, Wouter claims that we must have reviewed the Wouter E-mails because the First Supplemental Report refers to Wouter's correspondence. To be clear, this correspondence was copied to (and available from) Eric's inbox, and I do not understand the Van Essen Companies to be contesting that the Receiver was entitled to access Eric's emails on the Techlantic Server pursuant to the Receivership Order. We did not have access to Wouter's inbox until our document review was largely complete and the Receiver formulated its position.

90. I provided a further update to Ms. Beale on March 1, 2024, when I wrote to Ms. Beale to tell her that a further issue had been identified in the course of the Receiver's review that would need to be investigated further before delivery of the Receiver's supplementary report. Accordingly, I informed Ms. Beale that the delivery of First Supplemental Report would be delayed. This delay was caused by the need for FTI Forensic to investigate certain records relating to the purchase and sale of vehicles in 2022. The conclusions that we reached based on our review of the Techlantic E-mails did not change during the period after March 1, 2024.

L. The Motion and Cross-Motion were rescheduled, over the Van Essen Companies' opposition

91. On April 3, 2024, the parties appeared before Justice Cavanagh to reschedule the Motion and Cross-Motion. The Van Essen Companies opposed the rescheduling of the Motion, and sought to have the Motions adjourned indefinitely, or at least delayed until the fall. By Endorsement dated April 3, 2024, Justice Cavanagh set the hearing for June 27, 2024 and directed the Van Essen Companies to deliver their responding materials by May 22, 2024.

92. On April 4, 2024, the Receiver delivered its First Supplemental Record in relation to its motion to recover the Techlantic Funds. Consistent with my earlier statements to Ms. Beale on February 27, 2024 and our oral conversations, the First Supplemental Report attached a number of e-mails between Wouter and Eric that had been found in Eric's email folders. None of these emails were to or from Ms. Beale, none of them were on their face subject to any other form of privilege of which I am aware, and the Van Essen Companies have not asserted that any of these specific emails were in fact privileged.

M. The Van Essen Companies' Late-Breaking Privilege Assertions

93. On April 5, 2024, Ms. Beale wrote to me to assert (for the first time) that the Van Essen Companies used the Techlantic E-mails for the purposes of "receiving legal advice settlement-related discussion and litigation advice and strategy, including in relation to the litigation herein." Ms. Beale asked that the Receiver produce an inventory of the documents that had been collected, and the "protocol" the Receiver used to review documents. Ms. Beale also asserted that the Receiver had received and reviewed "all e-mails" sent from @techlantic.com and many e-mails from @techlanticconsulting.com. Ms. Beale's e-mail is attached as Exhibit "**Q**".

94. As noted above, this is not correct - FTI Forensic collected e-mails from only certain custodians, including wouter@techlantic.com. No emails from @techlanticconsulting.com were collected. Both Goodmans and FTI Forensic then conducted specific searches of those e-mails, using metadata and keyword searching.

95. I have since come to understand from the Second Wouter Affidavit sworn by Wouter on May 10, 2024, that Wouter's email storage practices linked his @techlantic.com email to his @techlanticconsulting.com, resulting in Wouter's @techlanticconsulting.com emails being uploaded to the Database. The Receiver did not know, and had no reason to suspect, that Wouter had set-up his email inbox in this way.

96. April 5, 2024 was a Friday, and I was in Court addressing an urgent motion for an injunction on another matter. I forwarded Ms. Beale's e-mail to the Receiver and said that we would discuss Ms. Beale's concerns on Monday, April 9, 2024.

97. When I received Ms. Beale's e-mail, I knew that Goodmans was not currently reviewing the Database. Our work on the First Supplemental Report was complete, and the next phase of our work had not yet commenced.

98. I also understood from FTI Forensic that its only ongoing work was reviewing certain financial information it had received from the Debtors' bank, RBC. Accordingly, I did not believe that FTI Forensic would access the Database either. I later came to understand that FTI Forensic accessed the Database between April 9 and the Database shutdown on April 11 for the limited purpose of reviewing documents relating to wires seen on the RBC financial statements.

99. Ms. Beale called me on April 9, 2024 to discuss the privilege issue. At that stage, I did not fully understand what privileged documents were alleged to be in the Database but I assumed that the Van Essen Companies wanted to segregate and remove those documents.

100. My assumption turned out to be incorrect. Ms. Beale asked to me to provide the "protocol" that the Receiver used to identify and segregate the Van Essen Companies' privileged documents. I told her that we did not know that the Van Essen Companies' documents (privileged or otherwise) were on the Techlantic Server and so we had not established any protocol to identify those documents. Ms. Beale then told me that if the Receiver could not prove that it had not accessed the Allegedly Privileged Documents or that the Van Essen Companies had not suffered prejudice then the case against the Van Essen Companies should be stayed.

101. Shortly thereafter, Ms. Beale purported to write a summary of our of conversation and sent it to me. This e-mail is attached as Exhibit "**R**" (it is also attached as Exhibit A to the First Wouter Affidavit). I responded to Ms. Beale to say that her summary may not be complete or accurate, and that the Receiver would respond in writing. To be clear, I do not believe that Ms. Beale's summary is accurate.

102. I sent the Receiver's response to Ms. Beale's correspondence on April 11, 2024 by e-mail, attached hereto as Exhibit "**S**". In the response, I confirmed to Ms. Beale that access to the Database had been locked down, preventing any further review. The Database has remained locked since this time. I specifically questioned why the Van Essen Companies had not raised their concerns sooner and proposed a number of solutions to address the Van Essen Companies' privilege concerns. Among other things, this included:

(a) offering to provide an inventory of all documents in the Database (as requested by the Van Essen Companies);

(b) proposing a protocol to identify any allegedly privileged documents so that they could be removed from the Database. Specifically, I suggested that:

(i) FTI Forensic establish an ethical wall so that FTI Forensic personnel on the other side of the ethical wall (the "**Wall Team**") could run searches based on instructions from Ms. Beale to identify any allegedly privileged documents; and

(ii) once the allegedly privileged documents were identified, they would be removed from the Database, without prejudice to the Receiver's ability to challenge the privilege designation.

103. The Van Essen Companies initially accepted my offer to identify and segregate the Allegedly Privileged Documents by e-mailed dated April 11, 2024 and attached as Exhibit "**T**", but subsequently changed their mind.

104. In the period after April 5, 2024, I exchanged a large number of e-mails with Ms. Beale trying to address the Allegedly Privileged Documents. These exchanges always followed the same basic pattern:

(a) I asked for information about the Allegedly Privileged Documents, so that the Receiver could investigate and provide an informed response to the Van Essen Companies' position;

(b) Ms. Beale refused to provide complete information, but insisted that the Receiver provide "proof" that none of the Van Essen Companies' "privileged documents" had been reviewed; and

(c) Ms. Beale claimed that the Van Essen Companies had suffered significant prejudice because the (as-yet unidentified) Allegedly Privileged Documents might have been reviewed.

105. Examples of my correspondence with Ms. Beale are attached as Exhibit "**U**".

106. The Van Essen Companies' position made it impossible for the Receiver to effectively address their allegations. There is no way to know if Allegedly Privileged Documents had been reviewed without knowing what the Allegedly Privileged Documents were and where they might be located within the Database. We did not want to provide an incomplete or inaccurate response to the Van Essen Companies, but could not provide a complete and accurate response without more information.

107. On April 16, 2024, the Van Essen Companies served the Stay Motion and the First Wouter Affidavit. The First Wouter Affidavit alleged that there were 326 documents exchanged "between myself and my counsel in relation to this dispute" and 1950 documents in a folder called legal that was allegedly "used to store privileged documents." The Van Essen Companies had not previously provided this information.

108. After seeing the First Wouter Affidavit, I continued to try to obtain from Ms. Beale information about the Allegedly Privileged Documents so that the Receiver could remove those documents from the Database and address the potential privilege issue.

109. By way of email dated April 23, 2024, Ms. Beale advised me that pursuant to her interpretation of the case law, her clients had no obligation to provide further information about the Allegedly Privileged Documents. A copy of this email is attached hereto as Exhibit "**V**".

110. It was not until May 2, 2024, that the Van Essen Companies provided some further information about the Allegedly Privileged Documents.

IV. THE ALLEGEDLY PRIVILEGED DOCUMENTS

A. Documents alleged to be privileged

111. The Van Essen Companies' refusal to identify the Allegedly Privileged Documents alleged to exist within the Database made it difficult for the Receiver to respond to the allegations advanced against it.

112. To the best of my understanding, the Van Essen Companies have now identified four categories of documents that are alleged to be privileged. Two categories of documents were identified in the First Wouter Affidavit. Two additional categories of documents were identified for the first time in a letter sent by Ms. Beale dated May 2, 2024 (the "**May 2nd Letter**"), attached hereto as Exhibit "**W**". These categories can be summarized as follows:

(a) **Category 1:** Communications between Wouter and Ms. Beale "in relation to this litigation";

(b) **Category 2:** Communications between Wouter and Andrea Brinston (who Ms. Beale identified for the first time as the Van Essen Companies' corporate counsel in the May 2nd Letter) from October 2023 onwards;

(c) **Category 3:** Documents stored by Wouter in a folder marked "legal"; and

(d) **Category 4:** Communications between Wouter, Eric and unidentified "others" that may be subject to litigation privilege from October 2023 onwards.

113. To be clear, the Receiver does not admit that these documents are privileged. But we have done our best to identify which Allegedly Privileged Documents Goodmans, the Receiver and FTI Forensic viewed.

B. Documents "Viewed" By the Receiver, FTI Forensic or Goodmans

114. After receiving the May 2nd Letter (which identified, for the first time, new categories of Allegedly Privileged Documents), I instructed the Wall Team to run searches to identify the documents in Categories 1-3 described above. The Wall Team then accessed the audit logs for the documents in this search to determine if any of the allegedly privileged documents had been "viewed" within the Database.

115. I am advised by FTI Forensic's technical team that a document is "viewed" if it appears on a reviewer's screen for any length of time. To be clear, the fact that a document is "viewed" does not mean that a reviewer actually viewed the contents or read the document. It is not possible to determine how long the document was open. In other words, if a reviewer clicks through a series of documents in order to find a different document then all of the documents will be "viewed" according to the Database.

116. I note that no searches were run in respect of the documents in Category 4. This is because the description of documents in Category 4 was too vague to permit an informed response. There are a large number of communications between Eric and Wouter and with "others"

during the fall 2023 period. Several such communications are attached to the First Supplemental Report, none of which are privileged. I personally reviewed a number of e-mails between Wouter, Eric and others from the fall of 2023 and I do not believe that any of the documents that I reviewed were privileged.

117. In any event, based on the limited description in Ms. Beale's letter, there was no practical way for me to instruct the Wall Team to identify documents in Category 4.

118. For completeness, I note again that I had previously offered to have Wall Team run searches for Ms. Beale directly, so that she could identify the Allegedly Privileged Documents herself. As described above, this offer was initially accepted but ultimately refused on April 23, 2024.

(i) Category #1: Correspondence between Wouter and Ms. Beale

119. With respect to the first category, I am advised by the Wall Team that they conducted a search for all emails sent to or from Wouter to Ms. Beale's two known e-mail addresses (alexisbeale@northcliffebarristers.ca and abeale@rosemountlaw.com). They then narrowed this list to any documents that had been "viewed" by any reviewer. For clarity, I do not know the total number of documents that exist within the database between Wouter and Ms. Beale (although I note that the First Wouter Affidavit places this number around 326).

120. A chart identifying the correspondence between Ms. Beale and Wouter that has been "viewed" and who viewed it is attached hereto as Exhibit "**X**".

121. The search results indicate the following:

- a total of 25 documents were "viewed" in category #1;
- 11 of the "viewed" emails were exchanged after the Receivership Order was granted;
- 14 of the "viewed" emails pre-date the Receivership. It is not clear whether these documents were (or could have been) sent "in relation to" the litigation between the Receiver and the Van Essen Companies; and
- 10 of the "viewed" emails were "viewed" by Goodmans, and the balance were "viewed" by FTI Forensic. None were viewed by the Receiver.

122. Within the documents "viewed" by Goodmans, four were "viewed" by me, nine were "viewed" by Ms. Tee and one was "viewed" by Mr. Sloan.

123. I did not read any of these "viewed" documents and have no knowledge of what was communicated in them. If I had seen correspondence between Ms. Beale and her client then I would have taken steps to address the issue immediately.

124. I cannot be sure how I came to "view" these documents, because I have no recollection of when or how I viewed them. I likely clicked past the documents while trying to find different documents relevant to the review. I am competent, but not expert, in searching Relativity and so I sometimes need to click through various documents to find the one that I am looking for.

125. I am advised by Ms. Tee, and believe, that she has no recollection of reviewing the documents in category #1 and does not know when or how she saw them.

126. I am advised by Mr. Sloan, and believe, that he has no recollection of viewing the document in category #1 and does not know when or how he saw it.

127. I have also been advised by Ms. Patel that neither she nor the other members of her team remember viewing any documents in Category #1. Ms. Patel has informed me that prior to this motion, it is likely that neither she nor the other members of her team would have recognized Ms. Beale's name or appreciated that she was counsel to Wouter. Because I did not know that the Van Essen Companies might have privileged documents in the Database, I did not provide instructions to FTI Forensic with respect to how to identify any privileged documents that might belong to the Van Essen Companies.

128. I note, as well, that the Van Essen Companies seem to claim that all of the Category #1 documents were sent "in relation to" their litigation with the Receiver. However, a significant number of those documents predate the litigation between the Van Essen Companies and the Receiver. Many pre-date the Receivership entirely. It is not clear what (if any) relationship there is between the pre-Receivership documents and the litigation between the Receiver and the Van Essen Companies.

129. Indeed, it is not even clear if Ms. Beale's pre-Receivership e-mails relate to a separate mandate entirely. In Ms. Beale's first e-mail to the Receiver on December 22, 2023 (which is referred to above and attached as Exhibit "**I**"), she advised that she had "just" been retained to deal with this matter. It is not clear what (if any) relationship there is between the correspondence that Ms. Beale may have had with Wouter in the fall of 2023 and the current litigation.

130. In addition, Eric was copied on all but one of the 25 Category #1 e-mails and most of them were sent to Eric while he was a director of Techlantic. The Van Essen Companies have not addressed Eric's role (if any) at the Van Essen Companies, but Eric was a director and/or employee of Techlantic when he received these e-mails. It is possible that the Van Essen Companies waived any privilege that may have existed over these e-mails by sending them to Eric.

(ii) Category #2: Correspondence between Wouter and Ms. Brinston

131. The Wall Team followed the same process with respect to documents in the second category, the results of which are attached hereto as Exhibit "**Y**". These results indicate the following:

- a total of 27 documents were "viewed" in category #2. All of these documents pre-date the Receivership;
- of these 27 documents, 12 copy or otherwise include Ms. Beale, and are accordingly duplicates of those the included in the chart attached at Exhibit "**X**";
- 13 of the documents were "viewed" by Goodmans, and the balance were "viewed" by FTI Forensic. None were viewed by the Receiver.

132. I do not recall seeing any of these documents, and am advised by my colleagues Ms. Tee and Mr. Sloan that they do not recall seeing any such documents either.

133. I do not know the contents of correspondence between Ms. Brinston and Wouter. However, I note that neither I, Ms. Tee, nor Mr. Sloan were aware of or had any reason to believe

that Ms. Brinston was corporate counsel to Wouter (and/or the Van Essen Companies) before we received Ms. Beale's May 2nd Letter.

134. In addition, and to avoid any doubt, neither I nor Ms. Tee nor Mr. Sloan discussed the contents of the Category #1 or #2 e-mails with the Receiver (or anyone else) and the e-mails had no impact at all on the litigation strategy in this matter.

(iii) Category #3: Wouter's "legal" folder

135. FTI Forensic's technical team followed the same process with respect to the third category. The results are attached at Exhibit "**Z**". They indicate the following:

- no e-mails in the "legal" folder were viewed;
- 26 documents (presumably attachments to e-mails) were "viewed", but the metadata discloses no information about these documents apart from their date. Accordingly, the Receiver cannot know whether they are (or may be) privileged; and
- all of the documents significantly predate the Receivership and this litigation.

136. Neither I nor Ms. Tee reviewed any of the Category #3 documents. I am advised by Mr. Sloan (the only person at Goodmans that viewed documents in Category #3), and believe, that he does not recall seeing any apparently privileged documents during his review. Mr. Sloan cannot identify the documents that he apparently viewed based on the (very limited) available metadata. In any event, the documents are dated in 2021 and 2022 and Mr. Sloan did not discuss the contents of any documents from these time periods with me or Ms. Tee.

137. I note, as well, that based on my review of the Database and discussion with Justin Jakubiak (a lawyer at Fogler Rubinoff LLP that acted for the Debtors on regulatory matters) it seems that Wouter often instructed counsel working for Techlantic. Even if Wouter's legal folder contains privileged documents (which the Receiver does not concede), it is not clear that the privilege belongs to the Van Essen Companies as opposed to Techlantic.

C. FTI Forensic Presentations

138. As discussed above, FTI Forensic communicated its findings to Goodmans and the Receiver through powerpoint presentations, and, on occasion, sending documents directly to Goodmans and the Receiver by email. The presentations and emails relating to Techlantic are described below.

139. On March 22, 2024, FTI made a presentation to Goodmans and the Receiver in respect of certain findings relating to the Van Essen Companies. A copy of the presentation is attached hereto as Exhibit **AA".** The presentation has been redacted for privilege, but shows all Techlantic documents excerpted in the presentation.

140. Ms. Descours and I had certain discussions with Mr. Lovy of the Applicants, together with the Receiver. To the best of my knowledge, we did not show any of the Allegedly Privileged Documents to or discuss any Allegedly Privileged Documents with, Mr. Lovy.

141. On April 8, 2024, Ms. Patel of FTI Forensic made a presentation to Mr. Lovy, alongside Goodmans and the Receiver, providing an update on FTI Forensic's review of various issues relating to the Debtors. A copy of the presentation is attached as Exhibit **"BB"**. The presentation has been redacted for privilege, but shows what Techlantic documents were shown to Mr. Lovy.

142. In addition, on March 28, 2024, Ms. Patel presented to the Receiver a complex spreadsheet tracing the flow of funds for various vehicles purchased by Techlantic. Ms. Patel subsequently sent Goodmans and the Receiver a package of supporting documents relating to the spreadsheet. The supporting documents were voluminous, and were sent over multiple e-mails. I did not review the supporting documents at the time. Ms. Tee advised me that she also did not review the documents, but saved them in case we needed to refer to them in the future.

143. Ms. Descours was also copied on Ms. Patel's March 28, 2024 email, along with Mr. Bishop and Mr. Hamidi from the Receiver.

144. On May 17, 2024, shortly before swearing this affidavit, I received a letter from Ms. Beale asking for certain information relating to FTI Forensic's work. In the course of considering these questions, I reviewed Ms. Patel's March 28, 2024 e-mails again. I had thought the emails attached only invoices and wire confirmations. However, upon further review, I noticed that among the attachment there were a few e-mails in addition to the invoices and wire confirmations. I opened one of these attachments and saw that it was an e-mail sent by Eric to Ms. Beale. I did not read the contents, or even the date, of the e-mail.

145. As soon as I saw Ms. Beale's name, I closed the e-mail and deleted all of the e-mails sent by Ms. Patel on March 28, 2024. I instructed Ms. Tee and Ms. Descours to delete the e-mails, and they both confirmed to me that they deleted the e-mails without opening or reading any attachments. Ms. Tee has also confirmed to me that she has deleted the copies of the emails she had saved locally.

146. I also immediately wrote to Mr. Hamidi and Mr. Bishop of the Receiver to identify the issue and instructed them to delete the e-mails from Ms. Patel sent March 28, 2024. Mr. Hamidi confirmed to me that he and Mr. Bishop had permanently deleted the emails.

147. In addition, I wrote to Ms. Patel to instruct her to delete her copies of the March 28, 2024 e-mails and to ensure that no one from her team accessed the supporting documents appended to her e-mail until we were able to identify and remove any potentially privileged information. Ms. Patel confirmed to me that she and her team had deleted all copies of the email and the supporting documents attached.

D. Conclusion

148. The Receiver retained independent counsel, Matthew Gottlieb and Andrew Winton of Lax O'Sullivan Lisus Gottlieb LLP ("**LOLG**") to argue this motion. By e-mail dated May 10, 2024, I proposed that LOLG receive the Allegedly Privileged Documents and give an undertaking that it would not discuss the contents of the Allegedly Privileged Documents with either Goodmans or the Receiver. By responding e-mail dated May 13, 2024, the Van Essen Companies refused.

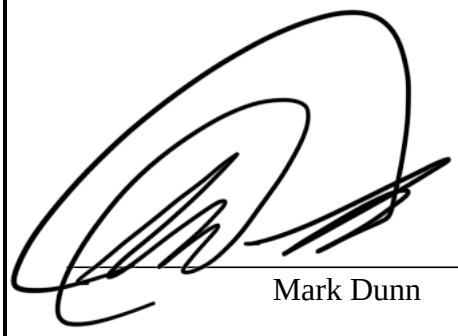
149. Since learning that the Allegedly Privileged Documents might be in the Database, the Receiver has tried to balance competing objectives. It has sought to address any valid privilege concerns while continuing with its mandate. The Van Essen Companies provided very little information about the Allegedly Privileged Documents but insisted from the outset that they had suffered prejudice that could only be cured by staying all current and future litigation against them. They served the Stay Motion before the Receiver had an opportunity to investigate and respond to their allegations.

150. The Stay Motion, if granted, would confer a significant advantage on the Van Essen Companies because they would avoid potentially significantly liabilities without a hearing on the merits, and would prejudice the Debtors' stakeholders. The Receiver opposes the Stay Motion.

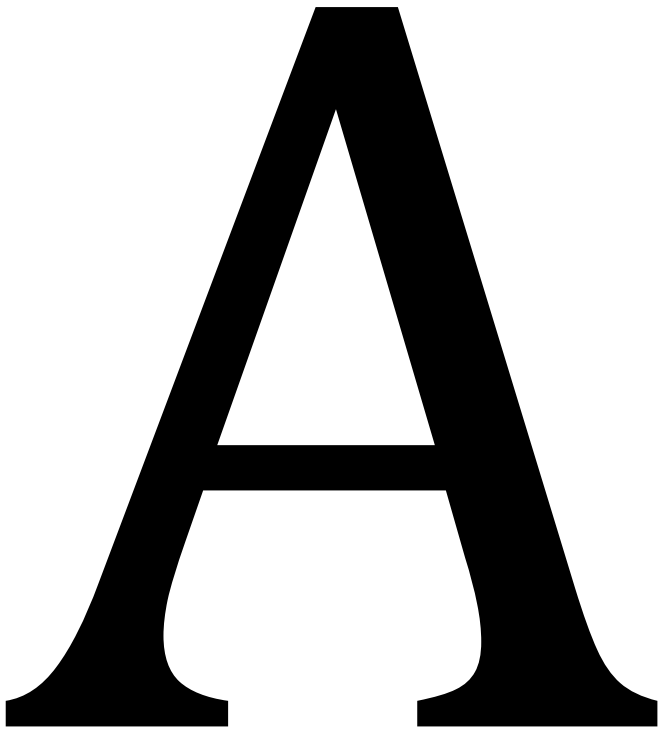
SWORN remotely by Mark Dunn stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on May 17, 2024, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*.

A Commissioner , etc.

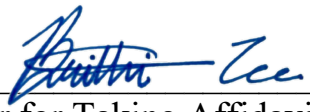
Brittni Tee
LSO #85001P



Mark Dunn



This is Exhibit “A” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.



Commissioner for Taking Affidavits (or as may be)

Court File No. CV-23-00710413-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 11th
	)	
JUSTICE PENNY	)	DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, c. C.43, as amended,

B E T W E E N :

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

ORDER

ON READING the Applicant's Amended Notice of Application for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.

C.43, as amended (the "**CJA**") appointing FTI Consulting Canada Inc. as receiver and manager ("**FTI**" or the "**Information Officer**") without security, of substantially all of the assets and undertakings of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, and the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, FTI, the Debtors and no one appearing although duly served, and on reading the consent of FTI to act as Information Officer,

AND GIVEN the request made by the Debtors to adjourn and postpone the hearing of the Application until December 22, 2023,

AND GIVEN the inherent jurisdiction of the Superior Court of Justice to grant an interlocutory injunction or a mandatory order,

AND GIVEN the provisions of the BIA and CJA,

ADJOURNMENT OF THE APPLICATION

1. **THIS COURT ORDERS** that the hearing on the Application is hereby adjourned and postponed until December 22, 2023 (the "**Postponed Hearing**"), at which time the Application shall be returnable before the Court, at a time and by videoconference to be announced by the Court and communicated to the parties.

2. **THIS COURT ORDERS** that any interested party wishing to object to any relief sought in the Applicant's Application shall be entitled to do so at the Postponed Hearing, provided that such party serves to the Applicant's counsels, and to all other parties, a detailed written response stating the nature and grounds of such objection by no later than 1 p.m. on December 21, 2023.

STAY OF PROCEEDINGS AGAINST THE DEBTORS AND THE PROPERTY

3. **THIS COURT ORDERS** that, until the date of the Postponed Hearing or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Debtors, or affecting the Debtors' business operations and activities (the "**Business**") or the Property (defined below), except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property, including all rights of His Majesty in right of Canada and His Majesty in right of a Province, are hereby stayed and suspended pending further order of this Court, with the exception of the proceedings commenced against the Debtors' affiliate, 13517985 Canada Inc. ("**Wholesale Express**") by Highcrest Lending Corporation ("**Highcrest**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, in the Commercial Division of the Superior Court of Quebec on November 22, 2023.

4. **THIS COURT ORDERS** that during the Stay Period, and subject to, *inter alia*, section 101 of the CJA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

5. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, except with the written consent of the Debtors and the Information Officer , or with leave of this Court.

6. **THIS COURT ORDERS** that during the Stay Period and subject to paragraph 8 hereof, all Persons having verbal or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and services, including without limitation all

computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation utility or other goods or services made available to the Debtors, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Debtors, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Debtors, with the consent of the Information Officer, or as may be ordered by this Court.

7. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Debtors.

8. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, cash or cash equivalents placed on deposit by the Debtors with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by the Debtors and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Debtors' accounts until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

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

10. **THIS COURT ORDERS** that notwithstanding the stay of proceedings ordered herein, the Debtors, with the prior approval of the Information Officer, shall be entitled but not obligated to pay amounts owing, either prior to or after the date of this Order, for goods or services actually supplied to the Debtors or any other expenses incurred in the ordinary course of business, if, in the opinion of the Information Officer, such payments are essential to the business and ongoing operations of the Debtors.

APPOINTMENT OF INFORMATION OFFICER

11. **THIS COURT ORDERS** that until the Postponed Hearing, FTI shall be appointed to act as Information Officer (the "**Information Officer**") of all of the following property (collectively, the "**Property**"):

(a) The assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("Trade X Parent")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof; and

(b) The assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof.

12. **THIS COURT ORDERS** that the Information Officer is hereby empowered and authorized, not obligated, to do any of the following where the Information Officer considers it necessary or desirable:

(a) To review and approve the receipts and disbursements of the Debtors, in consultation with the Applicant;

(b) To monitor the Debtors' business and all transactions in connection therewith;

(c) To obtain and review information with respect to the bank accounts of the Debtors (including all transaction activity), and the banks and/or financial institutions which maintain the Debtors' bank accounts are hereby directed to promptly provide any and all such information at the request of the Information Officer and/or its representatives;

(d) To provide a written report to the Court at the Postponed Hearing on all matters relating to the Debtors, their businesses and their Property and any potential transaction;

(e) To provide a written report to the Applicant, Aimia Inc. and to any other interested party as the Information Officer deems appropriate;

(f) To take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

13. **THIS COURT ORDERS** that the Debtors and all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, direct or indirect, and any of their affiliates, and all other persons acting on the Debtors' instructions or on their behalf shall cooperate with and provide the Information Officer with such assistance as required to allow the Information Officer to perform its duties as set out in paragraph 11 above.

14. **THIS COURT ORDERS** that during the Stay Period, there shall be no intercompany transactions, including transfers of funds between the Debtors and any of their direct or indirect shareholders or affiliates, except with the written consent of the Information Officer.

15. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against the Information Officer except with the written consent of the Information Officer or with leave of the Court.

16. **THIS COURT ORDERS** that the Information Officer shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, whether common law, statutory, environmental or otherwise, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Information Officer under the BIA, including, without limitation, section 14.06 thereof, or under any other applicable legislation.

17. **THIS COURT ORDERS**, for greater certainty, that none of the orders set forth herein shall be deemed to create an obligation upon the Information Officer to take possession, control or otherwise manage the Property, or any portion thereof, and the Information Officer shall not be presumed to be in possession of same.

18. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in connection with this Order and the exercise of its powers and duties hereunder.

19. **THIS COURT ORDERS** the Debtors to pay the Information Officer's and its Counsel's fees and costs related to the Information Officer's appointment upon receipt of their bill.

20. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting either as a receiver, monitor or trustee in bankruptcy of the Debtors.

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Lawyers for the Applicant, MBL Administrative Agent II LLC

B

This is Exhibit “B” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-23-00710413-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE	)	FRIDAY, THE 22nd
	)	
JUSTICE CAVANAGH	)	DAY OF DECEMBER, 2023

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and Section 243 of the *Bankruptcy and Insolvency Act*, c. C.43, as amended,

B E T W E E N :

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the

"**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing FTI Consulting Canada Inc. as receiver and manager (the "**Receiver**") without security, of substantially all of the assets and undertakings of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Westin Lovy sworn December 4, 2023 and the Exhibits thereto, the supplementary affidavit of Westin Lovy sworn December 8, 2023 and the Exhibit thereto, the second supplementary affidavit of Westin Lovy sworn December 21, 2023 and the Exhibits thereto, the Endorsement of Justice Penny dated December 11, 2023, the Interim Order of this Court dated December 11, 2023, and the consent of FTI to act as the Receiver.

ON HEARING the submissions of counsel for the Applicant, counsel for FTI as proposed receiver, counsel for the Debtors, and counsel for Aimia Inc., and being advised that this Application is on consent of the Debtors, and on consent of Aimia Inc. on the condition that the shares of 13517985 Canada Inc. are not included in the Property over which the Receiver is appointed, and with counsel for Highcrest Lending Inc. having appeared before this Court and not opposed to this Application.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, FTI Consulting Canada Inc. is hereby appointed Receiver, without security, of all of the following property (collectively, the "**Property**"):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("**Trade X Parent**") and TX OPS Canada Corporation ("**TX Canada**")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the TX Canada Collateral in the Affidavit of Westin Lovy sworn December 4, 2023.

RECEIVER'S POWERS

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

(a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

(b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

(c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;

(g) to obtain and review information with respect to each of the bank accounts of each of the Debtors, including, but not limited to, bank accounts with the financial institutions set out in Schedule “B” (the

"**Bank Accounts**"), which includes all transaction activity, and, without limiting the generality of the other provisions of this Order, to take possession of, exercise control over, and withdraw or otherwise transfer amounts from the Bank Accounts, and each of the banks and/or financial institutions which maintain any Bank Accounts are hereby directed to promptly provide any and all such information, and otherwise cooperate with the Receiver with regards to the foregoing, at the request of the Receiver and/or its representatives;

(h) to settle, extend or compromise any indebtedness owing to the Debtors;

(i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

(j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction provided that the aggregate consideration for all such transactions does not exceed $50,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required.

(m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals

thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors;

(r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and

(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes,

computer disks, or other data storage media or cloud-based storage containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to

observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, including, without limitation, set-off rights, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post

Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and

charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies (each, a "**Loan**") from time to time as it may consider necessary or desirable, provided that the aggregate outstanding principal amount of all of the Loans does not exceed $100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures.

The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the Loans, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

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

Website shall be established in accordance with the Protocol with the following URL https://ontariocourts.caselines.com/Case/Details?caseKey=34e91e5ee4f444be8cabe9a6507ad889.

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

GENERAL

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

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

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

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

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

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ■ day of December, 2023 (the "**Order**") made in an action having Court file number CV-23-00710413-00-CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the _____ day of each month after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property (as defined in the Order), in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

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

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

SCHEDULE "B"

BANK ACCOUNTS AND FINANCIAL INSTITUTIONS

In the course of its duties as Information Officer pursuant to the Order of Justice Penny dated December 11, 2023, FTI has discovered that the Respondents hold bank accounts with various financial institutions including, without limitation, the below listed banks, which do not comprise an exhaustive list, as FTI may discover additional financial institutions in the course of executing its duties as Receiver:

1. Royal Bank of Canada;
2. Silicon Valley Bank;
3. TD Bank;
4. National Bank of Canada;
5. China Minsheng Bank;
6. Commerzbank;
7. Standard Chartered Bank;
8. Zenith Bank;
9. Guaranty Trust Bank;
10. Banco Bilbao Vizcaya Argentaria;
11. Banreservas; and
12. Itaú Bank.

MBL ADMINISTRATIVE AGENT II LLC
Applicant

-and-

TRADE X GROUP OF COMPANIES INC. et al.
Respondents

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
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ORDER

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Lawyers for the Applicant, MBL Administrative Agent II LLC

C

This is Exhibit “C” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-23-00710413-00CL

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

FIRST SUPPLEMENTAL REPORT TO THE FIRST REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

April 3, 2024

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

A. INTRODUCTION AND PROCEDURAL BACKGROUND

1. This is the First Supplemental Report (the "**First Supplemental Report**") to the First Report of the Receiver dated February 1, 2024 (the "**First Report**"). Capitalized terms not otherwise defined herein have the meaning ascribed to them in the First Report.

2. The Receiver served its Notice of Motion (the "**Motion**") and First Report on February 1, 2024, after learning that the Van Essen Companies received the Techlantic Funds, which were proceeds from the sale of the Techlantic Vehicles totaling approximately $1.7 million, and purported to apply those proceeds to repay a debt allegedly owed by Techlantic to the Van Essen Companies as part of the Purported Set Off. The Receiver determined that the Purported Set Off was the exercise of a right against Techlantic that was prohibited by the terms of the Interim Order issue on December 11, 2023 and that the Techlantic Funds were Property within the meaning of the Receivership Order.

3. The Receiver's Motion initially sought to preserve the Techlantic Funds so that they could ultimately be paid to the appropriate party. The Van Essen Companies served a cross-motion (the "**Cross-Motion**") seeking a final determination that they are entitled to the Techlantic Funds and that the Purported Set-Off was a valid transaction. By Endorsement dated February 9, 2024, Justice Cavanagh scheduled the Motion and the Cross-Motion for a hearing on April 3, 2024. The parties subsequently agreed to adjourn this motion and a new date will be set by the Court.

4. Since the Motion and Cross-Motion were scheduled, the Receiver has continued its investigation into the matters raised in the Motion and Cross-Motion. Based on those investigations, it has amended the Motion. The amendments make two substantive changes to the relief sought by the Receiver:

   (a) the Receiver seeks a final determination with respect to entitlement to the Techlantic Funds, as opposed to preliminary relief to deliver the Techlantic Funds to the Receiver pending a final determination as initially sought in the Motion; and

(b) the Receiver seeks a declaration that the Purported Set-Off is void as against the Receiver because it was a preference prohibited by section 95 of the *Bankruptcy and Insolvency Act* (the "***BIA***").

5. This First Supplemental Report sets out information relevant to the Motion and the Cross-Motion that was discovered since the First Report was served. Specifically, it sets out the basis for the Receiver's conclusion that Techlantic and the Van Essen Companies were not dealing at arm's length and that the Purported Set-Off effected a preference.

B. SUMMARY OF THE RECEIVER'S CONCLUSIONS

6. Based on its review of Techlantic's records, as described below, the Receiver has reached the following conclusions:

(a) Techlantic agreed in the Global Facility that its only business would be purchasing Financed Vehicles (i.e., vehicles funded pursuant to the Global Facility), and that all proceeds from the sale of Financed Vehicles would be held in trust for the Lenders and deposited into certain specified "Collection Accounts";

(b) Techlantic entered into a parallel arrangement with the Van Essen Companies whereby the Van Essen Companies funded the purchase of vehicles that were sold by Techlantic. The Van Essen Companies have called this arranged the "**Liquidity Support Agreement**". By entering into the Liquidity Support Agreement, Techlantic breached the restrictions in the Global Facility, as set out above;

(c) The Van Essen Companies and Techlantic operated as a single integrated business. Eric and Wouter Van Essen directed the operation of Techlantic and the Van Essen Companies. Techlantic and the Van Essen Companies had the same staff and office space. Vehicles, debts and funds shifted continuously between Techlantic and the Van Essen Companies for reasons that are not entirely clear to the Receiver;

(d) In 2022, the Van Essen Companies sold certain vehicles, the 2022 Vehicles, to Techlantic and Techlantic sold those vehicles to other Debtors (referred to collectively as "**Trade X**"). Proceeds from the sale of the 2022 Vehicles were deposited into Trade X bank accounts and co-mingled with other funds;

(e) The Van Essen Companies complained about non-payment for the 2022 Vehicles, but ultimately agreed to be paid when the sale of one of the Debtors' subsidiaries (Wholesale Express) closed. This closing did not occur, and the alleged debt relating to the 2022 Vehicles was not repaid;

(f) The vehicles that are the subject of this motion, the Techlantic Vehicles, were Financed Vehicles within the meaning of the Global Facility. The Lenders advanced funds to purchase these vehicles in 2023, and Techlantic was obliged to hold proceeds from the sale of the Techlantic Vehicles in trust for the Lenders; and

(g) The Techlantic Vehicles were sold to a Techlantic customer named Stephen Zhou. Mr. Zhou paid the funds owing in respect of the Techlantic Vehicles to 130 Ontario instead of the Debtors. 130 Ontario then purported to apply the proceeds from the sale of the Techlantic Vehicles to offset the alleged debt owed in connection with the 2022 Vehicles. This set-off transaction is defined in the First Report as the Purported Set-Off.

7. Based on the foregoing conclusions, as set out further below, the Receiver has concluded that the Purported Set-Off effected a preference in favor of the Van Essen Companies contrary to the BIA.

C. TERMS OF REFERENCE

8. In preparing this First Supplemental Report and making the comments herein, the Receiver has been provided with and has relied upon certain unaudited, draft and/or internal financial information, the motion materials filed in respect of this proceeding, the Debtors' books and records, and discussions with certain employees and former employees of the Debtors (collectively, the "**Information**"). Future oriented financial information relied upon in the Report is based on assumptions regarding future events. Actual results achieved may vary from this information and these variations may be material.

9. The Receiver has not audited or otherwise verified the accuracy or completeness of the Information in a manner that would, wholly or partially, comply with Generally Accepted Auditing Standards ("**GAAS**") pursuant to the Chartered Professional Accountants Canada

Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

10. The Receiver has prepared this First Supplemental Report solely for the use of this Court and the stakeholders in these proceedings and will make a copy of the Report, and related documents, available on the Receiver's website at http://cfcanada.fticonsulting.com/TradeX/.

11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

D. THE RECEIVER'S REVIEW OF TECHLANTIC'S RECORDS

12. In order to gain a further understanding of the dealings between Techlantic and 130 Ontario, the Receiver uploaded Techlantic's electronic records, including e-mails sent and received by certain identified custodians, into document review software and conducted a review of certain documents with the assistance of its counsel.

13. The Debtors' electronic records obtained by the Receiver include nearly one million documents. In order to assess the issues described below, the Receiver reviewed e-mails sent or received by Wouter Van Essen ("**Wouter**") from his Techlantic e-mail address during the period from 2021-2024. The Receiver also reviewed e-mails sent and received by other individuals based on certain targeted keyword searches.

14. On February 15, 2024, the Receiver asked, through counsel, to meet with Wouter to discuss certain issues relating to the Van Essen Companies. Wouter declined, through counsel, to meet with the Receiver and said the exchange of information would be governed by the *Rules of Civil Procedure*.

15. The Receiver has also asked to meet with Eric Van Essen ("**Eric**") and two additional longtime Techlantic employees, Michelle Ralph and June Da Costa. Those meetings were scheduled to take place on March 6, 2024 and initially accepted by Eric, Michelle and June. These employees subsequently required, as a condition of their appearance, that the Receiver pay for them to hire counsel. The Receiver was not willing to agree to these terms,

and, on the morning of March 6, 2024, the three employees informed the Receiver that they would not be attending the meeting.

E. THE RECEIVER'S CONCLUSION THAT THE PURPORTED SET-OFF EFFECTED A PREFERENCE THAT IS VOID AGAINST THE RECEIVER

16. Following the Receiver's review of the relevant documents, the Receiver has concluded that the Purported Set-Off and the transactions leading up to it effected a preference that is void as against the Receiver.

17. Section 95 of the BIA establishes the law applicable to preferences and transfer at undervalue:

> **Preferences**
>
> **95 (1)** A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person
>
> > **(a)** in favour of a creditor who is dealing at arm's length with the insolvent person, or a person in trust for that creditor, with a view to giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy; and
> >
> > **(b)** in favour of a creditor who is not dealing at arm's length with the insolvent person, or a person in trust for that creditor, that has the effect of giving that creditor a preference over another creditor is void as against — or, in Quebec, may not be set up against — the trustee if it is made, incurred, taken or suffered, as the case may be, during the period beginning on the day that is 12 months before the date of the initial bankruptcy event and ending on the date of the bankruptcy.[1]

18. Pursuant to section 95(2), where a transaction has the effect of giving the creditor a preference, it is presumed to have been made with a view to giving the creditor a preference absent evidence to the contrary:

> **Preference presumed**
>
> (2) If the transfer, charge, payment, obligation or judicial proceeding referred to in paragraph (1)(a) has the effect of giving the creditor a preference, it is, in the absence of evidence to the contrary, presumed to have been made, incurred, taken or suffered with a

[1] Section 95(1), BIA.

> view to giving the creditor the preference — even if it was made, incurred, taken or suffered, as the case may be, under pressure — and evidence of pressure is not admissible to support the transaction.[2]

19. The Receiver understands that the Lenders hold a first ranking security interest over the Techlantic Vehicles, and any proceeds earned from the sale of the Techlantic Vehicles.[3] The Lenders have not been repaid all of the amounts owed to them.

20. By executing the Purported Set-Off, the Van Essen Companies effectively paid their own claim against Techlantic before Techlantic's secured creditors were paid in full. In the Receiver's view, this transaction has had the effect of a preference, as it caused the Van Essen Companies to be paid ahead of other creditors, including the Lenders.

21. As discussed below, based on the Receiver's investigation, the Receiver has determined that Techlantic and the Van Essen Companies were not acting at arm's length, and therefore the Purported Set-Off falls within the purview of Section 95(1)(b) of the BIA. And in any event, pursuant to Section 95(2), given the Purported Set-Off has had the effect of a preference in favour of the Van Essen Companies ahead of other creditors, including the Lenders, it is accordingly presumed to have been made with a view to giving the Van Essen Companies a preference pursuant to Section 95(1)(a) of the BIA.

22. The documents relied upon by the Receiver in respect of these conclusions are explained in greater detail below.

F. THE RECEIVER'S CONCLUSION THAT 130 ONTARIO DID NOT DEAL WITH TECHLANTIC AT ARM'S LENGTH

(a) Overview of the relationship between Techlantic and the Van Essen Companies

23. The Receiver has reviewed the assertion at paragraphs 37-40 of the Cross-Motion that Techlantic and the Van Essen Companies dealt with each other at arm's length. It has concluded that they did not. The Receiver's review of contemporaneous documents supports the following conclusions:

[2] Section 95(2), BIA.
[3] Although the Receiver has not yet completed a formal security review, no party has disputed the validity of the Lenders' security.

(a) Techlantic and the Van Essen Companies had the same staff and management. Eric and Wouter made decisions for Techlantic and the Van Essen Companies. Techlantic/Van Essen Company staff executed those decisions on behalf of both Techlantic and the Van Essen Companies. The Van Essen Companies did not have their own staff, and Techlantic staff acted as if they were also employed by the Van Essen Companies;

(b) Eric was the president and a shareholder of the Van Essen Companies' parent company;

(c) Eric, Wouter and other family members were the ultimate source of funds advanced by the Van Essen Companies to Techlantic;

(d) In the fall of 2023, Eric told Techlantic staff to shift business from Techlantic to 130 Ontario. Vehicle transactions that would previously have resulted in payment to Techlantic appear to have resulted in payments to 130 Ontario; and

(e) There is no evidence of any negotiations between Techlantic and 130 Ontario with respect to any of the transactions at issue.

24. A more detailed description of Techlantic, the Van Essen Companies and the transactions at issue on this motion is set out below.

(b) Techlantic's founding

25. According to its website, Techlantic was founded in 1983 by Wouter. Wouter's twin brother, Tom Van Essen ("**Tom**"), joined Techlantic in 1986. A long-time employee, Robin Jones, became a Techlantic shareholder in 2001.

26. Techlantic's core business, based on a review of its website and its records, was the export of vehicles to foreign markets.

27. In August 2019, Wouter's son Eric became a major Techlantic shareholder. When Techlantic announced Eric's new status as a "major shareholder" of Techlantic, it

confirmed that "Tom and Wouter are still actively involved and likely will be for many years".

28. Relevant excerpts from Techlantic's website are attached as Appendix "1".

(c) Wouter was actively involved in Techlantic's business

29. Trade X purchased Techlantic in August 2021. After that time, Eric was Techlantic's Managing Director and had overall responsibility for Techlantic's business operations. Trade X does not appear to have exercised control over Techlantic's day to day operations. Those operations were overseen by Eric with significant assistance from Wouter.

30. During the relevant period, Wouter described himself as a consultant to Techlantic. As described below, the Receiver's review of Techlantic's records showed that Wouter remained very heavily involved in Techlantic's business after Trade X bought Techlantic. He continued to be listed as a member of Techlantic's finance team, and its founder, on the Techlantic website.

31. Throughout the period reviewed by the Receiver, being January 2021 to December 2023, Wouter had a Techlantic e-mail and sent, received or was copied on most important correspondence relating to Techlantic and its business. Wouter also appears to have had signing authority over Techlantic's primary bank account at RBC, as indicated in an email attached as Appendix "2".

32. Wouter also routinely gave instructions to Techlantic's finance staff. He was highly involved in Techlantic's finance decisions, including what funds should be paid to 130 Ontario and what funds should be paid to the Lenders. Wouter also participated in correspondence, meetings and negotiations with the Lenders on behalf of Techlantic. This is discussed further below.

(d) Techlantic borrowed funds under the Global Facility – beginning December 30, 2021

33. Before it was acquired by Trade X, Techlantic had a $12 million line of credit from Royal Bank of Canada (the "**RBC Line**"). Pursuant to Amendment No. 1 and Joinder to the Senior Secured Revolving Credit Agreement as of December 30, 2021 (the "**Joinder**")

with the Lenders, Techlantic borrowed funds under the Global Facility to repay the RBC Line. The Joinder is attached as Appendix "3". Pursuant to the Joinder, Techlantic became a "Borrower" under the Global Facility.

34. Wouter reviewed and commented on the Joinder before it was signed. His e-mail exchange relating to the Joinder is attached as Appendix "4".

(e) Techlantic agreed to limit its business to buying Financed Vehicles and forego any other debt

35. Pursuant to section 5.16 of the Global Facility, each of the Borrowers (including Techlantic, after the Joinder) agreed that it would not:

(a) engage in any business other than buying and selling Financed Vehicles;

(b) own material assets other than the Financed Vehicles and incidental personal property; or

(c) incur any debt to any party other than the Lenders.

36. The Global Facility also imposed strict controls on the use of "Collections" obtained from selling Financed Vehicles. Specifically, Section 8.01(b) required that all Collections be deposited promptly into a "Collection Account". The Lenders, through their Administrative Agent, had the right to withdraw funds from the Collection Account at specified times to repay the debt advanced by the Lenders.

37. As is summarized in First Report, the Global Facility contemplated a closed system, whereby, in very simple terms: funds were advanced to purchase Financed Vehicles; the Financed Vehicles were sold to customers; and the proceeds from the Financed Vehicles were deposited into Collection Accounts and used to repay the advances.

(f) The Van Essens owned and operated the Van Essen Companies

38. The Van Essen Companies do not appear to have had their own staff or management. Eric and Wouter directed the operation of the Van Essen Companies, and Techlantic staff implemented their instructions.

39. 130 Ontario appears to have been indirectly owned and primarily funded by various members of the Van Essen family, including Eric.

40. According to an e-mail sent by Eric on September 5, 2023 and attached as Appendix "5", 130 Ontario is a wholly owned subsidiary of Techlantic Consulting Ltd. ("**Techlantic Consulting**"). Eric has been the president of Techlantic Consulting since August 2018, according to a Corporate Profile Report for Techlantic Consulting, which is attached as Appendix "6".

41. Eric said that the funds advanced by 130 Ontario were borrowed from Eric, Wouter, Tom and other family members:

> Techlantic currently only borrows from the parent company and Post Road Group (which is main credit line). **Our personal company (1309767 Ontario Limited) which we are using to support Techlantic commonly borrows from its parent company Techlantic Consulting Ltd. which commonly borrows from family members such as myself, Wouter** or my cousin's company. We adjust loans 4-6 times per year based on working capital requirements and it does not seem like something OMVIC needs to be made aware of.

42. In an e-mail from Wouter to RBC relating to his personal accounts, Wouter indicated that his children (ie., Eric and his siblings) together with Tom's children owned Techlantic Consulting and (indirectly) 130 Ontario but that Wouter and Tom still had signing authority over their bank accounts "in case of emergencies". A copy of this email is attached as Appendix "7".

43. The directors of 130 Ontario are Bartelt Van Essen and Wouter. The directors of 260 Ontario are Wouter and June Da Costa, a long-time Techlantic employee. Corporate Profile Reports for 260 Ontario and 130 Ontario are attached as Appendices "8" and "9", respectively.

44. In June 2023, Eric Gosselin, Trade X's Chief Operating Officer, e-mailed Eric to advise that Trade X had a third party investor prepared to lend funds to the Van Essen Companies. Eric responded that he and Wouter were hesitant to accept these loans because arrangements between 130 Ontario were "very informal and based on trust and relationship." A copy of this e-mail is attached as Appendix "10".

45. In addition to the funding from Eric, Wouter and other members of the Van Essen family, 130 Ontario also borrowed funds from Trade X's CEO, Ryan Davidson in March 2023. A copy of this e-mail is attached as Appendix "11".

The Liquidity Support Agreement

46. 130 Ontario appears to have provided funding for some of Techlantic's vehicle purchases after the Joinder was executed and Techlantic became indebted to the Lenders. According to the Cross-Motion filed by the Van Essen Companies, this funding was provided pursuant to a "Liquidity Support Agreement".

47. The Liquidity Support Agreement described in the Cross-Motion appears to contravene the restrictions in the Global Facility. Moreover, because of the arrangements with the Van Essen Companies, the closed system contemplated by the Global Facility broke down. As described below, sales proceeds were sometimes paid to 130 Ontario and sometimes paid to the Lenders based on directions from Wouter.

(ii) ***Techlantic's purchasing process***

48. As part of the operations of Techlantic, Techlantic staff e-mailed Eric asking for permission before purchasing vehicles. If the proposed purchase was acceptable, Eric would reply to approve it. Wouter also occasionally approved vehicle purchases.

49. Under the terms of the Global Facility, all of Techlantic's purchases were to be funded by advances from the Lenders. This is not what happened.

50. After 130 Ontario began funding some of Techlantic's vehicle purchases, Eric would reply to certain purchase e-mails to indicate that the purchase was approved and should be paid by 130 Ontario. Examples of this practice are attached as Appendix "12".

51. Based on the documents reviewed, Eric would determine whether 130 Ontario should advance funds on behalf of Techlantic or whether purchases should be funded by the Global Facility. By way of example, on February 8, 2023, Eric responded to a request to approve a $2.8 million purchase as follows:

> Approved to pay 1.425M USD from 130 Ontario. Michelle will request [Lender] funding to hopefully get that back quickly and pay the other half.

52. This practice appears to have created confusion about whether Techlantic or the Van Essen Companies owned a particular vehicle, and who was entitled to repayment when the vehicles were sold.

53. According to an e-mail sent by Wouter, and attached as Appendix "13", 130 Ontario and the Lenders seem to have financed the same vehicle on at least one occasion:

> 2. Further we do expect the HST refund on July 22, 2022 and plan using it to reduce debt for vehicles "double financed" by our purchasing company (ie our purchasing company still finances 400K of vehicles, for which Techlantic has already been paid by [the Lenders] and or client).

54. On September 15, 2023, Wouter e-mailed to suggest that, going forward, Techlantic only fund vehicles to be sold to Trade X using the Global Facility and that all other transactions be funded through 130 Ontario so that Techlantic could "establish certainty who owns which vehicle".

55. Eric responded that vehicles that are "very much in [Techlantic's] control" should be funded using the Global Facility to "ensure purchasing companies are paid for vehicles that may possibly be less in our control." These e-mails are attached as Appendix "14".

56. Based on the Receiver's review, including the e-mails reviewed above, Techlantic's dealings with the Van Essen Companies appears to have created uncertainty within Techlantic about the ownership of certain vehicles.

57. On November 6, 2023, Eric wrote Techlantic staff to say that Wouter "should be doing approvals for 130 for time being." This e-mail is attached as Appendix "15".

G. *The 2022 Vehicles*

58. As noted in the First Report, the Van Essen Companies sold to Techlantic 38 vehicles (defined in the First Report as the "2022 Vehicles") in 2022. The Van Essen Companies now allege that the 2022 Vehicles were "misappropriated" by Trade X in 2022, and seek various relief as a result of that alleged misappropriation.

59. The Receiver's review indicates that Wouter and Eric, on behalf of the Van Essen Companies, raised this issue with Trade X's management in early 2023 and that the issue was resolved (at least temporarily) by Trade X's promise to pay for the 2022 Vehicles when it sold one of its subsidiaries, Wholesale Express.

60. According to the Debtors' books and records, the 2022 Vehicles were transferred by Techlantic to other Debtors and then sold by those Debtors to end users. An analysis of these transactions is attached as Appendix "16".

61. The Van Essen Companies asked the Receiver to trace how the proceeds from the 2022 Vehicles were used in order to investigate their proprietary claim. The Receiver advised the Van Essen Companies that it had significant concerns about the cost of such an exercise. In order to assess whether a tracing was possible, the Receiver reviewed the Debtors' accounting records relating to 11 of the 2022 Vehicles.

62. Two of the 2022 Vehicles reviewed by the Receiver were involved in a complicated series of transactions between the Debtors and the Van Essen Companies that can be summarized as follows:

    (a) TX OPS Canada Corporation ("**TX Canada**") purchased each vehicle;

    (b) TX Ops Canada sold the vehicle to TX Ops Indiana Limited ("TX **Indiana**");

    (c) TX Indiana agreed to sell the vehicle to a third party, but the transaction was not completed;

    (d) the Debtors' records do not indicate how TX Indiana disposed of the vehicle;

    (e) Techlantic later purchased the same vehicle from 130 Ontario. It is not clear how 130 Ontario acquired the vehicle, or what it paid for the vehicle;

    (f) TX Indiana purchased the vehicle from Techlantic;

    (g) TX Indiana sold the vehicle to Tradexpress Auto, Inc. ("**Tradexpress**");

(h) Tradexpress sold the vehicle to a customer through an auction company, Manheim Auction.

63. The purpose of these transactions, and whether they give rise to any debt owed by Techlantic to 130 Ontario, is unclear based on the information currently available to the Receiver.

64. The other nine vehicles reviewed by the Receiver followed a simpler pattern, which is summarized below:

(a) Techlantic purchased the vehicle from 130 Ontario;

(b) Techlantic sold the vehicle to TX Indiana;

(c) TX Indiana sold the vehicle to Tradexpress; and,

(d) Tradexpress sold the vehicle to a customer through Manheim Auction.

65. In each case reviewed by the Receiver, the funds received from selling the relevant vehicle were deposited into a bank account and co-mingled with other funds. Because of this co-mingling, it is not possible to know with certainty how Tradexpress used the proceeds from these sales.

66. The documents relating to these transactions that are available to the Receiver will be provided to the Debtors.

H. ***Correspondence relating to the 2022 Vehicles***

67. The Receiver has reviewed the correspondence between Eric and Wouter (on behalf of 130 Ontario and Techlantic) and executives of the other Debtors with respect to the 2022 Vehicles. Wouter and Eric complained about TX Canada's failure to pay Techlantic for the 2022 Vehicles but the issue was apparently resolved after Trade X agreed to pay the debt owed for the 2022 Vehicles once one of its subsidiaries (Wholesale Express) was sold.

68. By e-mail dated October 1, 2022, attached as Appendix "17", Wouter e-mailed Ryan Davidson (Trade X's founder and CEO) to address Trade X's failure to pay Techlantic for

the 2022 Vehicles. On January 6, 2023, Eric followed up with an e-mail to Mr. Gosselin. Eric referred to 130 Ontario as "our purchasing company" and indicated that non-payment was the result of a "breakdown in process a few months ago". Eric discussed a potential "loan secured against" potential sale proceeds of Wholesale Express to resolve this issue. A copy of this email is attached hereto as Appendix "18".

69. On or around January 30, 2023, Trade X Group of Companies Inc. and 13517985 Canada Inc. o/a Wholesale Express executed an Irrevocable Letter of Direction (the "ILD") directing Trade X's lawyers at Dentons Canada LLP ("Dentons") to pay approximately $2 million of proceeds from the sale of Wholesale Express to the Van Essen Companies. The ILD is attached as Appendix "19".

70. On February 6, 2023, Eric wrote to Dentons seeking confirmation that the Van Essen Companies "are now secure". Trade X's CEO, Luciano Butera, wrote to assure Wouter that proceeds from the sale of Wholesale Express "will be enough" based on his assessment of the value of Wholesale Express. This e-mail is attached as Appendix "20".

71. The Van Essen Companies seem to have been satisfied with this information. The Van Essen Companies appear to have paused funding to Techlantic while the issue was being resolved, but Eric approved a further purchase by Techlantic using funds from 130 Ontario later on February 6, 2023. This e-mail is attached as Appendix "21".

I. THE RECEIVER'S CONCLUSION THAT WOUTER AND ERIC JOINTLY DIRECTED THE TRANSACTIONS LEADING TO THE PURPORTED SET-OFF

(a) Wouter directed Techlantic staff to pay the Lenders or the Van Essen Companies

72. As noted, the Global Facility imposed strict controls on proceeds from Financed Vehicles. All such proceeds were to be deposited into specified "Collection Accounts" and repaid to the Lenders. Techlantic did not have discretion under the Global Facility to decide where funds should be deposited. Despite these restrictions, Wouter appears to have controlled the how sales proceeds were used.

73. Wouter appears to have directed Techlantic staff to divide funds between the Lenders (which he sometimes referred to as "Man" or "PRG") and what funds should be paid to

130. Examples of this correspondence are attached as Appendix "22". On other occasions, he directed Techlantic staff to make payments to the Lenders. Examples of this are attached as Appendix "23".

74. Wouter acted with the authority to direct repayments from Techlantic to 130 Ontario. On September 6, 2023, and attached as Appendix "24", he wrote "I decided to pay [130] $197,750" and that he had completed a currency swap in Techlantic's e-mail account.

75. On another occasion, attached as Appendix "25", Wouter consulted Eric about how much should be paid by Techlantic to 130 Ontario and the Lenders. On September 7, 2023, Wouter asked Eric whether funds should be paid to PRG or 130 Ontario. Eric responded that 130 Ontario should be paid for a particular vehicle, and that the remaining funds should be paid to the Lenders.

76. In at least one case, payment to 130 Ontario apparently came directly from funds advanced by the Lenders, in contravention of the Global Facility. Wouter instructed Techlantic's accounting staff to make this payment. This e-mail is attached as Appendix "26". In another case, Wouter told Techlantic accounting staff that there were "no funds to spare" for the Lenders, because Techlantic needed funds to buy vehicles. This e-mail is attached as Appendix "27".

(b) Eric and Wouter knew that Techlantic and the other Debtors faced significant difficulties by October 2023

77. By October 2023, Techlantic was facing significant issues with the Lenders. On October 12, 2023, Eric e-mailed Westin Lovy (the representative of the Lenders) to advise that (according to Techlantic's calculations) Techlantic owed $2.1 million to the Lenders at that moment. Eric said that Techlantic had about $1 million worth of "highly liquid assets" and suggested that "we can work together to find a solution without dissolving Techlantic". This e-mail is attached as Appendix "28".

(c) Techlantic diverted payments 130 Ontario because of its financial problems

78. On October 26, 2023, Eric instructed staff that it was "mission critical" that payment for certain vehicles be "collected" in 130 Ontario. This appears to mean that funds were paid to 130 Ontario, and not to Techlantic. This e-mail is attached as Appendix "29".

79. On October 30, 2023, Eric wrote to inform Trade X's senior leadership team to advise that Techlantic clients would enter into transactions directly with 130 Ontario but that it would pay a "commission" to Techlantic on those transactions:

> I just wanted to formally inform you that to maintain clients and to try to generate some revenue to contribute to overhead while TRADE X sorts things out with PRG, **we have decided to do transactions with several clients directly with 1309767 Ontario Limited.** This is a new way to transact, so I don't have formulas setup yet, but **the plan is to calculate and track a commission payment due to Techlantic where the net result on margin distribution is similar to current/previous operations**. We hope to shift everything back to Techlantic once there is stability. [emphasis added]

80. Around the same time, documents relating to vehicles worth approximately $462,170 that had previously been ordered by Techlantic were changed so that the ordering company was 130 Ontario. These e-mails are attached as Appendix "30".

(d) Eric and Wouter Shift Vehicles Owned by Techlantic to 130 Ontario

81. The Techlantic Vehicles, and the Purported Set Off, relate to vehicles that Techlantic sold to Stephen Zhou. The Receiver understands from its discussions with Techlantic personnel that Techlantic had a longstanding business relationship with Stephen Zhou relating to the export of vehicles to China.

82. On March 22, 2023, Wouter e-mailed Eric with a "crazy thought" that Techlantic could get funding from the Lenders for Mr. Zhou's vehicles. This plan seems to have been implemented, as various vehicles sold to Mr. Zhou – including the Techlantic Vehicles – were funded by the Global Facility. This email is attached as Appendix "31".

83. In the fall of 2023, Techlantic and the Van Essen Companies seem to have shifted funds from, and vehicles sold to, Mr. Zhou between the two companies.

84. On October 23, 2023, Mr. Zhou e-mailed to advise that he would pay $562,533 in respect of certain vehicles. Bill Ralph, a Techlantic employee, said that ideally Mr. Zhou should wire funds to Techlantic but if he wanted to send a bank draft it should be made out to 130 Ontario. Tom later e-mailed Eric and Wouter to say that Mr. Zhou had paid with a bank draft to 130 Ontario. These e-mails are attached as Appendix "32".

85. Towards the end of October, Wouter and Eric seem to have been concerned that proceeds from the Wholesale Express sale might not be sufficient to repay all of Trade X's creditors. Wouter and Eric began to discuss with Ryan Davidson and Eric Gosselin the possibility that the ILD in favour of the Van Essen Companies might not be paid. These e-mails are attached as Appendix "33".

86. On October 30, 2023, Tom took notes from a call with Mr. Zhou indicating that "we will move business to [130 Ontario]". This e-mail is attached as Appendix "34".

87. On November 3, 2023, Eric, Wouter and Tom decided to transfer nine vehicles owned by Techlantic to 130 Ontario. Some or all of these vehicles had been sold to Mr. Zhou. Eric, Wouter and Tom also agreed to backdate the invoice. One of Techlantic's finance employees indicated that two of these vehicles were funded by the Lenders. These e-mails are attached as Appendix "35".

88. On December 1, 2023, Wouter wrote to Eric to say that upon receipt of funds paid by Mr. Zhou in respect of vehicles funded by Techlantic, Techlantic should pay the borrowing base amount (ie., the amount funded by the Lenders) to the Lenders and pay the rest of the funds to 130 Ontario. This e-mail is attached as Appendix "36".

89. The Global Facility requires that all proceeds from Financed Vehicles be deposited into Collection Accounts and used to pay the Lenders, not only the amount actually funded by the lenders. On December 1, 2023, Techlantic owed significant funds to the Lenders.

90. Wouter later wrote that 130 Ontario was entitled to repayment of funds it advanced to cover payroll, in priority to the Lenders. This e-mail is attached as Appendix "37".

91. On December 7, 2023, Wouter, Tom and Eric met to "discuss 130 year end adjustment." This e-mail is attached as Appendix "38". This occurred immediately before Mr. Zhou began making the payments that were ultimately the subject of the Purported Set Off.

92. In addition, on December 7, 2023, Bill Ralph from Techlantic e-mailed Mr. Zhou to say that he owed an outstanding balance of $2.3 million. Wouter subsequently e-mailed that the outstanding payments from Mr. Zhou related to vehicles (including the Techlantic Vehicles) had been "financed by [the Lenders]". This e-mail is attached as Appendix "39".

J. THERE IS NO EVIDENCE THAT THE PURPORTED SET-OFF WAS NEGOTIATED AT ARM'S LENGTH

93. As noted in the First Report, Wouter claims to have executed the Purported Set-Off on December 20, 2023. This was two days before the Receiver was appointed. The Receiver was unable to locate in Techlantic's records any negotiation between the Van Essen Companies or Techlantic with respect to the Purported Set-Off or any document from December 20, 2023 effecting the Purported Set-Off.

94. The Receiver also understands that December 20, 2023, the same day that the Purported Set-Off is alleged to have occurred, Wholesale Express was granted protection pursuant to the *Companies' Creditors Arrangement Act* (the "***CCAA***"). This filing likely created significant doubt (which still remains) about whether the Van Essen Companies would recover any amount pursuant to the ILD.

95. In addition, the Receivership Application in this proceeding had been adjourned to allow additional time for the sale of the Wholesale Express to be completed. The Debtors, including Techlantic, ultimately did not oppose the appointment of the Receiver.

K. CONCLUSION AND RECOMMENDATION

96. For the reasons stated in the this First Supplemental Report, the Receiver respectfully requests and recommends that the Court grant the requested Order, among other things:

(a) requiring the Van Essen Companies to transfer the Techlantic Funds to the Receiver;

(b) declaring that the Techlantic Funds are "Property" within the meaning of the Receivership Order;

(c) declaring that the Purported Set-Off is a preference prohibited by section 95 of the *BIA*.

solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic LTD., and TX OPS Canada Corporation, and not in its personal or corporate capacity

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director

D

This is Exhibit “D” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

SENIOR SECURED REVOLVING CREDIT AGREEMENT

dated as of

September 27, 2021

among

TX OPS GLOBAL FUNDING I, LLC,
as Borrower

TX OPS INDIANA LIMITED,
as Parent and Servicer

the Lenders Party hereto

and

MBL ADMINISTRATIVE AGENT II LLC,
as Administrative Agent

up to $50,000,000

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THIS SENIOR SECURED REVOLVING CREDIT AGREEMENT, dated as of September 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time, this "Agreement"), is entered into by and among **TX OPS GLOBAL FUNDING I, LLC**, a Delaware limited liability company (the "Borrower"), **TX OPS INDIANA LIMITED**, an Indiana corporation ("Parent"), each of the **LENDERS** from time to time party hereto (individually, each a "Lender" and, together, the "Lenders"), and **MBL ADMINISTRATIVE AGENT II LLC**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, the "Administrative Agent").

BACKGROUND

Borrower has requested that Lenders extend credit to it, on a senior secured revolving basis, subject to the limitations set forth herein, in an aggregate principal amount not exceeding the Revolving Commitment from time to time applicable hereunder at any one time outstanding. The proceeds of the credit extensions hereunder: (i) are to be used by Borrower to acquire equitable title to certain motor vehicles including the right to payment under certain purchase and sale agreements documenting the proposed sale of such motor vehicles, and for such other purposes as are permitted pursuant to Section 5.09, and (ii) shall be secured by the Collateral, pursuant to the Security Documents. Lenders are prepared to extend such credit to Borrower upon the terms and conditions hereof, and, accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"Acceptable Bill of Lading" shall mean with respect to Financed Vehicles, a tangible, negotiable bill of lading accessible to Administrative Agent and with respect to which Administrative Agent or Custodian has control that (i) is issued either by an ocean carrier which is not an Affiliate of the applicable End Buyer, Seller, Parent or Borrower and which is in actual possession of such Financed Vehicle or by an Eligible NVOCC; (ii) covers only such Financed Vehicles; (iii) is issued to the order of the Applicable Seller or the Borrower or, if so requested by Administrative Agent, to the order of Administrative Agent; (iv) bears a conspicuous notation on its face of Administrative Agent's security interest therein (unless such bill of lading is issued to the order of Administrative Agent, or otherwise waived by Administrative Agent in its sole discretion); (v) is subject to Administrative Agent's duly perfected, first priority security interest and no other Lien that is not a Permitted Lien; and (vi) is otherwise in form and content acceptable to Administrative Agent.

"Acceptable Purchase Order" shall mean a purchase order or purchase agreement (A) for the purchase of Financed Vehicles that (i) is issued by the Applicable Purchaser to Seller, (ii) is signed by both Seller and the Applicable Purchaser, (iii) clearly evidences the transfer of title in such Financed Vehicles from Seller to the Applicable Purchaser, and (iv) is otherwise in form and content acceptable to Administrative Agent or as context may require, and (B) for the sale of Financed Vehicles that (i) is issued by the Applicable Seller to the End Buyer, (ii) is signed by both the End Buyer and the Applicable Seller, (iii) clearly evidences the transfer of title in such Financed Vehicles from the Applicable Seller to the End Buyer, and (iv) is otherwise in form and content acceptable to Administrative Agent.

"Accrued Facility Costs" means, all accrued but unpaid amounts which would be payable pursuant to Section 8.01(c)(i), (ii), and (iii)(A).

"Additional Revolving Commitment" means, in accordance with the terms of this Agreement, one or more increases in the aggregate Revolving Commitments which increases, in the aggregate, shall not exceed $25,000,000 unless approved by the Required Lenders in their sole discretion.

"Administrative Agent" has the meaning assigned to such term in the Recitals.

"Administrative Agent Advance" has the meaning assigned to such term in Article X(m).

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

"Advance" means any borrowing under and advance by the Administrative Agent or any Lender under or in connection with this Agreement including, but not limited to, any Advance under Section 2.02, any Protective Advance, any LC Disbursement and any amounts paid by the Administrative Agent or its Affiliates to, for, or on behalf of, the Borrower under any Basic Document.

"Advance Rate" means for each Determination Date, (i) in respect of the Borrowing Base Value, ninety percent (90%) or (ii) in respect of the HST Tax Credit Value, (x) seventy-five percent (75%) for any HST Tax Credits paid by TX OPS Canada and/or Davidson Motors, as applicable, less than one hundred eighty (180) days prior to such Determination Date, (y) fifty percent (50%) for any HST Tax Credits paid by TX OPS Canada and/or Davidson Motors, as applicable, one hundred eighty (180) days or more prior to such Determination Date and (z) zero percent (0%) for any HST Tax Credit not properly filed on the monthly Tax returns of either TX OPS Canada or Davidson Motors, as applicable, within sixty (60) days of the date on which such HST Tax Credit was first paid by TX OPS Canada or Davidson Motors, as applicable.

"Advance Request" means a request by the Borrower for an Advance in accordance with Section 2.03 and substantially in the form of Exhibit D or such other form as shall be approved by the Administrative Agent.

"Adverse Change Notice Effective Date" has the meaning assigned to such term in Section 5.12.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" means with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "control", when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" has the meaning assigned to such term in the Recitals.

"Amortization Payment" has the meaning assigned to such term in Section 2.07(b).

"Anti-Corruption Laws" means all laws, rules, and regulations of the United States, the European Union, the United Kingdom, the United Nations, or any other jurisdiction applicable to the Loan Parties and their respective Affiliates from time to time concerning or relating to bribery or corruption, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010.

"Anti-Money Laundering & Counter Terrorist Financing Policy" shall mean the Trade X Group of Companies, Inc. document of that name dated June 2021, as amended from time to time.

"Anti-Money Laundering & Counter Terrorist Financing Procedures" shall mean the Trade X Group of Companies, Inc. Anti-Money Laundering & Counter Terrorist Financing Procedures for Compliance Staff dated June 2021, as amended from time to time.

"Anti-Money Laundering Laws" means all laws or regulations relating to financial recordkeeping and reporting requirements, money laundering or terrorist financing, of the United States, the United Nations Security Council, the United Kingdom and the European Union, including, without limitation, the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the "Bank Secrecy Act"), 31 U.S.C. §§ 5311 et seq., and 12 U.S.C. §§ 1818(S), 1820(B) and 1951 – 1959); Title III of the USA Patriot Act; 18 U.S.C. § 1956; 18 U.S.C. § 1957; and the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Regulations, 31 C.F.R. Part 103; and 31 C.F.R. Chapter X.

"Anti-Terrorism Laws" means any Governmental Rules applicable to any member, shareholder or equity interest holder of any Loan Party, including but not limited to any Covered Entity, relating to terrorism, Sanctions and Export Control Laws, or money laundering, including, without limitation, to the extent applicable, (a) Anti-Money Laundering Laws, (b) the USA Patriot Act, (c) Part II.1 of the Criminal Code, R.S.C. 1985 c.C-46, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, S.C. 2000, c. 17 and regulations promulgated pursuant to the Special Economic Measures Act, S.C. 1992, c. 17 and the United Nations Act, R. S. C. 1985, c. U-2, (d) any law prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), or (e) any similar laws enacted in the United States or any other jurisdictions in which the parties to this Agreement operate, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced and all other present and future legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

"Applicable Operating Procedures" means (i) with respect to a Trade X Vehicle, the Trade X Operating Procedures, and (ii) with respect to a Techlantic Vehicle, the Techlantic Operating Procedures.

"Applicable Percentage" means, with respect to any Lender, the percentage of the aggregate Revolving Commitments represented by such Lender's Revolving Commitment. If the Revolving Commitments have terminated or expired, the Applicable Percentage shall be determined based upon the percentage of the total unpaid Advances owing to such Lender.

"Applicable Purchaser" means (i) in the case of a Trade X Vehicle, TX Ops Canada, or (ii) in the case of a Techlantic Vehicle, Techlantic.

"Applicable Rate" means, as of any Determination Date, an interest rate per annum equal to (x) 12% for each Advance related to a Techlantic Vehicle; provided that, in the event the Wholesale Value of the Techlantic Vehicles exceeds fifty (50%) of the aggregate Wholesale Value of all Financed Vehicles, the amount which exceeds 50% of such aggregate Wholesale Value shall have an Applicable Rate equal to the amount set forth in clause (y) herein, and (y) fourteen percent (14.00%) for all other amounts hereunder.

"Applicable Seller" means (i) in the case of a Trade X Vehicle, Parent, or (ii) in the case of a Techlantic Vehicle, Techlantic.

"Applicant" means, MBL Administrative Agent II LLC, in its capacity as the applicant of any Letters of Credit hereunder. Applicant may, in its discretion, arrange for one or more Letters of Credit to

be applied for by its Affiliates, in which case the term "Applicant" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Applicant shall, or shall cause such Affiliate to, comply with the requirements of Section 2.16 with respect to such Letters of Credit). At any time there is more than one Applicant, all singular references to the Applicant shall mean any Applicant, either Applicant, each Applicant, the Applicant that has applied for the applicable Letter of Credit, or both (or all) Applicants, as the context may require.

Applicant Sublimit" means, as of the Amendment Effective Date, the Revolving Commitments, in the case of such amount as shall be designated to the Administrative Agent and the Borrower in writing by an Applicant; provided that any Applicant shall be permitted at any time to increase or reduce its Applicant Sublimit in its sole discretion upon providing five (5) days' prior written notice thereof to the Administrative Agent and the Borrower.

"Approved Country of Destination" means each of the countries set forth Schedule II on or any other country which may be approved by Administrative Agent in writing from time to time in its sole discretion.

"Approved Country of Origin" means the United States or Canada or any other country which may be approved by Administrative Agent in writing from time to time in its sole discretion..

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 11.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent and the Borrower.

"Authorized Person" means, with respect to the Borrower, the Servicer, or Parent, any officer, manager, general partner (including, in turn, any Authorized Person with respect to such Person), senior officer or other authorized signatory who is authorized to act for such Person and who is identified on the list of Authorized Persons delivered by such Person to the Administrative Agent on the Closing Date (as such list may be modified or supplemented from time to time thereafter).

"Avoided Transfer" has the meaning assigned to such term in Article X(o).

"Backup Servicer" means any Person that may be appointed by Administrative Agent at any time in its Permitted Discretion, at Borrower's sole cost and expense, to act as backup servicer for the Collateral.

"Backup Servicing Agreement" means a backup servicing agreement executed by Backup Servicer, Borrower and Administrative Agent, from time to time as contemplated by this Agreement and providing for backup servicing of the Collateral, in accordance herewith, in each instance with the prior written approval of Administrative Agent, in its Permitted Discretion.

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other

insolvency proceedings).

"Bankruptcy Code" means Title 11 of the United States Code, as amended from time to time, and the Rules thereunder, as amended from time to time.

"Bankruptcy Event" with respect to a Person, shall be deemed to have occurred if either:

(i) a case or other proceeding shall be commenced without the application or consent of such Person, in any court seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or for all or substantially all of its assets, or any similar action with respect to such Person under any Governmental Rules relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed or unstayed, and in effect, for a period of sixty (60) consecutive days; or an order for relief in respect of such Person shall be entered in an involuntary case under the Bankruptcy Code or other similar laws now or hereafter in effect, or

(ii) an order for relief in respect of such Person shall be entered in a voluntary case under the Bankruptcy Code, or any applicable bankruptcy, insolvency, reorganization, debt arrangement, dissolution or other similar Governmental Rules now or hereafter in effect, or such Person shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for such Person or for any substantial part of its assets, or shall make any general assignment for the benefit of creditors, or shall fail to, or admit in writing its inability to, pay its debts generally as they become due, or, if a corporation or similar entity, its board of directors shall vote to implement any of the foregoing.

"Basic Documents" means, collectively, this Agreement, the Promissory Notes, the Transfer Documents, the Security Documents, the Servicing Agreement, the Backup Servicing Agreement and each other document, instrument or agreement executed in connection with any of the foregoing, in each case, as amended, amended and restated, and in effect from time to time.

"Borrower" has the meaning assigned to such term in the Recitals.

"Borrowing Base" means, on any Determination Date, an amount equal to the lesser of:

(i) the Revolving Commitments minus the aggregate principal amount of all outstanding Advances; or

(ii) the aggregate sum of (x) the aggregate Borrowing Base Value of all Eligible Assets pledged as Collateral, *plus* (y) the aggregate HST Tax Credit Value *minus* (y) the Excess Concentration Amount.

"Borrowing Base Certificate" means a certificate executed by the president, chief financial officer, member or manager of the Borrower (or other Authorized Person having similar responsibilities) containing a calculation of the Borrowing Base of an Advance and substantially in the form of Exhibit C or such other form as shall be approved by the Administrative Agent. A *pro-forma* Borrowing Base Certificate shall be a Borrowing Base Certificate containing an estimate of the Borrowing Base of an Advance as of the future Determination Date stated therein.

"Borrowing Base Value" means, for each Eligible Asset, the lesser of (a) the Purchase Price for such Vehicle comprising the Eligible Asset or (b) the applicable Advance Rate multiplied by the Wholesale Value of such Vehicle comprising the Eligible Asset.

"Borrower Additional Revolving Commitment Request" has the meaning assigned to such term in Section 2.01(b).

"Breakage Ratio" means, with respect to any Collection Period, as of any Determination Date, the decimal value expressed as a percentage equal to (x) with respect to the aggregate pool of Financed Vehicles owned by Borrower, the aggregate Wholesale Value of such Financed Vehicles that became Defaulted Assets during such Collection Period divided by (y) the average daily cumulative Wholesale Value of the Financed Vehicles owned by the Borrower during the Collection Period ending two (2) calendar months prior to the Determination Date.

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York or Toronto, Ontario are authorized or required by Governmental Rules to remain closed.

"Canadian Cash Management Bank" means Royal Bank of Canada or any other banks or other financial institutions, as approved in writing by Administrative Agent in its Permitted Discretion.

"Canadian Collection Account" means the deposit account number (i) 03232-1024777, held in the name of TX OPS Canada or (ii) 03232-1024801, held in the name of Davidson Motors, in each case, at Canadian Cash Management Bank and each other or successor collection account established in accordance with the terms hereof.

"Canadian Collection Account Control Agreement" means one or more deposit account control agreements in form and substance acceptable to Administrative Agent, to be entered into among Canadian Cash Management Bank, Administrative Agent, TX OPS Canada and Davidson Motors, as applicable, with respect to the Canadian Collection Account, in each instance as the same may be modified, amended or restated from time to time.

"Capital Expenditure" means, for any Person, any expenditure or commitment to expend money for any purchase or other acquisition of any asset which would be classified as a fixed or capital asset on a consolidated balance sheet of any such Person in accordance with GAAP.

"Capital Lease Obligations" of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Management Bank" means Silicon Valley Bank, or any other banks or other financial institutions, as approved in writing by Administrative Agent in its Permitted Discretion.

"Change of Control" means the occurrence of any of the following:

(i) any transaction or series of related transactions resulting in the sale or issuance of securities or any rights to securities of any Restricted Party representing in the aggregate fifty percent (50%) or more of its issued and outstanding voting securities (or fifty percent (50%) or more of the voting power), on a fully-diluted basis, or any transaction or series of related transactions resulting in the sale, transfer, assignment or other conveyance or disposition of any securities or any rights to securities of any Restricted Party by any holder or holders thereof representing in the aggregate fifty percent (50%) or more of the

issued and outstanding voting securities of such Restricted Party (or fifty percent (50%) or more of the voting power), on a fully diluted basis and the receipt of any consideration in connection therewith;

(ii) any transaction or series of related transactions resulting in the sale or issuance of securities or any rights to securities of any Restricted Party that results in any Person and its Affiliates owning in excess of fifty percent (50%) of the ownership interests in any Restricted Party (excluding any Person that is an owner of at least fifty (50%) of the ownership interests in such Restricted Party, as applicable, as of the Closing Date and identified on Schedule III) unless such intended transferee or purchaser is a Person which otherwise meets the Administrative Agent's underwriting criteria (applied in a non-discriminatory manner by the Administrative Agent in the use of its sole, but good faith, discretion) to be a borrower/customer of the Administrative Agent or is otherwise reasonably acceptable to the Administrative Agent (and as to which the Administrative Agent has received all information it shall reasonably request to perform its customary "know your customer" procedures), all of the foregoing as reasonably determined by the Administrative Agent;

(iii) Parent ceases to beneficially and of record own and control one hundred percent (100%) of the issued and outstanding units, membership interests, or other equity securities of the Borrower;

(iv) Ryan Davidson is no longer employed by Parent or its Affiliates, or is no longer actively involved in the management of Parent; and

(v) a sale, transfer or other disposition of fifty percent (50%) or more of the assets of any Loan Party, except as contemplated by the Basic Documents.

"Charged-Off Asset" means, any Defaulted Asset for which Recoveries thereon have not been deposited into the Collection Account within thirty (30) days of the date on which such Financed Vehicle became a Defaulted Asset.

"Closing Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 11.02).

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means, collectively, all "Collateral", as and to the full extent such term is defined in each of the Security Documents.

"Collateral Assignment of Purchase Agreements" means, collectively, (i) the Collateral Assignment of Third Tier Purchase Agreement dated as of the Closing Date by Borrower in favor of Administrative Agent for the benefit of Administrative Agent and the Lenders and acknowledged by Parent, (ii) the Collateral Assignment of Second Tier Purchase Agreement dated as of the Closing Date by Parent in favor of Administrative Agent for the benefit of Administrative Agent and the Lenders, and acknowledged by TX OPS Canada, and (iii) the Collateral Assignment of Second Tier Purchase Agreement to be executed by Parent in favor of Administrative Agent for the benefit of Administrative Agent and the Lenders, and acknowledged by Techlantic.

"Collection Account" means the deposit account number ending in ***3546, held in the name of Borrower at Cash Management Bank, and each other or successor collection account established in accordance with the terms hereof.

"Collection Account Control Agreement" means one or more deposit account control agreements in form and substance reasonably acceptable to Administrative Agent, to be entered into among Cash

Management Bank, Administrative Agent, and Borrower with respect to the Collection Account, in each instance as the same may be modified, amended or restated from time to time.

"Collection Period" means any calendar month.

"Collections" means all payments by or on behalf of (i) End Buyers in respect of a Fourth Tier Purchase Agreement (including, without limitation, the End Buyer Purchase Price, any End Buyer Breakage Fee and the End Buyer Fee) or (ii) any other Person in respect of such Person's purchase of any Financed Vehicles in the ordinary course of Applicable Seller's business, in either case, in the form of cash, checks, wire transfers, electronic transfers, automatic teller machine transfers or any other form of payment and all other fees and other amounts payable to, or received by, Borrower, Parent, or Servicer, or any Affiliate of Borrower, Parent, or Servicer in respect of any Financed Vehicles or any Insurance Proceeds deriving from any Financed Vehicles. For the avoidance of doubt, "Collections" includes, without limitation, all payments, proceeds or products in respect of a Financed Vehicle, by or on behalf of any End Buyer or any other Person, including principal, interest or any other fees or charges owed by such End Buyer and Recoveries. For the avoidance of doubt, sales or other Taxes, license, title registration and recordation fees, and any other fees, charges or amounts customarily payable relating to the disposition of such Financed Vehicle or item of Collateral shall not be included in this definition of Collections; provided that HST Tax Credits shall be included in this definition of Collections.

"Compliance Authority" means each and all of the (a) U.S. Treasury Department/Office of Foreign Assets Control, (b) U.S. Treasury Department/Financial Crimes Enforcement Network, (c) U.S. State Department/Directorate of Defense Trade Controls, (d) U.S. Commerce Department/Bureau of Industry and Security, (e) U.S. Internal Revenue Service, (f) U.S. Justice Department, (g) U.S. Securities and Exchange Commission, (h) U.S. Department of Transportation, and (i) U.S. Environmental Protection Agency.

"Consolidated Fixed Charge Coverage Ratio" means, as of any date, on a consolidated basis for Parent and its Subsidiaries, the ratio of (a) EBITDA *minus* Non-Financed Capital Expenditures *minus* cash taxes, *minus* cash Distributions, *plus* Rent Expense, to (b) the *sum* of (i) Interest Expense, *plus* (ii) scheduled principal payments on Funded Debt, *plus* (iii) scheduled payments on Capital Lease Obligation *plus* (iv) Rent Expense, in each case for the immediately preceding twelve (12) month period.

"Control Agreements" means, individually and collectively, each of (i) the Collection Account Control Agreement, (ii) the Operating Account Control Agreement, (iii) the Canadian Collection Account Control Agreements, and (iv) any future deposit account control agreement in form and substance reasonably satisfactory to Administrative Agent, as each may be modified, amended or restated from time to time.

"Controlled Accounts" means, collectively, the Collection Account, the Operating Account, the Canadian Collection Accounts and any other deposit or investment account subject to a Control Agreement granting Administrative Agent control over such account(s) for the benefit of the Administrative Agent and the Lenders.

"Covered Entity" means (a) Borrower and each of the other Loan Parties and (b) each Person that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition only, control of a Person shall mean the direct or indirect (i) ownership of, or power to vote, twenty-five percent (25%) or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (ii) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

"Credit Extension Date" means any date on which an Advance is made to the Borrower hereunder.

"Custodial Agreement" means any custodial agreement by and among Borrower, each Custodian and Administrative Agent, as the same may be amended, modified, supplemented, restated, replaced or renewed in writing from time to time.

"Custodian" means an Eligible NVOCC or such Person as Administrative Agent, in its Permitted Discretion, engages from time to time, at Borrower's sole cost and expense, to maintain custody of all Vehicle Titles (to the extent required by such Approved Country of Destination), the applicable Acceptable Bill of Lading and certain original and duplicate documents and instruments related thereto and take certain actions in connection therewith.

"Custodian Certificate" shall mean an original certificate in the form annexed to the Custodial Agreement, duly completed and signed by the applicable Custodian in accordance with the terms and conditions of the Custodial Agreement.

"Custodian Certificate Delivery Date" means each date on which the Custodian Certificate is required to be delivered pursuant to the Custodial Agreement.

"Davidson Motors" means Davidson Motors Incorporated, a Canadian corporation, and its successors and assigns.

"Davidson Pledge Agreement" means the Pledge Agreement, dated as of the Closing Date, made by Davidson Motors in favor of Administrative Agent and the Lenders, as amended, supplemented or otherwise modified from time to time.

"Default" means any event or condition which constitutes an Event of Default or which, upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

"Defaulted Asset" means, each Financed Vehicle that has been acquired by Borrower (i) for which the End Buyer Purchase Price thereof has not been deposited into the Collection Account within thirty (30) days after such Financed Vehicle arrives at the Approved Country of Destination or (ii) which ceases to be in the possession, custody or control of an Eligible NVOCC.

"Defaulting Lender" means, subject to Section 2.04(e), any Lender that has failed to (i) fund its *Pro Rata* Share of any Advance on the date such funding was required to be made in accordance with Section 2.04(a), or (ii) pay to the Administrative Agent, any other Lender, or their respective Affiliates, any other amount in excess of $25,000 required to be paid by it hereunder within fifteen (15) calendar days of the date when due. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under either or both of clause (i) or (ii) above shall be conclusive and binding absent manifest error.

"Designated Depository Institution" means any depository institution that is insured by the Bank Insurance Fund, National Credit Union Administration or the Savings Association Insurance Fund of the FDIC, approved in writing by the Administrative Agent in its Permitted Discretion and shall include initially the Cash Management Bank and Canadian Cash Management Bank.

"Determination Date" means any date of determination hereunder.

"Distribution" means any dividend, distribution, or other payment (whether in cash, securities, or other assets and including any sinking fund or similar deposit) in respect of the equity interests of a Person or on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such

equity interest, or on account of any return of capital to such Person's shareholders, partners, members, or other Persons with equivalent ownership interests.

"Dollars" or "$" refers to lawful money of the United States of America.

"EBITDA" means, for any period, the total of net income for such period, *plus* the following items to the extent deducted in determining net income for such period, (a) Interest Expense, (b) income tax expense, (c) depreciation expense, (d) amortization expense, and (e) other non-cash charges, expenses or losses (excluding any such non-cash charge to the extent it represents an accrual or reserve for potential cash charge in any future period or amortization of a prepaid cash charge that was paid in a prior period), *minus*, to the extent included in determining net income for such period, the sum of (i) unusual or non-recurring gains and non-cash income, (ii) any other non-cash income or gains increasing net income for such period (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash charge in any prior period) and (iii) any gains realized from the disposition of assets outside of the ordinary course of business, all as determined on a consolidated basis.

"EEA Financial Institution" means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Asset" means each Financed Vehicle acquired by Borrower from Parent pursuant to the Third Tier Purchase Agreement that (i) satisfies each of the following eligibility requirements (unless the Administrative Agent agrees in writing to waive any such eligibility requirement with respect to such Financed Vehicle) or (ii) has been approved in writing as an "Eligible Asset" by the Administrative Agent in its sole and absolute discretion:

a) Unless subject to an Acceptable Purchase Order, such Financed Vehicle was posted for sale by a Seller on the Trade X Platform for purchase by an End Buyer;

b) End Buyer Purchase Price for such Financed Vehicle under the related Fourth Tier Purchase Agreement, and all other amounts owing thereunder, are payable in Dollars;

c) as of the date such Financed Vehicle is first included as part of the Collateral, the End Buyer is not in default of its obligations under the related Fourth Tier Purchase Agreement;

d) such Financed Vehicle is not a Charged-Off Asset at any time;

e) the acquisition of such Financed Vehicle by Borrower will not cause the Borrower or the pool of Collateral to be required to register as an investment company under the 1940 Act;

f) such Financed Vehicle is held at Wholesale Value;

g) each End Buyer meets the Applicable Operating Procedures or is otherwise approved by the Administrative Agent in writing in their sole and absolute discretion from time to time;

h) the Fourth Tier Purchase Agreement relating to such Financed Vehicle complies with all applicable Governmental Rules and will not cause Administrative Agent or any Lender to fail to comply with any request or directive from any Governmental Authority having jurisdiction over Administrative Agent or such Lender;

i) giving effect to the provisions of Sections 9-406 and 9-408 of the UCC, each Fourth Tier Purchase Agreement relating to such Financed Vehicle is eligible to be assigned to the Borrower and to have a security interest therein granted to the Administrative Agent, as agent for the Lenders;

j) such Financed Vehicle was acquired by Parent and sold to Borrower pursuant to the Third Tier Purchase Agreement in accordance with the Applicable Operating Procedures;

k) the Fourth Tier Purchase Agreement evidencing the sale of such Financed Vehicle to an End Buyer is documented on the Trade X Platform and such sale complies with the Terms and Conditions in the form attached to this Agreement as Exhibit G;

l) (i) no other Person, other than the Applicable Purchaser and the End Buyer (to the extent of its contractual right to acquire the Financed Vehicle through the Trade X Platform or an Acceptable Purchase Order), owned or claimed any legal or equitable interest in such Financed Vehicle as of the Transfer Date and such Financed Vehicle is free and clear of any Lien other than any Permitted Lien, and (ii) following the Transfer Date, such Financed Vehicle shall be 100% owned by Borrower and no other Person (other than Borrower, Administrative Agent and related End Buyer, to the extent of its contractual right to acquire the Financed Vehicle through the Trade X Platform pursuant to the Fourth Tier Purchase Agreement) owns or claims any legal or equitable interest therein;

m) To the extent such Financed Vehicle is located in the United States, the Borrower has a first-priority perfected Lien on such Financed Vehicle as "Inventory" (as that term is defined in Section 9-102 of the UCC), free and clear of any other Lien other than any Permitted Lien, including language on the financing statement (or any equivalent filing statement) that such Lien is for the benefit of the Administrative Agent as assignee and the Borrower has granted to the Administrative Agent a valid and perfected first priority security interest in Borrower's rights in such Vehicle;

n) the Borrower has good and marketable title to, and is the sole owner of, such Financed Vehicle, subject to the End Buyer's contractual right to acquire the Financed Vehicle, and the Borrower has granted to the Administrative Agent a valid and perfected first priority security interest in the Financed Vehicle;

o) such Financed Vehicle, and any payment made with respect to such Financed Vehicle by an End Buyer or any other Person, is not subject to any sales tax, import tax, withholding tax, fee or governmental charge;

p) all consents, licenses, approvals or authorizations of, or registrations or declarations with, any Governmental Authority or any other Person required to be obtained, effected or given in connection with the making, acquisition or transfer of such Vehicle, Financed Vehicle and the related Fourth Tier Purchase Agreement have been duly obtained, effected or given and are in full force and effect;

q) each Purchase Agreement (i) constitutes the legal, valid, binding and enforceable obligation of the parties thereto, (ii) is not subject to a right of rescission, setoff, counterclaim, defense (including the defense of usury), dispute, recoupment, or adjustment, and (iii) is not subject to a challenge in any legal or administrative proceeding;

r) all information provided to the Administrative Agent by the Borrower, Parent (as seller) and Servicer relating to the Financed Vehicle is true, correct and complete;

s) no Purchase Agreement relating to such Financed Vehicle has been amended, waived, modified, renewed, supplemented or restated from its original terms in any manner in violation of the Applicable Operating Procedures or this Agreement;

t) the original of the applicable Acceptable Bill of Lading for such Financed Vehicle has been delivered to the Custodian in accordance with this Agreement and the Custodial Agreement and Administrative Agent has a valid and perfected first priority security interest in Borrower's rights in such Financed Vehicle;

u) if a Backup Servicer has been appointed, all information relating to such Financed Vehicle required to be delivered to the Backup Servicer pursuant to the Backup Servicing Agreement have been delivered to the Backup Servicer;

v) no End Buyer has defaulted in any material respect with respect to its obligations to purchase Vehicles from the Applicable Seller pursuant to any Fourth Tier Purchase Agreement more than one (1) time during any twelve (12) month period;

w) (i) neither the Financed Vehicle nor the related Vehicle is subject to, or affected by, a Level Two Regulatory Event and (ii) the acquisition date of such Financed Vehicle by Borrower did not occur after the occurrence of a Level One Regulatory Event hereunder;

x) such Financed Vehicle has a Wholesale Value equal to or greater than $3,500;

y) such Financed Vehicle is less than ten (10) years old;

z) such Financed Vehicle is on board (1) a marine vessel and in the possession of a common carrier or Eligible NVOCC that has issued an Acceptable Bill of Lading or (2) an overland rail carrier or motor carrier in the United States or Canada and subject to a straight bill of lading in form and substance satisfactory to Administrative Agent in its sole discretion;

aa) any NVOCC with respect to such Financed Vehicle is an Eligible NVOCC and has issued an Acceptable Bill of Lading;

bb) such Financed Vehicle is fully insured, to the extent of at least 100% of its Wholesale Value, by marine cargo, stock throughput or other insurance in such amounts, with such insurance companies, subject to such deductibles and against such risks (including war and terrorism risks) as are satisfactory to Administrative Agent and in respect of which Administrative Agent has been named as sole lender loss payee pursuant to a lender loss payee endorsement;

cc) one original counterpart of the Acceptable Bills of Lading, if applicable, in respect of such Financed Vehicle (whether issued by a carrier or an NVOCC) is in the possession of Administrative Agent, Custodian or any other agent of Administrative Agent;

dd) the End Buyer of such Financed Vehicle is not a Prohibited Person;

ee) each Vehicle related to such Financed Vehicle must be shipped from an Approved Country of Origin a to an Approved Country of Destination; and

ff) such Financed Vehicle is subject to an Acceptable Purchase Order or Fourth Tier Purchase Agreement, as applicable.

"Eligible Assignee" means: (i) an insurance company, investment or mutual fund, finance company, financial institution, or other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) that (a) is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and (b) has (together with its Affiliates) total assets, or a net worth, or assets under management, in excess of $50,000,000; (ii) a commercial bank organized under the laws of the United States, or any state thereof, having total assets or a net worth in excess of $50,000,000; (iii) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, having total assets or a net worth in excess of $50,000,000, provided, that, such bank is acting through a branch or agency located in the United States and has not been subject to a Bail-In Action or action of any EEA Resolution Authority, the application of any Write-Down and Conversion Powers by an EEA Resolution Authority, or a Bail-In Action or order during the preceding 24 calendar months; (iv) any Lender, or any Affiliate of any Lender (other than a natural person, the Borrower or any Affiliate of the Borrower), provided, that, in the case of an Affiliate of a Lender, such Affiliate has the financial ability to fund that portion of the Revolving Commitment assigned to it, as determined by the Administrative Agent in its Permitted Discretion; (v) any Person under common investment management with a Lender or an Affiliate of a Lender (other than a natural person, Borrower or any Affiliate of Borrower), provided, that, such Person has the financial ability to fund that portion of the Revolving Commitment assigned to it, as determined by the Administrative Agent in its Permitted Discretion; or (vi) any other Person (other than a natural Person) approved by the Administrative Agent and, so long as no Default or Event of Default has occurred and is continuing, the Borrower, which Borrower consent shall not be unreasonably delayed or withheld.

"Eligible Deposit Account" means an account maintained with a Designated Depository Institution.

"Eligible NVOCC" shall mean with respect to any Vehicle, an NVOCC for such Vehicle that (i) is not an Affiliate of Borrower, Parent, Seller or the applicable End Buyer and is otherwise acceptable to Administrative Agent; (ii) is engaged by (y) Administrative Agent to act as hold the Acceptable Bills of Lading for the Administrative Agent in accordance with the terms of the Freight Forwarder Agreement and (z) Parent or Borrower as freight forwarder with respect to such Vehicle; (iii) has received from the carrier a tangible bill of lading with respect to such Vehicle that names such NVOCC as consignee and has granted Administrative Agent a security interest in such bill of lading as security for the Obligations; (iv) has issued to the order of Borrower or, if so requested by Administrative Agent, to the order of Administrative Agent, an Acceptable Bill of Lading in respect of such Vehicle (and any bill of lading so issued to the order of Borrower shall name Borrower as consignee and conspicuously state on its face that it is subject to Administrative Agent's security interest); (v) has not asserted any adverse claim or Lien against any such Vehicle except for the existence of inchoate statutory liens in the ordinary course of business with respect to fees for the NVOCC's services which are not past due (vi) and is set forth in Schedule IV, as the same may be updated from time to time with the prior written consent of the Administrative Agent, not to be unreasonably withheld.

"End Buyer" means, with respect to any Fourth Tier Purchase Agreement (or Acceptable Purchase Order, as applicable), the Person or Persons obligated to pay the End Buyer Purchase Price for a Vehicle

and take delivery of such Vehicle, including any guarantor thereof, such Person shall have (i) submitted a business application to the Applicable Seller, (ii) been approved by the Applicable Seller for business credit in accordance with the Applicable Operating Procedures and (iii) to the extent required under the laws of the applicable jurisdiction, a dealer license validly existing, in good standing and issued by a Governmental Authority having jurisdiction over such End Buyer; provided that, if the applicable jurisdiction does not require the End Buyer to be licensed and in good standing in such applicable jurisdiction, Borrower shall certify to Administrative Agent in its request for an Advance that no such license is required.

"End Buyer Breakage Fee" means any amounts owing by an End Buyer to Parent in accordance with the Applicable Operating Procedures for failure to consummate the purchase of a Vehicle from the Applicable Seller under a Fourth Tier Purchase Agreement.

"End Buyer Fee" means the fee owing by an End Buyer to Parent for the use of the TRADE X Platform.

"End Buyer Deposit" means the security deposit paid by an End Buyer to Parent upon the purchase of Vehicles on the Trade X Platform or Acceptable Purchase Order, as applicable, in accordance with the Applicable Operating Procedures.

"End Buyer Purchase Price" means the purchase price owing by an End Buyer for the purchase of a Vehicle from the Applicable Seller pursuant to a Fourth Tier Purchase Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"ERISA Affiliate" shall mean, when used with respect to any Person, any trade or business, whether or not incorporated, that together with such Person, would be deemed to be a single employer within the meaning of Section 4001(b) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Event of Default" has the meaning assigned to such term in Article IX.

"Excess Concentration Amount" means, as of any Determination Date, the sum of the following amounts:

(a) the amount by which all Financed Vehicles with a Wholesale Value of $100,000 or greater exceeds ten percent (10%) of the aggregate Wholesale Value of all Financed Vehicles;

(b) the amount by which the Wholesale Value of any Financed Vehicle exceeds $200,000;

(c) the amount by which the aggregate Wholesale Value of any pool of Financed Vehicles that are the same make and model exceeds fifteen percent (15%) of the aggregate Wholesale Value of all Financed Vehicles; and

(d) the amount by which in excess of twenty percent (20%) (as determined by aggregate Wholesale Value) of Financed Vehicles with any End Buyer and any of such End Buyer's Affiliates;

"Excess Spread Ratio" means, with respect to any Collection Period, as of any Determination Date, the decimal value expressed as a percentage equal to (x) with respect to the aggregate pool of Financed Vehicles owned by Borrower, the amount of gross profit earned by TX OPS Canada, Parent and the Borrower during such Collection Period divided by (y) the ending cumulative Wholesale Value of such Financed Vehicles during such Collection Period.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (i) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or in which it is otherwise doing business or, in the case of any Lender, in which its applicable lending office is located, (ii) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located, and (iii) Taxes imposed or withheld as a result of such Person not being a United States Person within the meaning of Section 7701(a)(30) of the Code.

"Expected Collections" means, with respect to any Defaulted Asset, the amount of Collections that would have been collected in respect of such Defaulted Asset had such asset not become a Defaulted Asset.

"Fair Value" means, as of the Determination Date, with respect to a portfolio of Financed Vehicles equal in size and characteristics to the portfolio of Financed Vehicles then held by Borrower, the fair market price that could be obtained if such portfolio was sold in a prudent manner, within a reasonable period of time, taking into account, among other factors, the amount of credit losses on such portfolio that would reasonably be expected to have been incurred by such Person during a period of time equal in length to the period Borrower would have held such portfolio in the absence of such sale, *plus*, without duplication, the amount of the loan loss reserve taken by Borrower as of such date with respect to such portfolio, in accordance with GAAP and pursuant to the exercise of reasonable business judgment.

"FDIC" means the Federal Deposit Insurance Corporation and any successor thereto.

"Federal Funds Effective Rate" means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"Financial Covenants" means each covenant set forth in Article VII.

"Financing Commitment" has the meaning assigned to such term in Section 11.14(a)(i).

"Financing Exclusivity" means the exclusive financing arrangement contemplated by Section 2.01(c).

"Financed Vehicle" means the equitable title to any Vehicle acquired by the Borrower from Parent with the proceeds of an Advance, together with the right to receive the End Buyer Purchase Price attributable to such Vehicle when sold to an End Buyer by the Applicable Seller or any other payments made by an End Buyer under a Fourth Tier Purchase Agreement.

"First Tier Purchase Agreement" shall mean (i) with respect to a Trade X Vehicle, each electronic

purchase and sale agreement or Acceptable Purchase order by and between a Seller and TX OPS Canada pursuant to which TX OPS Canada acquires such Trade X Vehicle from such Seller through the Trade X Platform or such Acceptable Purchase Order, as the same may be amended, restated or otherwise modified from time to time in accordance with the terms of this Agreement, or (ii) with respect to a Techlantic Vehicle, each purchase and sale agreement (which may be in electronic format) or Acceptable Purchaser Order by and between a Seller and Techlantic pursuant to which Techlantic acquires Vehicles from such Seller, as the same may be amended, restated or otherwise modified from time to time in accordance with the terms of this Agreement.

"Foreign Plan" shall mean any "employee benefit plan" as defined in Section 3(3) of ERISA that is (a) neither subject to ERISA nor a governmental plan within the meaning of Section 3(32) of ERISA and (b) mandated by a government other than the United States or a state within the United States or an instrumentality thereof.

"Fourth Tier Purchase Agreement" shall mean (i) with respect to a Trade X Vehicle, each electronic purchase and sale agreement by and between Parent and an End Buyer pursuant to which Parent sells a Trade X Vehicle to such End Buyer through the Trade X Platform, or through an Acceptable Purchase Order, for an amount equal to the End Buyer Purchase Price, as the same may be amended, restated or otherwise modified from time to time in accordance with the terms of this Agreement, or (ii) with respect to a Techlantic Vehicle, each purchase and sale agreement by and between Techlantic and an End Buyer pursuant to which Techlantic sells a Techlantic Vehicle to such End Buyer pursuant to an Acceptable Purchase Order for an amount equal to the End Buyer Purchase Price, as the same may be amended, restated or otherwise modified from time to time in accordance with the terms of this Agreement.

"Freight Forwarder Agreement" means a written agreement by and between the Servicer, Administrative Agent and an Eligible NVOCC in form and substance reasonably satisfactory to the Administrative Agent in its Permitted Discretion that sets forth all material terms of the Eligible NVOCC's duties and responsibilities, and provides reps and warranties relating to timing, standards, and insurance to protect the value of the Vehicle(s) while in the possession of the Eligible NVOCC.

"Funded Debt" means, as of any date, for any Person (a) all outstanding obligations for borrowed money, whether or not evidenced by notes, bonds, debentures or similar instruments, (b) all Capital Lease Obligations, and (c) all obligations in respect of letters of credit, bankers' acceptances and similar instruments.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Actions" means any and all consents, approvals, permits, orders, authorizations, waivers, exceptions, variances, exemptions or licenses of, or registrations, declarations or filings with, any Governmental Authority required under any Governmental Rules.

"Governmental Authority" means the government of the United States of America, or of any other nation, or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity of the foregoing exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Governmental Rules" means any and all laws, statutes, codes, rules, regulations, ordinances, orders, writs, decrees and injunctions, of any Governmental Authority and any and all legally binding conditions, standards, prohibitions, requirements and judgments of any Governmental Authority.

"Grant" means mortgage, pledge, bargain, sell, warrant, alienate, remise, release, convey, assign,

transfer, create and grant a lien upon and a security interest in and right of set-off against, deposit, set over and confirm pursuant to the Security Documents. A Grant of the Collateral or of any other agreement or instrument shall include all rights, powers and options (but none of the obligations) of the granting party thereunder, including the immediate and continuing right to claim for, collect, receive and give receipt for principal and interest payments in respect of the Collateral and all other moneys payable thereunder, to give and receive notices and other communications, to make waivers or other agreements, to exercise all rights and options, to bring a Proceeding in the name of the granting party or otherwise, and generally to do and receive anything that the granting party is or may be entitled to do or receive thereunder or with respect thereto.

"Guarantee" or "guarantee" of or by any Person (the "guarantor") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that, the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business or liability in respect of customary representations (other than collectability) made in connection with the sale, assignment or disposition of assets in the ordinary course of business.

"Guaranty and Security Agreement" means, collectively, (i) the Guaranty and Security Agreement for the Reserve Collateral and the other collateral set forth therein, dated as of the Closing Date, executed by Parent and TX OPS Canada in favor of Administrative Agent, for the benefit of Administrative Agent and the Lenders, and (ii) the Guaranty and Security Agreement to be executed by Techlantic in favor of Administrative Agent, for the benefit of Administrative Agent and the Lenders, in each case as amended or modified from time to time in accordance with the terms thereof and this Agreement.

"HST Tax Credit Value" means the applicable Advance Rate multiplied by the HST Tax Credit.

"HST Tax Credit" shall mean the amount of harmonized sales tax and goods and services tax or similar taxes imposed on any Financed Vehicle under the federal laws of Canada or a province thereof paid by, and to be refunded or credited to, TX OPS Canada or Davidson Motors, as applicable.

"In-Transit Vehicle" means any automobile, truck or sport utility vehicle, excluding recreational vehicles, motorcycles, trailers, boats, and off-road sport vehicles, with a valid Vehicle Title currently in-transit to an Approved Country of Destination.

"Indebtedness" of any Person means, without duplication, (i) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (ii) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (iii) all obligations of such Person (other than trade payables incurred in the ordinary course of business) upon which interest charges are customarily paid, (iv) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (v) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (vi) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such

Person, whether or not the Indebtedness secured thereby has been assumed (in which case non-recourse Indebtedness, for the purpose of this clause (vi), shall be limited to the fair market value of the property subject to such Lien), (vii) all guarantees by such Person of Indebtedness of others, (viii) all Capital Lease Obligations of such Person, (ix) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, and (x) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Party" has the meaning assigned to such term in Section 11.03(c).

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnifying Party" has the meaning assigned to such term in Section 11.03(c).

"Indemnitee" has the meaning assigned to such term in Section 11.03(b).

"Ineligible Asset" means any Financed Vehicle which (i) fails to satisfy or comply with the definition of Eligible Asset and (ii) fails to be provided on the Custodian Certificate as required by Section 4.02(l).

"Initial Revolving Commitment" means $25,000,000.

"Initial Offer" has the meaning assigned to such term in Section 11.14(a)(i).

"Initial Offer Matching Period" has the meaning assigned to such term in Section 11.14(a)(i).

"Insurance Proceeds" means any insurance proceeds received by Parent or Borrower as a result of theft, damage or destruction to a Vehicle relating to any Financed Vehicle.

"Interest Expense" shall mean, for any period, determined on a consolidated basis in accordance with GAAP, the sum of (a) total interest expense, including the interest component of any payments in respect of Capital Lease Obligations, capitalized or expensed during such period (whether or not actually paid during such period) *plus* (b) the net amount payable (or *minus* the net amount receivable) with respect to swap agreements during such period (whether or not actually paid or received during such period).

"Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the acquisition of all or any substantial portion of the equity interests issued by any other Person, (b) the creation, acquisition or division of any Subsidiaries, (c) the acquisition of all or a substantial portion of the assets or business of another Person or assets constituting a business unit, line of business or division of such Person, (d) a loan, advance or capital contribution to, any Person, or (e) any guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment but giving effect to any returns or distributions of capital or repayment of principal actually received in case by such Person with respect thereto.

"Issuing Bank" means the Applicant's lender from time to time issuing any Letter of Credit hereunder.

"LC Collateral Account" has the meaning assigned to such term in Section 2.16(j).

"LC Disbursement" means any payment, whether as cash collateral, expenses, fees or otherwise, made by an Applicant pursuant to a Letter of Credit.

"LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all Letters of Credit outstanding at such time ***plus*** (b) the aggregate amount of all LC Disbursements relating to such Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

"Lenders" means the Persons listed on Schedule I and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption.

"Letters of Credit" means the letters of credit issued on behalf of Applicant pursuant to this Agreement for the benefit of Borrower and its Affiliates, and the term "Letter of Credit" means any one of them or each of them singularly, as the context may require.

"Letter of Credit Agreement" has the meaning assigned to it in Section 2.16(b).

"Level One Regulatory Event" means that a Governmental Authority has issued, served upon, or otherwise delivered to Borrower, Parent, Servicer, or any of their Affiliates, a written notice of such Governmental Authority's commencement, or intention to commence, an investigation or inquiry relating in any way to any Vehicle, Financed Vehicle, Second Tier Purchase Agreement or Third Tier Purchase Agreement, which notice has not been rescinded, released, or otherwise terminated.

"Level Two Regulatory Event" means that a Governmental Authority has either (i) initiated an administrative or judicial proceeding challenging the legality, enforceability, validity or permissibility of matters relating to origination, servicing, or collection of certain, or all, Vehicle, Financed Vehicle, Second Tier Purchase Agreement or Third Tier Purchase Agreement, or (ii) issued or entered, an order, decree, demand, or judgment, any of which have, or may have, the effect of (a) staying, restraining, enjoining, or compelling Borrower, Parent, Servicer, or any of their Affiliates, to cease, desist in, or discontinue, Borrower's, Parent's, Servicer's, or any of their Affiliates' origination, servicing, collection, or ownership of Vehicle, Financed Vehicle, Second Tier Purchase Agreement or Third Tier Purchase Agreement, or (b) otherwise reducing the amounts previously collectible with respect to such Vehicle, Financed Vehicle, Second Tier Purchase Agreement or Third Tier Purchase Agreement.

"Level Two Regulatory Event Declaration" has the meaning assigned to such term in Section 2.01(e).

"Lien" means, with respect to any asset, (i) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset, and (iii) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loan Parties" means, collectively, Borrower, Parent, and each other Person that joins this Agreement or the other Basic Documents as a borrower or guarantor.

"Material Adverse Effect" means (i) a material adverse change in, or a material adverse effect upon,

the business, assets, operations or financial condition of any of the Loan Parties, (ii) a material impairment of the ability of Servicer or any of the Loan Parties to perform any of their respective obligations under this Agreement or any of the other Basic Documents to which it is a party, (iii) a material impairment of the Collateral, or (iv) a material adverse effect upon the binding effect, legality, validity or enforceability of this Agreement or any of the other Basic Documents against any Loan Party.

"Maturity Date" means the earliest to occur of (i) the three (3) year anniversary of the Closing Date, and (ii) the date on which the Administrative Agent has declared Advances due and payable pursuant to Article IX or any other provision of this Agreement; provided, clause (i) of the foregoing may be extended upon the mutual agreement of Borrower, the Administrative Agent and the Lenders, in each of their sole discretions.

"Measurement Period" means:

(i) for purposes of Sections 7.01 and 7.03, the period of three (3) Collection Periods immediately preceding any Determination Date; and

(ii) for purposes of Section 7.02, the Collection Period immediately preceding any Determination Date.

"Money Laundering & Terrorist Financing Risk Assessment" shall mean the Trade X Group of Companies, Inc. document of that name dated June 2021, as amended from time to time.

"Moody's" means Moody's Investors Service, Inc., or any successor thereto.

"Net Income" means, for any period, the consolidated net income (or loss) determined for the Parent and its Subsidiaries, on a consolidated basis in accordance with GAAP; provided that there shall be excluded (a) the income (or deficit) of any Person accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with the Parent or any Subsidiary, and (b) the income (or deficit) of any Person (other than a Subsidiary) in which the Parent or any Subsidiary has an ownership interest, except to the extent that any such income is actually received by the Parent or such Subsidiary in the form of dividends or similar distributions and (c) the undistributed earnings of any Subsidiary, to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation (other than under any Loan Document) or Governmental Rules applicable to such Subsidiary.

"Net Loss Ratio" means, with respect to any Collection Period, as of any Determination Date, the decimal value expressed as a percentage equal to (x) with respect to the aggregate pool of Financed Vehicles owned by Borrower, the sum of (i) the aggregate Expected Collections of all Defaulted Assets that became Defaulted Assets in the Collection Period ending one month prior to the Determination Date minus (ii) Recoveries on such Defaulted Assets divided by (y) the aggregate Expected Collections on such Defaulted Assets.

"Net Worth" means, as of any date, (a) the aggregate amount at which all assets of the Loan Parties, *minus* (b) the Total Liabilities of the Loan Parties, in each case as would be shown on a balance sheet at such date in accordance with GAAP.

"Non-Defaulting Lender" has the meaning assigned to such term in Section 2.04(b).

"Non-Financed Capital Expenditures" means, as of any date, on a consolidated basis for the Parent and its Subsidiaries, Capital Expenditures to the extent not made using Indebtedness.

"NVOCC" shall mean, with respect to any In-Transit Vehicle, a vessel operating common carrier engaged as a freight forwarder or otherwise to assist in the transport of In-Transit Vehicles to the Approve Country of Destination.

"Obligations" means all present and future indebtedness, loans, advances, costs, debts, liabilities and other liabilities and obligations (of any kind or nature, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or due or to become due) of the Borrower to the Lenders or the Administrative Agent arising under this Agreement, or under any other Basic Document including, without limitation, all liability for principal of and interest on the Advances, fees incurred pursuant to Section 2.08, fees incurred pursuant to Section 5.04, fees payable in connection with an extension of any Maturity Date, the fees referred to in Section 8.01(c), Letters of Credit issued pursuant to Section 2.16, expense reimbursements, indemnifications and other amounts due or to become due by the Borrower to the Lenders or the Administrative Agent under this Agreement, the Promissory Notes, and/or any other Basic Document, including all expenses of Lenders or the Administrative Agent incurred in the documentation, negotiation, modification, enforcement, or collection in connection with any of the foregoing, including reasonable attorneys' fees and expenses and all obligations of Borrower to Administrative Agent or Lenders to perform acts or refrain from taking any action, and shall include, with respect to each of the foregoing, interest, fees and other obligations that accrue after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Borrower, Parent, or any guarantor, whether or not a claim for post-filing or post-petition interest, fees, or other amounts is allowed in such proceeding, whether or not evidenced by any note, guaranty or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, opening of a letter of credit, loan, equipment lease, guarantee, or in any other manner, whether arising out of overdrafts or deposit or other accounts or electronic funds transfers (whether through automated clearing houses or otherwise) or out of the Administrative Agent's or any Lender's non-receipt of or inability to collect funds or otherwise not being made whole in connection with any depository transfer, check or other similar arrangements, whether direct or indirect (including those acquired by assignment or participation), joint or several, due or to become due, now existing or hereafter arising, regardless of how such indebtedness or liabilities arise or by what agreement or instrument they may be evidenced.

"Offeror" has the meaning assigned to such term in Section 11.14(a)(i).

"Operating Account" means an account in the name of Borrower, which shall be an Eligible Deposit Account.

"Operating Account Control Agreement" that certain deposit account control agreement, to be entered into among Cash Management Bank, Administrative Agent, and Borrower with respect to the Operating Account, as the same may be modified, amended or restated form time to time.

"Other Taxes" means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies, including, without limitation, all penalties, interest, additions to tax, expenses, costs and fees, arising from any payment made under any Basic Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Basic Document.

"Overadvance" means, the occurrence as of any Determination Date, of the total outstanding principal amount of Advances of all Lenders exceeding (i) the Borrowing Base, or (ii) the aggregate Revolving Commitments of the Lenders.

"Parent" has the meaning assigned to such term in the Recitals.

"Participant" has the meaning assigned to such term in Section 11.04(c).

"Payment Date" means (i) Wednesday of each calendar week (or, if such day is not a Business Day, the next succeeding Business Day) and (ii) the Maturity Date.

"Permitted Discretion" means a determination or judgment made in good faith in the exercise of commercially reasonable (from the perspective of a secured lender) credit or business judgment.

"Permitted Investments" means each of the following:

(i) direct general obligations of the United States or the obligations of any agency or instrumentality of the United States fully and unconditionally guaranteed, the timely payment or the guarantee of which constitutes a full faith and credit obligation of the United States;

(ii) federal funds, certificates of deposit, time and demand deposits, and bankers' acceptances (having original maturities of not more than 365 days) issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof, provided, that, (a) such federal funds, certificates of deposit, time deposits and banker's acceptances are held in a Securities Account through which the Administrative Agent can perfect a security interest therein and (b) the short-term debt obligations of such bank are rated "A 1" or better by S&P and "P-1" or better by Moody's;

(iii) investment agreements approved by the Administrative Agent, provided, that:

(a) the agreement is with a bank or insurance company which has an unsecured, uninsured and unguaranteed obligation (or claims paying ability) rated "Aa2" or better by Moody's and "AA" or better by S&P; and

(b) monies invested thereunder may be withdrawn without any penalty, premium or charge upon not more than one calendar days' notice (provided such notice may be amended or canceled at any time prior to the withdrawal date); and

(c) the agreement is not subordinated to any other obligations of such insurance company or bank; and

(d) the same guaranteed interest rate will be paid on any future deposits made pursuant to such agreement; and

(e) the Administrative Agent receives an opinion of counsel that such agreement is an enforceable obligation of such insurance company or bank;

(iv) commercial paper (having original maturities of not more than 365 days) rated "A1" or better by S&P and "P1" or better by Moody's;

(v) investments in money market funds rated in the highest rating category by any rating agency then rating such investments (which may be managed or purchased by the Administrative Agent or its Affiliates); and

(vi) investments approved in writing by the Administrative Agent;

provided, that, (A) no instrument described above is permitted to evidence either the right to receive (1) only interest with respect to obligations underlying such instrument or (2) both principal and interest payments derived from obligations underlying such instrument and the interest and principal payments with

respect to such instrument provided a yield to maturity at par greater than 120% of the yield to maturity at par of the underlying obligations; (B) no instrument described above may be purchased at a price greater than par if such instrument may be prepaid or called at a price less than its purchase price prior to stated maturity; and (C) in no event shall Permitted Investments include any obligation that is not denominated in Dollars.

Each of the Permitted Investments may be purchased by the Administrative Agent, or through an Affiliate of the Administrative Agent.

"Permitted Lien" has the meaning assigned to such term in the Security Agreement.

"Person" means any person or entity, including any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, governmental entity or other entity of any nature, whether or not a legal entity.

"Plan" shall mean an "employee benefit plan" as defined in Section 3(3) of ERISA that is covered by Title IV of ERISA.

"Pledge Agreement" means the Pledge Agreement, dated as of the Closing Date, made by Parent in favor of Administrative Agent and the Lenders, as amended, supplemented or otherwise modified from time to time.

"*Pro Rata* Share" of any amount means, with respect to any Lender, a fraction (expressed as a percentage) (i) at any time before the expiration of the Revolving Commitment Period, the numerator of which is the Revolving Commitment of such Lender and the denominator of which is the aggregate amount of the Revolving Commitments of all the Lenders, and (ii) at any time on and after the expiration of the Revolving Commitment Period, the numerator of which is the aggregate unpaid principal amount of the Advances made by such Lender and the denominator of which is the aggregate unpaid principal amount of all Advances at such time. For purposes of determining *Pro Rata* Share, a Defaulting Lender's Revolving Commitment shall be deemed to equal only the portion of such Revolving Commitment actually funded by it.

"Proceeding" means any suit in equity, action at law or other judicial or administrative proceeding.

"Prohibited Person" shall mean any Person:

a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order");

b) that is owned or controlled by, or acting for or on behalf of, any person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;

c) with whom Administrative Agent or any Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

e) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website,

http://www.treas.gov.ofac/t11sdn.pdf or at any replacement website or other replacement official publication of such list;

f) that is a Sanctioned Person or located in a Sanctioned Country; or

g) who is an Affiliate of or affiliated with a Person listed above.

"Promissory Note" and "Promissory Notes" have the meanings assigned to such term in Section 2.06(e).

"Protective Advance" has the meaning assigned to such term in Section 2.02(e).

"Protective Advance Notice" has the meaning assigned to such term in Section 2.02(e).

"Purchase Agreements" means each First Tier Purchase Agreement, the Second Tier Purchase Agreement, the Third Tier Purchase Agreement and each Fourth Tier Purchase Agreement.

"Purchase Price" means (i) the actual amount paid by TX OPS Indiana to the Applicable Purchaser pursuant to the Second Tier Purchase Agreement (excluding the amount paid with respect to the harmonized sales tax), reduced by (ii) the End Buyer Deposit. For the avoidance of doubt, the calculation of the amount paid by TX OPS Canada shall be reduced by the related Seller's payments and obligations, including the applicable platform fee (which shall not be less than 10%), export fees and export costs (including profits built into such costs by TX OPS Canada).

"Record Date" means with respect to each Payment Date, the close of business two (2) Business Days before such Payment Date.

"Recoveries" means all amounts received with respect to Charged-Off Assets, whether in the form of payments from, or on behalf of, End Buyers or any other Person, as proceeds of the sale of Charged-Off Assets, or otherwise.

"Register" has the meaning assigned to such term in Section 11.04(b)(iv).

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Remarketing Agent" means (i) in the United States, TradeXpress Auto, Inc. and (ii) in any jurisdiction other than the United States, any Person similar to TradeXpress Auto, Inc. selected by the Borrower or the Servicer and satisfactory to the Administrative Agent in its sole discretion.

"Rent Expense" means, as of any date, the aggregate consolidated cash rental obligations of Parent and its Subsidiaries determined in accordance with GAAP which are under leases of real estate or personal property (net of income from subleases thereof), whether or not such obligations are reflected as liabilities or commitments on a consolidated balance sheet of Parent and its Subsidiaries or in the notes thereto.

"Replacement Lender" has the meaning assigned to such term in Section 2.04(c).

"Replacement Notice" has the meaning assigned to such term in Section 2.04(c).

"Reportable Compliance Event" means that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or

has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Law.

"Required Lenders" means, at any time, the Administrative Agent, and Lenders holding aggregate *Pro Rata* Shares of Advances representing more than 51% of the total Advances outstanding hereunder at such time; provided that, for any Determination Date on which there are no Advances then outstanding hereunder, "Required Lenders" means the Administrative Agent, and Lenders holding aggregate *Pro Rata* Shares of unused Revolving Commitments representing more than 51% of the total unused Revolving Commitments at such time; and provided, further, that the *Pro Rata* Share of Advances and unused Revolving Commitments held by any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Required Principal Payment" shall mean, as of any Determination Date, the amount by which the aggregate principal amount of outstanding Advances has exceeded the Borrowing Base.

"Reserve Collateral" means that certain collateral consisting of Vehicles (excluding Financed Vehicles), cash, or a letter of credit owned by TX OPS Canada and pledged by TX OPS Canada to the Administrative Agent in an amount not less than the Reserve Collateral Amount pursuant to that certain Guaranty and Security Agreement.

"Reserve Collateral Amount" shall mean, as of any Determination Date, the amount equal to the average monthly operating expenses (averaged over the prior three fiscal months) of TX OPS Canada and its Affiliates, multiplied by six, which, in any event, shall not exceed $5,000,000.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Restricted Party" shall mean any Loan Party or any shareholder, partner, member or non-member manager, or any direct or indirect legal or beneficial owner of, any Loan Party or any non-member manager.

"Revolving Commitment" or "Revolving Commitments" means (i) as to any Lender, the aggregate commitment of such Lender to make Advances, expressed as an amount representing the maximum aggregate amount of such Lender's credit exposure hereunder, as set forth on Schedule I, as the same may be (A) increased from time to time pursuant to Section 2.01(b), or (B) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 11.04, and (ii) as to all Lenders, the aggregate Revolving Commitments of all Lenders to make Advances in an amount not to exceed the sum of the Initial Revolving Commitment, plus, if applicable, the Additional Revolving Commitment, provided, that, in no event shall the aggregate Revolving Commitments exceed $50,000,000. After the expiration of the Revolving Commitment Period, the amount of the Revolving Commitments shall be zero.

"Revolving Commitment Period" means the period commencing on the Closing Date and ending on the earliest to occur of (i) the two (2) year anniversary of the earlier to occur of (y) the first Advance and (z) the six (6) month anniversary of the Closing Date and (ii) the date on which the Revolving Commitments are terminated pursuant to Sections 2.05, 2.07, 2.13, 12.01, or Article IX; provided, clause (i) of the foregoing may be extended upon the mutual agreement of Borrower, the Administrative Agent and the Lenders, in each of their sole discretion.

"Revolving Exposure" means, with respect to any Lender, at any time, the sum of the aggregate outstanding principal amount of such Lender's Loans and its LC Exposure at such time.

"Rolling Average Breakage Ratio" means, with respect to any Determination Date, the average of

the Breakage Ratios determined with respect to each of the three (3) Collection Periods immediately preceding such Determination Date.

"Rolling Average Excess Spread Ratio" means, with respect to any Determination Date, the average of the Excess Spread Ratios determined with respect to each of the three (3) Collection Periods immediately preceding such Determination Date.

"Rolling Average Net Loss Ratio" means, with respect to any Determination Date, the average of the Net Loss Ratios determined with respect to each of the three (3) Collection Periods immediately preceding such Determination Date.

"Sanctioned Country" means a country or territory which is the subject of or target of any Sanctions and Export Control Laws (at the time of this Agreement, with regard to the United States, the Crimea region of Ukraine, Cuba, Iran, North Korea, Venezuela, and Syria).

"Sanctioned Person" means any Person (a) listed on any Sanctions and Export Control Laws-related list maintained by a Governmental Authority or otherwise recognized as a specially designated, prohibited, sanctioned or debarred Person, or subject to any limitations or prohibitions (including, but not limited to, the blocking of property or rejection of transactions), under any Sanctions and Export Control Law, (b) greater than fifty percent (50%) owned, directly or indirectly, or otherwise controlled by one or more Persons described in clause (a) above, or (c) located, organized, or resident in a Sanctioned Country.

"Sanctions and Export Control Laws" means any law, regulation or order applicable to the Administrative Agent, Lenders, any Loan Party or the Collateral related to (a) export controls, including the U.S. Export Administration Regulations and the International Traffic in Arms Regulations, and, where applicable, the Canadian Export and Import Permits Act, R.S.C., 1985, c. E-19, and regulations made thereunder, or (b) economic sanctions, including, but not limited to, those administered by the U.S. Treasury Department's Office of Foreign Assets Control, the U.S. Department of State, the United Nations, the European Union and any European Union Member State, the United Nations, Her Majesty's Treasury of the United Kingdom and Global Affairs Canada.

"S&P" means Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc., or any successor thereto.

"Second Tier Purchase Agreement" means that certain purchase and sale agreement, dated as of the date hereof, between the Applicable Purchaser and Parent pursuant to which from time to time from and after the Closing Date, the Applicable Purchaser shall sell and Parent shall purchase certain Financed Vehicles and the rights in and to the related Fourth Tier Purchase Agreements acquired by the Applicable Purchaser from a Seller pursuant to a First Tier Purchase Agreement on the terms set forth in such purchase and sale agreement, as the same may be amended, modified, supplemented or restated from time to time in accordance with the terms of this Agreement.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, executed by Borrower in favor of Administrative Agent, for the benefit of Administrative Agent and the Lenders, as amended or modified from time to time in accordance with the terms thereof and this Agreement.

"Security Documents" means, collectively, the Security Agreement, the Guaranty and Security Agreement, each Control Agreement, the Collateral Assignment of Purchase Agreement, the Pledge

Agreement, the Davidson Pledge Agreement, each Freight Forwarder Agreement, the Transfer Documents, all Uniform Commercial Code financing statements filed with respect to any Collateral, the Trade X Global Guaranty, and all other assignments, pledge agreements, security agreements, control agreements and other instruments executed and delivered on or after the date hereof by the Borrower pursuant to the Security Agreement or otherwise providing or relating to any collateral security for any of the Secured Obligations under and as defined in the Security Agreement.

"Seller" means, with respect to any First Tier Purchase Agreement, the Person(s) obligated to sell any Vehicle(s) to TX OPS Canada (or Parent, as applicable) under such First Tier Purchase Agreement or Acceptable Purchase Order.

"Servicer" means Parent and any other Person engaged as a replacement servicer by Administrative Agent pursuant to the terms hereof.

"Servicer Account" means the deposit account number ending in ***6925, held in the name of the Servicer at Cash Management Bank, and each other or successor servicer account established by the Servicer or any replacement servicer.

"Servicer Default" has the meaning assigned to such term in the Servicing Agreement.

"Servicer Report" means, with respect to each Payment Date, a report executed by an Authorized Person of the Servicer containing the amounts payable by the Borrower from the Collection Account on such Payment Date substantially in the form of Exhibit I or such other form as shall be approved by the Administrative Agent, which shall be distributed to the Administrative Agent no later than such Payment Date, or, with respect to the final Maturity Date, five (5) Business Days prior to such final Maturity Date.

"Servicing Agreement" means the Servicing Agreement, dated as of the Closing Date, between Servicer and Borrower, as amended, modified, restated or replaced from time to time in accordance with this Agreement. Any servicing agreement entered into by and between Borrower, Administrative Agent and a replacement Servicer following the termination of the Servicing Agreement pursuant to Section 5.07(e) shall be, on and after the date of such agreement, be the "Servicing Agreement".

"Similar Laws" has the meaning assigned to such term in Section 3.01(s).

"State" means any one of the states of the United States of America or the District of Columbia.

"Subsequent Offer" has the meaning assigned to such term in Section 11.14(a)(ii).

"Subsequent Offer Matching Period" has the meaning assigned to such term in Section 11.14(a)(ii).

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (i) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (ii) that is, as of such date, otherwise controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Anything herein to the contrary notwithstanding, the term "Subsidiary" shall not include any Person that constitutes an investment held by the Borrower in the ordinary course of business and that is not, under GAAP, consolidated on the financial

statements of the Borrower and its Subsidiaries. Unless otherwise specified, "Subsidiary" means a Subsidiary of the Borrower.

"Tangible Net Worth" means, as of any date, the Net Worth for the Loan Parties on a consolidated basis, *minus* (a) capitalized research and development costs, capitalized interest, debt discount and expense, goodwill, patents, trademarks, copyrights, franchises, licenses and such other assets as are properly classified as "intangible assets", (b) the principal amount of Indebtedness owed by any Loan Party to an Affiliate, and (c) Investments in any Loan Party by an Affiliate.

"Taxes" means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings, including, without limitation, all penalties, interest, additions to tax, expenses, costs and fees, imposed by any Governmental Authority.

"Techlantic" means Techlantic Ltd.

"Techlantic Operating Procedures" means the Techlantic Operational Procedures attached hereto as Exhibit F-2, as such Exhibit may be amended from time to time in accordance with the terms of this Agreement.

"Techlantic Vehicle" means a Financed Vehicle purchased by Techlantic from a Seller pursuant to a First Tier Purchase Agreement.

"Terms and Conditions" means the Terms and Conditions of the Trade X Platform in substantially the form attached hereto as Exhibit G, as the same may be amended, restated or otherwise modified from time to time so long as the same are approved in writing by the Administrative Agent from time to time.

"Third Party Claim" has the meaning assigned to such term in Section 11.03(c).

"Third Tier Purchase Agreement" means the purchase and sale agreement, between Parent and Borrower pursuant to which from time to time from and after the Closing Date, Parent shall sell and Borrower shall purchase the Vehicles acquired by Parent from the Applicable Purchaser pursuant to a Second Tier Purchase Agreement, as the same may be amended, modified, supplemented or restated from time to time in accordance with the terms of this Agreement.

"Total Liabilities" means, as of any date, for the Loan Parties on a consolidated basis, all obligations required by GAAP to be classified as liabilities on a balance sheet.

"Trade X Group" shall mean Trade X Group of Companies, Inc., a Canadian corporation, and its successors and permitted assigns.

"Trade X Operating Procedures" means the TradeX Global Operational Procedures attached hereto as Exhibit F-1, as such Exhibit may be amended from time to time in accordance with the terms of this Agreement.

"Trade X Platform" means a global B2B automotive trading platform operated by TX OPS Canada, connecting End Buyers and Sellers through a secure marketplace offering an end to end service solution that handles the middle mile of identified trade corridors, more specifically handling the foreign exchange, logistics, compliance, duties, etc., as may be required by destination country regulators.

"Trade X Vehicle" means a Financed Vehicle purchased by TX OPS Canada from a Seller pursuant to a First Tier Purchase Agreement.

"Transactions" means the execution, delivery and performance by the Borrower of this Agreement and the other Basic Documents to which it is a party, the making of Advances hereunder, the issuance of Letters of Credit hereunder and the use by the Borrower of the proceeds thereof in accordance with the terms hereof.

"Transfer Date" means, with respect to each Eligible Asset, the date on which such Eligible Asset is sold and conveyed by Parent to the Borrower pursuant to the Second Tier Purchase Agreement.

"Transfer Documents" means the Second Tier Purchase Agreement, the Third Tier Purchase Agreement and each other document evidencing the sale of a Vehicle from the Applicable Purchaser to Parent or the sale of a Financed Vehicle from Parent to Borrower.

"TX OPS Canada" shall mean TX OPS Canada Corporation and its successors and permitted assigns.

"UCC" means the Uniform Commercial Code as in effect in the State of New York.

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Uncured Defaulting Lender" means a Lender that is a Defaulting Lender for a period of forty-five (45) consecutive calendar days or more.

"Vehicle" means any automobile, truck or sport utility vehicle, excluding recreational vehicles, motorcycles, trailers, boats, and off-road sport vehicles, with a valid Vehicle Title which is also an In-Transit Vehicle.

"Vehicle Title" means the certificate of title or registration, as applicable, issued by the department of motor vehicles or other corresponding instrumentality or agency of any State or Canadian province.

"Wholesale Value" means, with respect to any Vehicle as of the effective date of the related Third Tier Purchase Agreement, the wholesale value for such Vehicle on such date determined by Manheim Market Report; provided, however, that if a wholesale value for such Vehicle is unavailable from Mannheim Market Report, one of Black Book or Kelly Blue Book may be used, in each case, taking into account the age, condition and mileage of such Vehicle.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In

Legislation that are related to or ancillary to any of those powers.

Section 1.02 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, and (v) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights. Capitalized terms used herein which are not specifically defined herein shall have the meanings provided in the UCC in effect on the date hereof to the extent the same are used or defined therein.

Section 1.03 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time.

Section 1.04 Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of such Letter of Credit available to be drawn at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Agreement related thereto, provides for one or more automatic increases in the available amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum amount is available to be drawn at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be "outstanding" and "undrawn" in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the Applicant and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

ARTICLE II

THE CREDITS

Section 2.01 The Revolving Commitments.

(a) Revolving Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Advances in Dollars to the Borrower from time to time during the

Revolving Commitment Period in an amount that does not exceed the Borrowing Base and that, in an aggregate principal amount, will not result in (i) such Lender's outstanding Advances exceeding such Lender's Revolving Commitment then in effect or (ii) the total outstanding Advances of all Lenders exceeding the aggregate Revolving Commitments then in effect. Following the Revolving Commitment Period, the Lenders shall have the right, but not the obligation, to make Advances in Dollars to the Borrower from time to time subject to the terms and conditions of this Section 2.01(a).

(b) Increase in Revolving Commitments. Subject to the other terms of this Section 2.01(b), upon the funding, in accordance with the terms of this Agreement, of Advances in an aggregate principal amount equal to or greater than eighty-five percent (85%) of the Initial Revolving Commitment (x) at the written request of the Borrower to the Administrative Agent, the Lenders shall have the right, but not the obligation, to increase the aggregate Revolving Commitments pursuant to the Additional Revolving Commitment (any and each such request, a "Borrower Additional Revolving Commitment Request") and (y) at any time upon the written notification from the Administrative Agent to the Borrower and the Lenders, the Lenders shall increase the aggregate Revolving Commitments pursuant to an Additional Revolving Commitment in an amount equal to such Borrower Additional Revolving Commitment Request; provided that:

(i) both before and after giving effect to any Additional Revolving Commitment, no Event of Default, Level One Regulatory Event or Level Two Regulatory Event shall have occurred and be continuing;

(ii) no Lender shall be obligated to increase its Revolving Commitment and any increase in Revolving Commitment by any Lender shall be at the sole and absolute discretion of such Lender;

(iii) any increase in the aggregate Revolving Commitments which is accomplished by increasing the Revolving Commitment of any Lender or Lenders who are at the time of such increase a Lender hereunder (any such Lender shall provide or withhold its consent to such increase in its sole discretion) shall be accomplished by amending Schedule I to reflect the revised and agreed allocation of the Revolving Commitments;

(iv) any increase in the aggregate Revolving Commitments accomplished by the addition of a new Lender under this Agreement shall be accomplished as follows: (A) such Lender shall have been approved by Administrative Agent and Borrower in their sole discretion; (B) such Lender shall be an assignee pursuant to the terms of Section 11.04 or shall otherwise join this Agreement as a Lender, in each case, pursuant to such documentation requested by the Administrative Agent; and (C) Schedule I shall be amended to reflect such revised and agreed allocation of the Revolving Commitments;

(v) any Borrower Additional Revolving Commitment Request shall be in writing and delivered to the Administrative Agent. The Borrower may issue a Borrower Additional Revolving Commitment Request only after the funding, in accordance with the terms of this Agreement, of Advances equal to, or greater than eighty five percent (85%) of the Initial Revolving Commitment; provided that, if the Administrative Agent does not affirmatively respond and accept such request within five (5) Business Days of the delivery thereof (or deemed delivery pursuant to the terms of this Agreement) then such request shall automatically be deemed to have been rejected;

(vi) each increase in the aggregate Revolving Commitments pursuant to the

Additional Revolving Commitment shall be in increments of $5,000,000;

(vii) after giving effect to such Additional Revolving Commitment, the aggregate Revolving Commitment of all Lenders shall not exceed $50,000,000; and

(viii) Borrower shall deliver to Administrative Agent on or before the effective date of any Additional Revolving Commitment, each of the following (unless waived by Administrative Agent in its Permitted Discretion), in form and substance reasonably satisfactory to Administrative Agent; (a) upon request from any Lender, a replacement Promissory Note for any Lender whose Revolving Commitment is affected by such Additional Revolving Commitment, (b) each of the items described in Sections 4.01(c), (d), and (i), with respect to the Additional Revolving Commitment, and (c) such other agreements, information, certificates and documents as the Administrative Agent may reasonably request.

(c) Financing Exclusivity. Each Loan Party agrees that, (A) at all times during each calendar month prior to when the outstanding amount of all Advances made under this Agreement during such calendar month equals or exceeds $25,000,000.00, (i) Parent and its Affiliates shall sell to Borrower and Borrower shall purchase from Parent and its Affiliates, any Financed Vehicles owned by Parent or its Affiliates, to the extent qualifying as Eligible Assets hereunder, until the amount of Eligible Assets set out in Section 2.02(d) have been purchased in any calendar month, and (ii) Borrower shall have a right of first refusal, in consultation with Administrative Agent, to purchase from Parent or its Affiliates, pursuant to the Transfer Documents, any Eligible Assets over the amount specified in clause (i) hereof and all Ineligible Assets purchased by TX OPS Canada through the Trade X Platform, and (B) at all times thereafter when the outstanding amount of all Advances made under this Agreement equals or exceeds $25,000,000.00 until the outstanding amount of all Advances made under this Agreement equals or exceeds $50,000,000.00, (i) Parent and its Affiliates shall sell to Borrower and Borrower shall purchase from Parent and its Affiliates, one half of all the Financed Vehicles owned by Parent or its Affiliates, to the extent qualifying as Eligible Assets hereunder, and (ii) Borrower shall have a right of first refusal, in consultation with Administrative Agent, to purchase from Parent or its Affiliates, pursuant to the Transfer Documents, one half of all Ineligible Assets purchased by TX OPS Canada through the Trade X Platform. Each Loan Party agrees not to form, or consent to, or otherwise acquiesce in the formation of, any Affiliate of any Loan Party, or otherwise use any Affiliate of any Loan Party existing on the Closing Date, to originate, acquire or finance any Eligible Assets in circumvention of the intent of the covenants, agreements and obligations set forth in this Section 2.01(c) or Section 11.14.

(d) Substitution of Ineligible Assets; Re-purchase of Excess Concentration Assets. At any time, upon discovery by Borrower, or upon notice from Servicer or the Administrative Agent, that any Financed Vehicle that is Collateral hereunder, in whole or part, constitutes an Ineligible Asset or causes the Excess Concentration Amount to be greater than or equal to zero, if and to the extent such condition causes an Overadvance, as determined by Administrative Agent in the exercise of its Permitted Discretion, then Borrower shall, within three (3) Business Days after the earlier of its discovery or receipt of notice thereof, either (i) cure the applicable defect with respect to such Ineligible Asset to the reasonable satisfaction of Administrative Agent in its sole discretion, (ii) deliver to Administrative Agent, as Collateral, one or more substitute Eligible Assets in substitution for such Ineligible Asset, in which case, Borrower also shall deliver monthly to Administrative Agent, a schedule of any Ineligible Assets so removed and Eligible Assets so substituted and shall update all other reports and schedules accordingly or (iii) cause Parent to re-purchase, with the proceeds of such re-purchase deposited directly into the Collection Account,

such Ineligible Asset or any Financed Vehicle that causes the Excess Concentration Amount to exceed zero, in each case, in accordance with the Third Tier Purchase Agreement. Upon such substitution, the substitute Eligible Asset(s) shall be subject to the terms of this Agreement and the other Basic Documents in all respects, the Borrower shall be deemed to have made the representations and warranties applicable to Financed Vehicles hereunder with respect to each substitute Eligible Asset, in each case, as of the date of substitution, and Borrower shall be deemed to have made a representation and warranty that each Financed Vehicle so substituted is an Eligible Asset as of the date of substitution.

(e) Occurrence of Level One Regulatory Event or Level Two Regulatory Event. Upon the occurrence of a Level One Regulatory Event, Borrower shall, within two (2) Business Days (except to the extent prohibited by Governmental Rules), give notice thereof to Administrative Agent, advising Administrative Agent of the pertinent and material facts relating thereto (solely to the extent permitted by Governmental Rules), and that the Borrower, Parent or Servicer affected thereby, or one or more of their Affiliates, intends, or does not intend, to contest, in good faith, such Level One Regulatory Event. Borrower, thereafter, keep Administrative Agent reasonably and timely informed (solely to the extent permitted by Governmental Rules) with respect to all Level One Regulatory Events that remain pending. Upon the occurrence of a Level Two Regulatory Event, Borrower shall, within two (2) Business Days (except to the extent prohibited by Governmental Rules), give notice thereof to Administrative Agent, advising Administrative Agent of the pertinent and material facts relating thereto (solely to the extent permitted by Governmental Rules), and that the Borrower, Parent or Servicer affected thereby, or one or more of their Affiliates, intends, or does not intend, to contest, in good faith, such Level Two Regulatory Event. Upon the occurrence of any Level Two Regulatory Event, or at any time thereafter that such Level Two Regulatory Event continues without relief satisfied to Administrative Agent, Administrative Agent may declare, by notice to Borrower (a "Level Two Regulatory Event Declaration"), that such Vehicle, Financed Vehicle, or any Purchase Agreement which have the characteristics, as determined by Administrative Agent, that are the subject of such Level Two Regulatory Event shall be Ineligible Assets and shall be subject to the provisions of Section 2.01(d) of this Agreement.

Section 2.02 Advances, Etc.

(a) Obligations of Lenders. Each Advance shall be made by the Lenders ratably, in accordance with their respective Revolving Commitments; provided that such Advances shall be made ratably by the Lenders in accordance with their respective Revolving Commitments unless any Lender shall be a Defaulting Lender with respect to the applicable Advance, in which case the Non-Defaulting Lenders shall fund Advances solely to the extent expressly required by Section 2.04(b). The failure of any Lender to make any Advance required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Type of Advances. Advances shall be denominated in Dollars.

(c) Minimum Amounts. Each Advance shall be in an amount of not less than (i) $100,000.00 or (ii) such other amount approved in writing by the Administrative Agent.

(d) Limitation on Number and Aggregate Amount of Advances. Unless otherwise consented to by Lenders in their sole discretion, no more than one (1) Advance may be made during any calendar week, and the aggregate amount of Advances in any calendar month shall not exceed $10,000,000 or such greater amount as agreed to by the parties.

(e) Protective Advances. The Borrower and the Lenders hereby authorize the Administrative Agent, either directly, or through one or more of its Affiliates, from time to time in Administrative Agent's Permitted Discretion, after the occurrence and during the continuance of a Default or an Event of Default, to make additional Advances (each a "Protective Advance") to the Borrower or any other Person for the benefit of the Borrower, in respect of all or any Advances that such Administrative Agent deems necessary or desirable, in each case, in Administrative Agent's Permitted Discretion (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of repayment of the obligations of the Borrower under this Agreement or (iii) to pay any other amount chargeable to the Borrower pursuant to the terms of this Agreement. Any Protective Advances, together with interest thereon, as provided herein, shall be repaid and allocated to the Administrative Agent in accordance with Section 8.01(c)(iii). Administrative Agent agrees to give Borrower notice, pursuant to Section 11.01, of Administrative Agent's intention to make a Protective Advance not less than three (3) Business Days prior to the making of any such Protective Advance (a "Protective Advance Notice"); provided that, in the event Administrative Agent determines, in its Permitted Discretion, that the making of a Protective Advance prior to giving a Protective Advance Notice is necessary to preserve, protect, and/or realize upon Collateral, then Administrative Agent may make such Protective Advance without a Protective Advance Notice and shall advise Borrower, both telephonically, and in writing, as promptly as practicable thereafter. The parties acknowledge and agree that no Protective Advance Notice shall be required during any period where the making thereof is stayed, or otherwise prohibited, by applicable Governmental Rules.

(f) Advances. Notwithstanding anything herein to the contrary, all Advances hereunder and all other amounts or Obligations from time to time owing to the Lenders or the Administrative Agent hereunder or under the other Basic Documents shall constitute one general obligation of the Borrower and are secured by the Administrative Agent's Lien on all Collateral as set forth more specifically in the Security Agreement, the Pledge Agreement, the Davidson Pledge Agreement and Guaranty and Security Agreement, as applicable.

Section 2.03 Requests for Advances.

(a) Notice by the Borrower. To request an Advance, the Borrower shall notify the Administrative Agent of such request in writing not later than 1:00 p.m., New York time, at least two (2) Business Days before the date of the proposed Advance, which request shall be by delivery, via electronic mail or telecopy, to the Administrative Agent of a written Advance Request in the form of Exhibit D, or such other form approved by the Administrative Agent, signed by the Borrower together with a *pro-forma* Borrowing Base Certificate for the proposed Advance based on the most current information available (which information will be updated by Borrower if and to the extent it changes prior to the applicable Credit Extension Date). The Borrower shall provide the Administrative Agent with all requirements of Section 2.03(b) hereof. Requests made after the 1:00 p.m. cutoff time shall be deemed made on the next Business Day.

(b) Content of Advance Requests. Each Advance Request shall comply with Section 2.02 and specify or include the following information:

(i) the amount of the requested Advance;

(ii) the date of such Advance, which shall be a Business Day;

(iii) a certification by Borrower that each Financed Vehicle to be purchased by Borrower with the proceeds of the requested Advance is an Eligible Asset acquired

pursuant to the applicable Transfer Documents and will conform with the Applicable Operating Procedures;

(iv) a certification by Borrower that with respect to each Financed Vehicle included in the calculation of the Borrowing Base for such Advance, (x) all Purchase Agreements have been delivered, electronically through the Trade X Platform or otherwise, to Servicer and Administrative Agent, (y) all copies of Vehicle Titles have been delivered to Custodian or Administrative Agent and (z) all Acceptable Bills of Lading have been delivered to the Custodian;

(v) a "flat car" inspection report for each Vehicle indicating that such Vehicle is in good condition and free of any material damage;

(vi) a copy of the Acceptable Bill of Lading for such Vehicle;

(vii) the VIN of each Vehicle;

(viii) the country of destination for each Vehicle;

(ix) the name and address of the Eligible NVOCC where each Vehicle is held;

(x) the End Buyer Purchase Price of each Vehicle;

(xi) the deposit amount of the End Buyer of such Vehicles;

(xii) the Wholesale Value of such Vehicles (including the valuation source and the values of any Vehicles sourced through Techlantic);

(xiii) the date on which the Vehicle was added to the Borrowing Base;

(xiv) the amount of the HST Tax Credit and the HST Tax Credit Value;

(xv) the date on which the return was, or will be, filed that claims the HST Tax Credit; and

(xvi) if applicable, a certification by Borrower that such End Buyer is not required to be a licensed dealer in good standing by the Governmental Authority having jurisdiction over such End Buyer.

(c) Notice by Administrative Agent to Lenders. Promptly following receipt of an Advance Request in accordance with this Section, the Administrative Agent shall approve or deny each Advance Request (which shall be based solely on the conditions set forth in Section 4.02) within two (2) Business Days or receipt of the Advance Request by the Administrative Agent in accordance with this Section 2.03. Administrative Agent's failure to approve or reject an Advance Request within such two (2) Business Day period shall be deemed a rejection of such Advance Request by Administrative Agent. Upon approval of an Advance Request, Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's *Pro Rata* Share of such Advance.

Section 2.04 Funding of Advances.

(a) Funding Borrower. So long as the conditions set forth in Section 4.02 are

satisfied, each Lender shall make its respective *Pro Rata* Share of such Advance to be made by it hereunder and Administrative Agent shall remit the amount of such Advance in immediately available funds to TX OPS Canada by 12:00 noon, New York time, on the day of such Advance, to be used in accordance with Section 5.09; provided that Advances made to finance the reimbursement of an LC Disbursement as provided in Section 2.16(e) shall be remitted by the Administrative Agent to the Applicant.

(b) Funding of Defaulting Lenders. If any Lender shall become a Defaulting Lender, the other Lenders (each, a "Non-Defaulting Lender") shall fund such Defaulting Lender's *Pro Rata* Share of such Advance, in accordance with each Non-Defaulting Lender's *Pro Rata* Share, in each case, in accordance with Section 2.04(a), to the extent such funding would not cause such Non-Defaulting Lender to exceed its Revolving Commitment. In such event, and provided funds shall have been advanced in accordance with Section 2.04(a), then such Defaulting Lender agrees immediately to pay to each Non-Defaulting Lender the amount so funded by such Non-Defaulting Lender, with interest thereon, for each day from and including the date such amount was funded by such Non-Defaulting Lender to, but excluding, the date of payment to each such Non-Defaulting Lender, at the rate *per annum* equal to the Federal Funds Effective Rate plus two percent (2%). If, at a later date, such Defaulting Lender pays the amount of its failed *Pro Rata* Share of the applicable Advance to the Non-Defaulting Lenders, together with interest as provided above, then such amount attributable to principal shall constitute such Defaulting Lender's funding of its *Pro Rata* Share of the applicable Advance. Each Lender's funded portion of any Advance is intended to be equal at all times to such Lender's *Pro Rata* Share of such Advance and the foregoing shall not relieve any Lender of its obligations hereunder. The failure of any Lender to fund its *Pro Rata* Share of any Advance shall not relieve any other Lender of its obligation to fund its *Pro Rata* Share of such Advance. Conversely, no Lender shall be responsible for the failure of another Lender to fund such other Lender's *Pro Rata* Share of an Advance except in the circumstances expressly set forth in this Section 2.04(b).

(c) Uncured Defaulting Lender Commitment Assignment. A Non-Defaulting Lender who is not then an Affiliate of an Uncured Defaulting Lender shall have the right, but not the obligation, to acquire and assume its *Pro Rata* Share of an Uncured Defaulting Lender's then remaining Revolving Commitment. Immediately upon receiving written notice from such Non-Defaulting Lender that it desires to acquire its *Pro Rata* Share of such Uncured Defaulting Lender's then remaining Revolving Commitment, the Uncured Defaulting Lender shall assign, in accordance with this Agreement, all or part, as the case may be, of its Revolving Commitment and other rights and obligations under this Agreement and all other Basic Documents to such Replacement Lender.

If no Non-Defaulting Lender elects to acquire and assume its *Pro Rata* Share of such Uncured Defaulting Lender's then remaining Revolving Commitment as set forth in the immediately preceding paragraph within thirty (30) calendar days of such Defaulting Lender becoming an Uncured Defaulting Lender, then the Borrower may, by notice (a "Replacement Notice") in writing to the Administrative Agent and the Uncured Defaulting Lender, (i) request such Uncured Defaulting Lender to cooperate with the Borrower in obtaining a replacement lender (such lender, a "Replacement Lender") for such Uncured Defaulting Lender; or (ii) propose a Replacement Lender. If a Replacement Lender shall be accepted by the Administrative Agent who, at the time of determination, is neither an Uncured Defaulting Lender nor an Affiliate of an Uncured Defaulting Lender, then such Uncured Defaulting Lender shall assign its then remaining Revolving Commitment and other rights and obligations related to unfunded Revolving Commitments under this Agreement and all other Basic Documents to such Replacement Lender.

In either case, following the consummation of the assignment and assumption of the Uncured

Defaulting Lender's remaining Revolving Commitment pursuant to one of the two immediately preceding paragraphs in this Section 2.04(c), any remaining Revolving Commitment of such Uncured Defaulting Lender shall not terminate, but shall be reduced proportionately to reflect any such assignments and assumptions, and such Uncured Defaulting Lender shall continue to be a "Lender" hereunder with its Revolving Commitment and *Pro Rata* Share eliminated to reflect such assignments and assumptions. Upon the effective date of such assignment(s) and assumption(s) such Replacement Lender shall, if not already a Lender, become a "Lender" for all purposes under this Agreement and the other Basic Documents. The assignment and assumption contemplated by this paragraph shall modify the ownership of obligations related to unfunded Revolving Commitments only and shall not modify the Uncured Defaulting Lender's rights and obligations, including, without limitation, all indemnity obligations hereunder, with respect to Advances previously funded.

(d) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable Governmental Rules:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(ii) Defaulting Lender Waterfall. The provisions of Section 8.01(c) to the contrary notwithstanding, any Collections, fees, interest, or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Applicant hereunder; *third*, to cash collateralize LC Exposure with respect to such Defaulting Lender in according with this Section; *fourth*, (so long as no Default or Event of Default then exists), to the funding of any Advance in respect of which such Defaulting Lender has failed to fund its *Pro Rata* Share thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent in the Collection Account and released in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Advances and cash collateralize future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default then exists, to the payment of any amounts owing to a Loan Party as a result of any judgment of a court of competent jurisdiction obtained by such Loan Party against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction.

(iii) Certain Fees. Each Defaulting Lender shall be entitled to receive its *Pro Rata* Share of fees hereunder only with respect to (A) Advances, with respect to which, such Lender is a not a Defaulting Lender and (B) any period during which such Lender is not a Defaulting Lender, and only to the extent accruing hereunder during such period.

(e) Defaulting Lender Cure. If the Administrative Agent agrees in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto; provided, that no adjustments will be made retroactively with respect to fees accrued, or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(f) Defaulting Lender LC Exposure. If any LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the LC Exposure of such Defaulting Lender shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages but only (x) to the extent that such reallocation does not, as to any Non-Defaulting Lender, cause such Non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Administrative Agent, cash collateralize, for the benefit of the Applicant, the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.16(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(c) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the Non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.16(a) and 2.16(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Applicant or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Applicant until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(vi) so long as such Lender is a Defaulting Lender, the Applicant shall not be required to issue, amend, renew, extend or increase any Letter of Credit, unless it is satisfied that the related exposure and such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Revolving Commitments of the Non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.04(f), and LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among Non-Defaulting Lenders in a manner consistent with Section 2.04(f)(i) (and such Defaulting Lender shall not participate therein).

(g) If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender shall occur following the date hereof and for so long as such event shall continue or (ii) the Applicant has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Applicant shall not be required to issue, amend or increase any Letter of Credit, unless the Applicant shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Applicant to defease any risk to it in respect of such Lender hereunder.

(h) In the event that each of the Administrative Agent, the Borrower and the Applicant agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other Lenders as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

Section 2.05 Termination of the Revolving Commitments.

(a) Scheduled Termination. If not earlier terminated in accordance with the terms hereof, the Revolving Commitments shall terminate on the last day of the Revolving Commitment Period.

(b) Voluntary Termination by the Borrower. The Borrower may terminate all, but not less than all, of the Revolving Commitments then outstanding and terminate this Agreement subject to the voluntary prepayment provisions of Section 2.07(a), upon not less than sixty (60) days prior written notice to Administrative Agent.

Section 2.06 Repayment of Advances; Evidence of Debt.

(a) Repayment. If not previously paid in accordance with the terms of this Agreement, the Borrower hereby unconditionally promises to pay the outstanding principal amount of all Advances (and interest and fees consolidated into and comprising such Advances), together with interest as provided herein, to the Administrative Agent, for the accounts of the Lenders, on the Maturity Date. Any and all other amounts or Obligations owing hereunder, if not otherwise specified herein, shall be due and payable in full in cash on the Maturity Date.

(b) Releases. Upon payment in full of the Obligations and termination of the Revolving Commitment by the Borrower pursuant to the terms of this Agreement, Administrative Agent and the Lenders shall, at the sole expense of the Borrower, authorize the filing of any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and if applicable in recordable form) as are reasonably required and requested to release, as of record, the Liens and all notices of security interests and liens previously filed with respect to the applicable Obligations hereunder.

(c) Maintenance of Records by Administrative Agent. Administrative Agent shall maintain records in which it shall record: (i) the amount of each Advance made hereunder, (ii) the amount of principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, and (iii) the amount of any sum received by Administrative Agent hereunder for accounts of the Lenders and each Lender's *Pro Rata* Share thereof.

(d) Effect of Entries. The entries made in the records maintained pursuant to Section 2.06(c) shall be *prima facie* evidence of the existence and amounts of the Obligations recorded therein; provided that the failure of Administrative Agent to maintain such records, or any error therein, shall not in any manner affect the obligation of the Borrower to repay the Advances and other Obligations in accordance with the terms of this Agreement.

(e) Promissory Notes. Upon request of any Lender, all Advances of such Lender made pursuant to this Agreement, together with interest thereon at the rates specified herein, shall be further evidenced by those certain Promissory Notes, substantially in the form of Exhibit B hereto, made by the Borrower payable to the order of the applicable Lender, in the maximum amount of such Lender's Revolving Commitment, and delivered by Borrower on the date thereof to such Lender (each, a "Promissory Note" and collectively, the "Promissory Notes").

Section 2.07 Prepayment of Advances.

(a) Optional Prepayments. The Borrower may only voluntarily prepay Advances hereunder in accordance with this Section 2.07(a). The Borrower may not prepay the Obligations prior to the end of the Revolving Commitment Period. At any time after the end of the Revolving Commitment Period, Borrower may voluntarily prepay all, but not less than all Obligations hereunder upon not less than sixty (60) days prior written notice to Administrative Agent. All voluntary prepayments shall be accompanied by accrued interest required by Section 2.09 and any fees owing pursuant to Section 2.08 and any other amounts owing hereunder in connection with a termination of this Agreement, including those items listed in Section 12.01. For the avoidance of doubt, this Section 2.07(a) shall not prohibit repayments or prepayments pursuant to Section 2.07(b), (c) or (d) or Section 8.01(c).

(b) Mandatory Prepayments. If, as of any Determination Date, an Overadvance exists, then the Borrower shall promptly, and in any event within three (3) Business Days or as otherwise agreed in writing, (i) prepay the Advances, (ii) prepay the LC Exposure, (iii) pledge additional or substitute Eligible Assets as Collateral in accordance with Section 2.01(d) or (iv) deposit cash collateral in the LC Collateral Account, in each case, in an amount that would result in such Overadvance no longer continuing to exist.

(c) Amortization. Principal payments made to the Lenders arising from Collections on the Eligible Assets (each, an "Amortization Payment") shall not be construed as an optional prepayment, and may be made by the Borrower at any time for prompt application by the Administrative Agent to reduce the Obligations. Amounts paid in respect of Amortization Payments may be re-borrowed if permitted pursuant to the terms of this Agreement.

(d) Notices, Etc. The Borrower shall notify the Administrative Agent in writing of any prepayment made under Section 2.07(a) at least thirty (30) days before the date of such prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of the Advances to be prepaid on such date and, on such date, such amounts shall become due. Promptly following receipt of any such notice, the Administrative Agent shall advise the Lenders of the contents thereof.

Section 2.08 Certain Fees.

(a) Payment of Fees. All fees payable hereunder shall be cumulative and shall be owed independent of the other fees owing pursuant to this Agreement and paid on the dates due, in Dollars and in immediately available funds, to the Administrative Agent, for the ratable benefit of

the Lenders and Administrative Agent entitled thereto. Fees paid, once incurred, shall not be refundable, reversible or subject to set-off or counterclaim under any circumstances.

Section 2.09 Interest.

(a) Advances. The outstanding principal amount of all Advances and any fees and interest that is not timely paid related to any Advances shall bear interest at a rate *per annum* equal to the Applicable Rate from the date the same are made available to the Borrower (which, for the avoidance of doubt, shall be the date any such amount is received by the Borrower pursuant to an Advance) to the date paid.

(b) Default Interest. Notwithstanding the foregoing, upon the occurrence and during the continuation of an Event of Default, at the Administrative Agent's option, (i) the outstanding principal amount of all Advances and (ii) any accrued, but unpaid, interest and fees and any other Obligations that are not timely paid (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws, whether or not a claim for post-filing or post-petition interest or other amounts is allowed in such proceeding) shall bear interest, after as well as before judgment, at a rate *per annum* equal to three percent (3.00%) *plus* the Applicable Rate from the date the same are made available to the Borrower (which, for the avoidance of doubt, shall be the date any such amount is funded to the Borrower pursuant to an Advance) to the date paid.

(c) Payment of Interest. Interest accrued on the outstanding Obligations relating to each Advance shall accrue at the Applicable Rate for interest payable in cash and shall be payable in cash in arrears on each Payment Date and upon the applicable Maturity Date. Any interest accrued on the Advances that is not paid on each Payment Date shall constitute principal which amounts shall also accrue interest at the Applicable Rate.

(d) Computation. All interest and fees hereunder shall be computed on the basis of a year consisting of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(e) *Interest Act* Disclosure. For the purposes of the *Interest Act* (Canada) and disclosure thereunder, whenever any interest or any fee to be paid under any Basic Document is to be calculated on the basis of a year consisting of 360-days, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement. Each Loan Party acknowledges and confirms that: (i) this clause (e) satisfies the requirements of Section 4 of the *Interest Act* (Canada) to the extent it applies to the expression or statement of any interest payable under any Basic Document; and (ii) it is able to calculate the yearly rate or percentage of interest payable under any Basic Document based upon the methodology set out in this clause (e).

Section 2.10 Pay-Off Amount Statements. The Borrower may from time to time reasonably request, but in any event no more than one (1) time per month (which request may be given orally if a written copy thereof is delivered promptly by e-mail, telecopy or mail) from the Administrative Agent a written statement setting forth the aggregate principal amount owing with respect to the Advances, the unpaid principal amount of and interest on all outstanding Advances, or any other amount owing hereunder

(including the aggregate amount required to be paid under this Agreement) or any other Basic Document as shall be necessary to satisfy and discharge in full (or in part) all Obligations and liabilities owing under this Agreement or any other Basic Document. The Administrative Agent shall, not later than the fifth (5th) Business Day following the Business Day on which such request shall have been received, deliver to the Borrower in writing a customary pay-off statement setting out the amount owing as requested by Borrower in its written request and addressing the release of Liens securing the Collateral as contemplated by Section 2.06.

Section 2.11 Taxes.

(a) Payments Free of Taxes. Any and all payments to or for the benefit of any Lender by the Borrower hereunder or under any other Basic Document shall be made, provided, that, the Administrative Agent and such Lender shall have provided the Borrower with an executed IRS Form W-9 that indicates that backup withholding is not required with respect to payments made to such Person, free and clear of and without deduction or withholding for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct or withhold any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall, provided that the Administrative Agent and such Lender shall have provided the Borrower with an executed IRS Form W-9 that indicates that backup withholding is not required with respect to payments made to such Person, be increased as necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section) the Administrative Agent, or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the Borrower shall deduct the Taxes (whether or not the Taxes constitute Indemnified Taxes) and (iii) the Borrower shall pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Governmental Rules.

(b) Payment of Other Taxes by Borrower. In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Governmental Rules.

(c) Indemnification by Borrower. Without duplication of payments made pursuant to Section 2.11(a) or Section 2.11(b), the Borrower shall indemnify the Administrative Agent and each Lender within twenty (20) days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section but excluding any Taxes deducted or withheld in accordance with Section 2.11(a) when the provisions set forth in Section 2.11(a) relating to the provision of IRS Form W-9 have not been materially complied with) paid by the Administrative Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. Each Lender agrees to give notice to the Borrower of the assertion of any claim against such Lender relating to Indemnified Taxes or Other Taxes as promptly as is practicable, and agrees to repay to the Borrower any refund (including that portion of any interest that was included as part of such refund with respect to the Indemnified Taxes or Other Taxes paid by the Borrower) or credit received by such Lender for Indemnified Taxes or Other Taxes that were paid by the Borrower pursuant to this Section 2.11, to the extent such Lender determines that it may do so without prejudice to the retention of the refund or credit (vis-à-vis the Governmental Authority that paid such refund or credit), and net of all related expenses, cost and fees incurred by such

Lender. Nothing herein contained shall interfere with the right of any Lender to arrange its tax affairs in whatever manner it thinks fit nor obligate any Lender to claim a tax refund or disclose any information relating to its tax affairs or any computations in respect thereof or require any Lender to do anything that would prejudice its ability to benefit from any other refunds, credits, reliefs, remissions or repayments to which it may be entitled.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent a copy of a receipt issued by such Governmental Authority, if any, evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

Section 2.12 Payments Generally; Application of Payments; Sharing of Set-offs.

(a) Payments by the Borrower. The Borrower shall make each payment required to be made by it hereunder (whether principal, interest, fees or reimbursement of LC Disbursements, or of amount payable under Section 2.11, or otherwise) or under any other Basic Document (except to the extent otherwise provided therein) prior to 2:00 p.m., New York time, on the date when due (as evidenced by a Fed funds reference number), in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the sole discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent except payments to be made directly to the Applicant as expressly provided herein or as expressly provided in the relevant Basic Document and payments pursuant to Section 2.11 and Section 11.03, which shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All amounts owing under this Agreement or under any other Basic Document (except to the extent otherwise provided therein) are payable in Dollars.

(b) Application of Payments. All payments hereunder shall be applied in accordance with Section 8.01(c), (d), or (e), as applicable.

(c) *Pro Rata* Treatment. Except to the extent otherwise provided herein: (i) any fees required pursuant to Section 2.08 shall be paid for the ratable account of the Lenders based on their respective *Pro Rata* Share of the Advances giving rise thereto, (ii) each termination or reduction of the amount of the Revolving Commitments shall be applied to the respective Revolving Commitments of the Lenders, *pro rata*, according to the amounts of their respective Revolving Commitments, (iii) each Advance shall be allocated *pro rata* among the Lenders according to the amounts of their respective Revolving Commitments at the time of such Advance, and (iv) each payment or prepayment of principal or payment of interest shall be made for account of the Lenders *pro rata* in accordance with each such Lender's *Pro Rata* Share of the unpaid principal amount of the Advances.

(d) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on or fees with respect to any of the Advances or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of its *Pro Rata* Share of Advances or participants in LC Disbursements and accrued interest thereon then due than the proportion it would have

received had such payment been made in accordance with Section 8.01(c), then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the LC Disbursements or participations in the Advances funded by other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders in accordance with Section 8.01(c); provided, that, (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this Section 2.12(d) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Advances to any assignee or participant, other than to the Borrower or any Affiliate thereof (as to which the provisions of this Section 2.12(d) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Governmental Rules, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

Section 2.13 Termination of Revolving Commitment Period. Without in any way limiting the other remedies provided in Article IX, upon the occurrence and during the continuance of an Event of Default the Administrative Agent may, in its sole discretion, and upon written notice to the Borrower, terminate the Revolving Commitment Period and accordingly the right of the Borrower to receive Advances hereunder.

Section 2.14 Correction of Errors. If any party hereto discovers any prepayments not properly credited, such party shall give prompt notice to the other parties hereto, and the party that shall have benefited from such error shall promptly remit to the other, by wire transfer of immediately available funds, the amount of such error with no interest thereon.

Section 2.15 Collateral Administration.

(a) Borrower and Parent, as applicable, hereby agree to deliver to Custodian, on or prior to the applicable Transfer Date, for each Vehicle relating to the Financed Vehicle that is acquired by Borrower on such Transfer Date the (i) original Vehicle Title (to the extent required by the Approved Country of Destination) and (ii) an Acceptable Bill of Lading for each such Vehicle. All original documents constituting Collateral shall, regardless of their location, be held by the Custodian for the benefit of the Administrative Agent and shall be deemed to be under Administrative Agent's sole dominion, possession and control.

(b) With respect to any Purchase Agreement evidenced by an electronic record that is a transferrable record under applicable law, Borrower shall deliver to Administrative Agent control of such transferable electronic record in accordance with applicable law (to ensure, among other things, that Administrative Agent has a first priority perfected Lien in such Collateral), which shall be delivered, at Borrower's expense, to Administrative Agent at its address as set forth herein, or as otherwise specified by Administrative Agent and, except as otherwise expressly provided herein to the contrary, held in Administrative Agent's possession, custody, and control until all of the Obligations have been fully satisfied or Administrative Agent expressly agree to release such documents. Alternatively, Administrative Agent, in its sole discretion, may elect for any other agent to accept delivery of and maintain possession, custody, and control of all such documents and any instruments on behalf of Administrative Agent during such period of time. Borrower shall identify (or cause any applicable servicing agent to identify) on the related electronic record the pledge of such electronic record by Borrower to Administrative Agent.

Section 2.16 Letters of Credit

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request any Applicant, as the applicant thereof, to request Letters of Credit denominated in Dollars for the support of Borrower's and its Affiliates' obligations in connection with the acquisition of Financed Vehicles, in a form reasonably acceptable to such Applicant, at any time and from time to time prior to the Revolving Commitment Period, and such Applicant may, but shall have no obligation, to request the issuance of such requested Letters of Credit pursuant to this Agreement.

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Borrower shall hand deliver (or transmit through other means which have been approved by the respective Applicant) to an Applicant selected by it and to the Administrative Agent (reasonably in advance of the requested date of issuance, amendment or extension, but in any event no less than four (4) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof, and such other information as shall be necessary to prepare, amend or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the Applicant shall have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or shall submit a letter of credit application, in each case, as required by the respective Issuing Bank (each, a "Letter of Credit Agreement"). A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) the aggregate LC Exposure shall not exceed the LC Sublimit, (ii) no Lender's Revolving Exposure shall exceed its Revolving Commitment and (iii) the Aggregate Revolving Exposure shall not exceed the lesser of the aggregate Revolving Commitments and the Borrowing Base. Notwithstanding the foregoing or anything to the contrary contained herein, no Applicant shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Applicant's Applicant Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower may from time to time request that an Applicant issue Letters of Credit in excess of its individual Applicant Sublimit in effect at the time of such request, and each Applicant agrees to consider any such request in good faith. Any Letter of Credit so issued by an Applicant in excess of its individual Applicant Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of the Credit Agreement, and shall not affect the Applicant Sublimit of any other Applicant, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.16(b).

An Applicant shall not be under any obligation to apply for any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Applicant from applying for such Letter of Credit, or any Requirement of Law relating to such Applicant or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Applicant shall prohibit, or request that such Applicant refrain from, the application for letters of credit generally or such Letter of Credit in particular or shall impose upon such Applicant with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Applicant is not otherwise compensated hereunder) not in effect on the Amendment Effective Date, or shall impose upon such Applicant any unreimbursed loss, cost or expense which was not

applicable on the Amendment Effective Date and which such Applicant in good faith deems material to it, or

(ii) the application for such Letter of Credit would violate one or more policies of such Applicant.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the applicable Applicant to the beneficiary thereof) no later than the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration thereof, including, without limitation, any automatic renewal provision, one year after such extension) and (ii) the date that is five Business Days prior to the Revolving Credit Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Applicant or the Lenders, such Applicant hereby grants to each Lender, and each Lender hereby acquires from such Applicant, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the respective Applicant, such Lender's Applicable Percentage of each LC Disbursement made by such Applicant and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason, including after the Maturity Date. Each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Revolving Commitments.

(e) Reimbursement. If an Applicant shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 11:00 a.m., New York time, on (i) the Business Day that the Borrower receives notice of such LC Disbursement, if such notice is received prior to 9:00 a.m., New York time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is received after 9:00 a.m., New York time, on the day of receipt. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof, and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.04 with respect to Advances made by such Lender (and Section 2.04 shall apply, mutatis mutandis, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the respective Applicant the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the respective Applicant or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Applicant, then to such Lenders and such Applicant, as their interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse an Applicant for any LC Disbursement (other than the funding of the Loans as contemplated above) shall not constitute an Advance and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be

performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the respective Applicant under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor any Applicant, or any of their respective Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the respective Applicant; provided that the foregoing shall not be construed to excuse an Applicant from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Applicant's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Applicant (as finally determined by a court of competent jurisdiction), such Applicant shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Applicant may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit; provided the parties hereto further recognize that Applicant's determination herein shall not be conclusive and Issuing Bank shall make the sole determination whether to accept and make payment upon any Letter of Credit without recourse to Applicant or any Lender.

(g) Disbursement Procedures. The Applicant shall cause its lender for any Letter of Credit to, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Applicant shall cause its lender to promptly after such examination notify Applicant and Applicant shall notify the Administrative Agent and the Borrower by telephone (confirmed by in writing as permitted herein) of such demand for payment if such Applicant has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Applicant and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Applicant for any Letter of Credit shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to the Loans and such interest shall be due and payable on the date when such reimbursement is due. Interest accrued pursuant to this paragraph shall be for the account of such Applicant, except that interest accrued on and after the date of payment by any Lender

pursuant to paragraph (e) of this Section to reimburse such Applicant for such LC Disbursement shall be for the account of such Lender to the extent of such payment.

(i) [Reserved].

(j) Cash Collateralization. If any Event of Default shall occur and be continuing or if Issuing Bank shall require cash collateralization pursuant to the terms of its Letter of Credit Agreement, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Advances has been accelerated, Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. The Borrower also shall deposit cash collateral in accordance with this paragraph as and to the extent required by Sections 2.07(b). Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remains outstanding after the expiration date specified in said paragraph (c), the Borrower shall immediately deposit in the LC Collateral Account an amount in cash equal to 105% of such LC Exposure as of such date plus any accrued and unpaid interest thereon. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrower hereby grants the Administrative Agent a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse each Applicant for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Advances has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure), be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Administrative Agent.

(k) Applicant Reports to the Administrative Agent. Unless otherwise agreed by the Administrative Agent, Applicant shall, in addition to its notification obligations set forth elsewhere in this Section, report in writing to the Administrative Agent (i) periodic activity (for such period or recurrent periods as shall be requested by the Administrative Agent) in respect of Letters of Credit issued by such Applicant, including all issuances, extensions and amendments, all expirations and cancelations and all disbursements and reimbursements, (ii) reasonably prior to the time that such Applicant applies for issuance, amends or extends any Letter of Credit, the date of such issuance, amendment or extension, and the stated amount of the Letters of Credit issued, amended or extended by it and outstanding after giving effect to such issuance, amendment or extension (and whether the amounts thereof shall have changed), (iii) on each Business Day on which such Applicant makes any LC Disbursement, the date and amount of such LC Disbursement, (iv) on any Business Day on which the Borrower fails to reimburse an LC Disbursement required to be reimbursed to such Applicant on such day, the date of such failure and the

amount of such LC Disbursement, and (v) on any other Business Day, such other information as the Administrative Agent shall reasonably request as to the Letters of Credit issued by such Applicant.

(l) Letters of Credit Issued for Account of Affiliates. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, an Affiliate of Borrower, or states that an Affiliate of Borrower is the "account party," "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the applicable Applicant (whether arising by contract, at law, in equity or otherwise) against such Affiliate in respect of such Letter of Credit, the Borrower (i) shall reimburse, indemnify and compensate the applicable Applicant hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of the Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Affiliate in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of such Letters of Credit for its Affiliates inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Affiliates.

(m) Letters of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to its participations in each outstanding Letter of Credit, which shall accrue on the daily maximum amount then available to be drawn under such Letter of Credit at the same Applicable Rate used to determine the interest rate applicable to Loans , during the period from and including the Amendment Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to Applicant for its own account a fronting fee with respect to each Letter of Credit applied for by such Applicant, which shall accrue at the rate or rates per annum separately agreed upon between the Borrower and such Applicant on the daily maximum amount then available to be drawn under such Letter of Credit, during the period from and including the Amendment Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure with respect to Letters of Credit applied for by such Applicant, as well as such Issuing Bank's standard fees and commissions with respect to the issuance, amendment or extension of any Letter of Credit and other processing fees, and other standard costs and charges, of such Issuing Bank relating to Letters of Credit as from time to time in effect. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the fifteenth (15th) Business Day following such last day, commencing on the first such date to occur after the Amendment Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to Applicant pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01 Representations and Warranties of the Loan Parties. Except as set forth in the Disclosure Schedule attached hereto as Schedule 3.1, the Loan Parties hereby, jointly and severally, make the following representations and warranties to the Administrative Agent, Applicant and each Lender, as of the Closing Date and as of the date of each Advance, and the Lenders shall be deemed to have relied on such representations and warranties in making each Advance on each Credit Extension Date:

(a) Organization and Qualification. Each of the Loan Parties has been duly organized

and is validly existing and in good standing under its jurisdiction of organization, with requisite power and authority to own its properties and to transact the business in which it is now engaged, including to enter into and perform its obligations under each Basic Document to which it is a party, and is duly qualified to do business and is in good standing (or is exempt from such requirements) in each State of the United States where the nature of its business requires it to be so qualified and the failure to be so qualified and in good standing could reasonably be expected to have a Material Adverse Effect.

(b) No Conflict. The execution, delivery and performance by the Loan Parties, as applicable, of their respective obligations under each Basic Document to which it is a party and the consummation of the transactions therein contemplated will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than any Lien created by the Basic Documents) upon any of the property or assets of the Loan Parties pursuant to the terms of, any of its organizational documents or any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it or any Subsidiary of it is bound or to which any of its property or assets is subject, nor will such action result in any violation of the provisions of its organizational documents or any Governmental Rule applicable to the Loan Parties or any of their properties.

(c) Authorization and Enforceability. Each of the Basic Documents to which the Loan Parties, as applicable, are a party has been duly authorized, executed and delivered by the Loan Parties, as applicable, and (assuming due authorization, execution and delivery by each other party thereto) is a valid and legally binding obligation of the Loan Parties, as applicable, enforceable against the Loan Parties, as applicable, in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(d) No Violation. None of the Loan Parties, is in violation of its organizational documents or in default under any agreement, indenture or instrument to which it is a party. None of the Loan Parties is in violation of any Governmental Rule of any Governmental Authority having jurisdiction.

(e) Governmental Action. No Governmental Action (other than has been obtained, waived or satisfied) is required for (i) the execution, delivery and performance by the Loan Parties, or compliance by the Loan Parties with, any of the Basic Documents to which a Loan Party is a party, (ii) the purchase or sale of Vehicles by Parent or the purchase of Financed Vehicles by Borrower, or (iii) the consummation of the transactions required of a Loan Party by any Basic Document to which a Loan Party, is a party, except such as shall have been obtained before the date hereof, other than the filing or recording of financing statements, instruments of assignment and other similar documents necessary in connection with the transfer of Financed Vehicles to the Borrower and the perfection of the security interest created under the Basic Documents.

(f) Licenses. The Loan Parties possess the material licenses, certificates, authorities or permits issued by its respective state, federal or foreign regulatory agencies or bodies necessary to conduct the business now operated by it, and has not received any notice of proceedings relating to the revocation or modification of any such license, certificate, authority or permit.

(g) Litigation. There are no actions or proceedings against, or investigations of, any Loan Party currently pending with regard to which such person has received service of process and

no action or proceeding against, or investigation of such person is, to the knowledge of any such Person, threatened or otherwise pending before any Governmental Authority that (i) would prohibit its entering into any of the Basic Documents to which it is a party or render the Advances invalid, (ii) seeks to prevent the making of the Advances or the consummation of any of the transactions contemplated by any of the Basic Documents to which it is a party, (iii) would prohibit or materially and adversely affect the performance by such Person of its obligations under, or the validity or enforceability of, any of the Basic Documents to which it is a party, (iv) that could reasonably be expected to have a Material Adverse Effect, or (v) seeking to affect adversely the income tax treatment of the Advances.

(h) Investment Company Act. None of the Loan Parties are or under the "Control" of, and neither the making of an Advance nor the activities of the Loan Parties pursuant to the Basic Documents shall require the Loan Parties to register as, an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended.

(i) No Insolvency Proceeding. No order for relief under the Bankruptcy Code (or any similar insolvency proceeding) has been entered with respect to any Loan Party.

(j) Ownership of Financed Vehicles. Upon the conveyance to Borrower of a Financed Vehicle pursuant to the terms of the Third Tier Purchase Agreement, the Borrower shall have good and valid title to, and the Borrower shall be the sole owner of, such Financed Vehicle, free and clear of any Liens other than Permitted Liens. The Administrative Agent has a first-priority perfected Lien in each such Financed Vehicle free and clear of any Liens other than Permitted Liens. The Borrower acquired ownership of each of such Financed Vehicle from Parent in good faith, without notice of any adverse claim other than Permitted Liens.

(k) Disclosure. None of the Basic Documents to which any of the Loan Parties is a party, nor any certificate, statement, report or other document prepared by a Loan Party and furnished or to be furnished by it pursuant to any of the Basic Documents to which it is a party or in connection with the transactions contemplated thereby, contains any untrue statement of fact or omits to state a fact necessary to make the statements contained herein or therein not misleading.

(l) Brokers. Except as previously disclosed to Administrative Agent in writing, neither of the Loan Parties has dealt with any broker or agent or other Person who might be entitled to a fee, commission or compensation in connection with the transactions contemplated by this Agreement or any of the other Basic Documents.

(m) Chief Executive Offices. The principal place of business and chief executive offices of the Borrower is located at 5053 E Court ST N STE G, Burton, Michigan 48509-1542 or, with the consent of the Administrative Agent, such other address as shall be designated by the Borrower, as applicable, in a written notice to the other parties hereto.

(n) Information. The information provided pursuant to Section 5.01 will, at the date thereof, be true and correct in all material respects and does not contain any untrue statement of material fact or omit to state a fact necessary in order to make the statements made therein and herein, in the light of the circumstances under which they were made, not misleading.

(o) Use of Proceeds. Proceeds of any Letter of Credit or Advance made hereunder will not be used (i) for a purpose that violates or would be inconsistent with Section 5.09 or Regulations T, U or X promulgated by the Board of Governors of the Federal Reserve System from time to time, (ii) to acquire any security in any transaction in violation of Section 13 or 14 of the

Securities Exchange Act of 1934, (iii) to directly or indirectly fund any trade, business or other activity with a Sanctioned Person, or activity in a Sanctioned Country, or (iv) or in a manner that would violate or cause the Administrative Agent, Applicant, Lenders, or Borrower to violate any Anti-Terrorism Laws, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions and Export Control Laws.

(p) Citizenship. The Borrower is currently a "citizen of the United States" as defined in Section 40102(a)(15) of Title 49 of the United States Code, as amended, and shall maintain such citizenship status until all of the Obligations have been satisfied in full.

(q) International Trade Compliance. None of the Loan Parties or their respective officers, directors, employees, Affiliates or, to the knowledge of the Loan Parties, agents or third-party representatives are currently or have in the last five (5) years: (i) been (A) a Sanctioned Person; (B) operating in, organized in, conducting business with, or otherwise engaging in dealings with or for the benefit of any Sanctioned Person or in or for the benefit of any Sanctioned Country without U.S. authorization; or (C) otherwise in violation of any Sanctions and Export Control Laws; or (ii) made any unlawful payment or given, offered, promised or authorized or agreed to give, any money or thing of value, directly or indirectly, to any Governmental Authority or other Person in violation of any Anti-Corruption Laws.

(r) Transferred Assets. With respect to each Financed Vehicle purchased by Borrower with the proceeds of an Advance or which is otherwise comprising a portion of the Collateral, for the benefit of Administrative Agent and Lenders, as of the Transfer Date applicable thereto and with respect to such Financed Vehicle, that:

(i) Eligibility. Each such Financed Vehicle constitutes an Eligible Asset.

(ii) Lien of Administrative Agent. Each such Financed Vehicle has been subject to a Grant in favor of the Administrative Agent for the benefit of the Lenders and the Administrative Agent of a first-priority perfected security interest in each case free and clear of any other Lien other than Permitted Liens.

(iii) Payments to Servicer Account. The End Buyer party to each Fourth Tier Purchase Agreement shall have been directed by the Applicable Seller to make all payments directly to the Servicer Account.

(iv) Compliance with Representations, Etc. Each such Financed Vehicle complies in all material respects (or, if qualified by materiality or reference to Material Adverse Effect, in all respects) with the representations and warranties made by the Loan Parties hereunder and all information with respect to such Financed Vehicle furnished to Administrative Agent and/or any Lender hereunder is true and correct in all material respects.

(v) Due Diligence; No Impairment, Etc. The Applicable Purchaser and Borrower (i) have completed to its satisfaction, in accordance with the Applicable Operating Procedures, a due diligence audit and collateral assessment with respect to such Financed Vehicles and (ii) have done nothing to impair the rights of the Administrative Agent or the Lenders with respect to such Financed Vehicles, or any collections, income or Recoveries therefrom.

(vi) True and Correct Information. All information, reports, exhibits,

schedules or certificates of the Loan Parties or any of their respective officers to be furnished to Administrative Agent and/or any Lender hereunder and during Administrative Agent's and/or any such Lender's diligence of the Loan Parties are true and complete in all material respects and do not omit to disclose any material facts necessary to make the statements therein, in light of the circumstances in which they are made, not misleading in any material respect.

(vii) Freight Forwarders. Each Eligible NVOCC has executed a Freight Forwarder Agreement that is in compliance with all Department of Transportation and U.S. Customs and Border Protection requirements.

(s) ERISA.

(i) The Borrower and its ERISA Affiliates do not maintain or contribute to any Plan;

(ii) None of the Loan Parties is an employee benefit plan subject to Title I of ERISA, a "plan" as defined in Section 4975(e)(1) of the Code and subject to 4975 of the Code, or a governmental plan, church plan, or a Foreign Plan that is subject to federal, state, local or non-U.S. laws substantially similar in form or application to Section 406 of ERISA or Section 4975 of the Code ("Similar Laws");

(iii) None of the assets of any Loan Party constitute or will constitute "plan assets" within the meaning of U.S. Department of Labor Section 2510.3-101, as amended by Section 3(42) of ERISA; and

(iv) The transactions contemplated by this Agreement will not cause a non-exempt prohibited transaction under Section 406 of ERISA, Section 4975 of the Code or a violation of any Similar Laws.

Section 3.02 Taxes, Etc.

(a) The Loan Parties represent and warrant that any taxes, fees and other charges of Governmental Authorities applicable to any of the Loan Parties, except for franchise or income taxes, in connection with the execution, delivery and performance by the Loan Parties of each Basic Document to which it is a party, the making of the Advances, LC Disbursements or otherwise applicable to either of the Loan Parties have been paid or will be paid by the Loan Parties, as applicable, at or prior to the Closing Date or the date of each Advance, as applicable, to the extent then due.

(b) Each of TX OPS Canada and Davidson Motors is duly registered under subdivision V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax with registration numbers 742208085RT0001 and 715294286RT0001, respectively. All input tax credits claimed by either TX OPS Canada and Davidson Motors have been properly and correctly calculated and documented in accordance with the *Excise Tax Act* (Canada) and applicable provincial laws and the regulations thereunder.

Section 3.03 Financial Condition. Each of the Loan Parties represents and warrants as to itself only, and not as to the other, that on the date hereof and on the date of each Advance:

(a) it is not subject to a Bankruptcy Event and, has no reason to believe that its insolvency is imminent; and

(b) (i) the value of each Loan Party's assets (assuming the Fair Value of the Financed Vehicles then held by any Loan Party), will exceed the debts and liabilities, subordinated, contingent or otherwise, of such Loan Party, (ii) each Loan Party will be able to pay their debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities mature, (iii) no Loan Party will have unreasonably small capital with which to conduct the business in which they are engaged as such business is now conducted and is proposed to be conducted following the Closing Date and, (iv) no Loan Party will be rendered insolvent by the execution and delivery of any of the Basic Documents to which they are a party or the assumption of any of their obligations thereunder.

ARTICLE IV

CONDITIONS

Section 4.01 Closing Date. The obligations of the Lenders to make Advances and the Applicant to obtain Letters of Credit hereunder shall not become effective until the date on which the Administrative Agent shall have received each of the following documents, each of which shall be satisfactory to the Administrative Agent in its Permitted Discretion (and to the extent specified below, to each Lender in its Permitted Discretion) in form and substance (or such condition shall have been waived in accordance with Section 11.02):

(a) Documents. A duly executed counterpart of each of the Basic Documents (other than the Basic Documents referenced in Section 4.02(o) below), and each and every document or certification delivered by any party in connection with the execution of any of the Basic Documents, and all Schedules and Exhibits thereto and each such document shall be in full force and effect.

(b) Officer's Certificate. An officer's certificate from an Authorized Person of Borrower, dated the Closing Date, (i) that all the terms, covenants, agreements and conditions of this Agreement and each of the other Basic Documents to be complied with and performed by each Loan Party on or before the Closing Date have been complied with and performed in all material respects, (ii) that each of the representations and warranties of the Loan Parties made in this Agreement and each of the other Basic Documents are true and correct in all material respects as of the Closing Date (except to the extent they expressly relate to an earlier or later time), and (iii) that no Default or Event of Default shall have occurred and be continuing.

(c) Organizational Documents. Such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Loan Party (other than Techlantic), the authorization of the transactions contemplated by each of the Basic Documents to which they are a party and any other material legal matters relating to a Loan Party, this Agreement or such transactions which shall include a duly completed IRS Form W-9, or other applicable tax form.

(d) Opinions of Counsel. Counsel to Borrower shall have delivered to the Administrative Agent favorable opinions with respect to corporate, enforceability, perfection, true sale, non-consolidation, and other matters (as reasonably requested by the Administrative Agent) dated as of the Closing Date.

(e) Insurance. Certified copies of the property and liability insurance policies of Borrower, or certificates evidencing the same, together with additional insured and lender loss

payable endorsements naming Administrative Agent as a co-insured.

(f) Approvals and Consents. Copies of all Governmental Actions of all Governmental Authorities required with respect to the transactions contemplated by the Basic Documents and the documents related thereto.

(g) Diligence Review. Administrative Agent shall have completed its review of the Collateral and the management and financial performance of the Loan Parties, the results of which shall be satisfactory to Administrative Agent in its sole and absolute discretion.

(h) Compliance Review. Administrative Agent shall be satisfied that each Loan Party and each Financed Vehicle is in compliance with all applicable Governmental Rules in its sole and absolute discretion.

(i) Lien Searches. Administrative Agent shall be satisfied, in its Permitted Discretion, of the results of customary UCC and other lien searches on the Loan Parties.

(j) Accounts. Evidence that the Collection Account, Canadian Collection Account and Operating Account have been established in accordance with the terms hereof.

(k) Other Documents. Such other opinions, information, certificates and documents as the Administrative Agent or Applicant may reasonably request.

(l) No Material Adverse Effect. There shall exist no fact, condition or circumstance, which, with the passage of time, the giving of notice or both, could reasonably be expected to result in a Material Adverse Effect.

(m) Know Your Customer. The Administrative Agent and the Lenders shall have received a properly completed and duly executed IRS Form W-9 (or other applicable tax form) from Borrower and all other documentation and other information required by bank regulatory authorities or other Governmental Authorities in connection with the transactions contemplated by the Basic Documents, including, without limitation, under applicable "know your customer" and other regulatory rules and regulations (including but not limited to the USA PATRIOT Act).

The obligation of each Lender to make its initial extension of credit hereunder is also subject to the payment by the Borrower of such fees as the Borrower shall have agreed to pay to any Lender or the Administrative Agent in connection herewith, including the reasonable fees and expenses of counsel to the Administrative Agent, in connection with the negotiation, preparation, execution and delivery of this Agreement and the other Basic Documents and the extensions of credit hereunder (to the extent that reasonably detailed statements for such fees and expenses have been delivered to the Borrower). The Administrative Agent shall notify the Borrower and the Lenders of the Closing Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Advances hereunder shall not become effective unless each of the foregoing conditions is satisfied (or waived pursuant to Section 11.02).

Section 4.02 Each Credit Extension Date. The obligation of each Lender to make its *Pro Rata* Share of any Advance on any Credit Extension Date, including with respect to any Advance made on the Closing Date, is additionally subject to the satisfaction of the following conditions:

(a) by 1:00 p.m., New York time, on each related proposed Credit Extension Date, the Borrower shall have given notice to the Administrative Agent of such proposed upcoming

Credit Extension Date and shall have provided in such notice a specification of any Financed Vehicles to be transferred on such Credit Extension Date, including the Purchase Price and End Buyer Purchase Price of each Financed Vehicle;

(b) each of the representations and warranties of the Loan Parties made in this Agreement and each of the other Basic Documents shall be true and correct in all material respects on and as of such Credit Extension Date (except to the extent they expressly relate to an earlier time), including, without limitation, the representations and warranties set forth in Section 3.01 with respect to the Eligible Assets;

(c) at the time of and immediately after giving effect to such Advance, no Default, Event of Default, Servicer Default or Level Two Regulatory Event shall have occurred and be continuing, and the Breakage Ratio for the prior calendar month was less than 25%;

(d) the Administrative Agent shall have received (i) an Advance Request, (ii) a Borrowing Base Certificate as of such Credit Extension Date demonstrating that the Advance will not result in an Overadvance, or exceed the maximum amount that may be borrowed pursuant to Section 2.02, (iii) each Vehicle Title with respect to each Financed Vehicle to be transferred on such Transfer Date (to the extent required by the Approved Country of Destination), (iv) the original Acceptable Bill of Lading with respect to each Financed Vehicle to be transferred on such Transfer Date, and (v) such additional information and documentation as may be reasonably requested by the Administrative Agent;

(e) the Administrative Agent shall have received evidence satisfactory to it in its Permitted Discretion (i) of the completion of all recordings, registrations, and filings as may be necessary or desirable, to (a) perfect or evidence the sale and assignment by TX OPS Canada to Parent and from Parent to Borrower, any interest in such Financed Vehicles and the proceeds thereof, (b) perfect or evidence the sale and assignment by Techlantic to Parent and from Parent to Borrower, any interest in such Financed Vehicles and the proceeds thereof, (c) to perfect or evidence Borrower's perfected security interest in the Financed Vehicles purchased in respect of the Third Tier Purchase Agreement and the assignment thereof to Administrative Agent, and (ii) of the Grant of a first-priority, perfected security interest in the Collateral, including such Financed Vehicles and proceeds thereof, in favor of the Administrative Agent, subject to no Liens other than the Liens in favor of the Administrative Agent Granted pursuant to the Security Documents and the Permitted Liens, and (iii) that such Financed Vehicles are Eligible Assets;

(f) a Bankruptcy Event shall not have occurred with respect to the Parent or the Borrower on such proposed Credit Extension Date;

(g) such proposed Credit Extension Date shall be during the Revolving Commitment Period;

(h) each of the Borrower, Parent, and Servicer shall have performed in all material respects all obligations to be performed by it under the Basic Documents to which it is a party on or prior to such Credit Extension Date;

(i) the Borrower shall have taken any action reasonably requested by the Administrative Agent or the Lenders required to maintain the ownership interest of the Borrower in the Collateral and the first-priority, perfected security interest of the Administrative Agent in the Collateral;

(j) with respect to any Financed Vehicle being purchased by Borrower on a proposed Transfer Date, all conditions precedent to Borrower's acquisition of such Financed Vehicle pursuant to the applicable Transfer Documents shall have been fulfilled as of such Transfer Date;

(k) with respect to Financed Vehicles being purchased by Borrower on a proposed Transfer Date, the Administrative Agent shall have received a computer file, hard copy or microfiche list containing a true and complete list of all Financed Vehicles, which shall be in form and substance satisfactory to the Administrative Agent in its Permitted Discretion;

(l) with respect to all Financed Vehicles being purchased by Borrower on a proposed Transfer Date, (i) all copies of Vehicle Titles related thereto shall have been delivered to Custodian (to the extent required by the Approved Country of Destination) and (ii) an Acceptable Bill of Lading for each such Financed Vehicle shall have been delivered to Custodian, in each case, pursuant to the Custodial Agreement, as of such Transfer Date, and Custodian shall issue and deliver to Administrative Agent a Custodian Certificate (without any exceptions noted thereon unless otherwise waived by Administrative Agent) provided for in the Custodial Agreement and in form and substance reasonably acceptable to Administrative Agent, not later than the next Custodian Certificate Delivery Date evidencing delivery of the items required in sub clauses (i) and (ii) of this clause (l); provided that Administrative Agent shall have the right, at any time and in its sole discretion, to require delivery of the Custodian Certificate at least two (2) days prior to any Credit Extension Date;

(m) with respect to each Financed Vehicle purchased in each Purchase Agreement, all Eligible NVOCC's shall have entered into a Freight Forwarder Agreement and shall not be in breach of any Department of Transportation or U.S. Customs and Border Protection compliance requirements or any other requirements of any Governmental Authority;

(n) the Administrative Agent shall have received Control Agreements are effective to provide Administrative Agent with control over each of the Collection and Operating Accounts.

(o) the Administrative Agent shall have received a duly executed counterpart of the Freight Forwarder Agreement with the applicable Eligible NVOCC, and each and every document or certification delivered by any party in connection with the execution of such Freight Forwarder Agreement, and all Schedules and Exhibits thereto and each such document shall be in full force and effect;

(p) prior to the Lenders making any Advances with respect to Techlantic Vehicles, Administrative Agent shall have received each of the following:

(i) a duly executed intercreditor agreement among Administrative Agent, Royal Bank of Canada and Techlantic memorializing their relative rights and obligations with respect to this Agreement and the credit facility provided by Royal Bank of Canada to Techlantic, in form and substance acceptable to Administrative Agent in its sole discretion;

(ii) a duly executed copy of the Guaranty and Security Agreement referenced in clause (ii) of the definition thereof in form and substance satisfactory to Administrative Agent;

(iii) a duly executed copy of the Collateral Assignment of Purchase Agreement referenced in clause (iii) of the definition thereof in form and substance satisfactory to Administrative Agent;

(iv) Administrative Agent shall be satisfied, in its Permitted Discretion, of the results of customary UCC, PPSA and other lien searches of Techlantic;

(v) such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of Techlantic, the authorization of the transactions contemplated by each of the Basic Documents to which Techlantic is a party and any other material legal matters relating to Techlantic, this Agreement or such transactions which shall include a duly completed IRS Form W-8BEN-e, or other applicable tax form;

(vi) counsel to Borrower shall have delivered to the Administrative Agent favorable opinions with respect to corporate, enforceability, perfection, and other matters (as reasonably requested by the Administrative Agent) relating to Techlantic; and

(vii) certified copies of the marine cargo insurance policy of Techlantic, or certificates evidencing the same, together with additional insured and lender loss payable endorsements naming Administrative Agent as a co-insured; and

(q) all other conditions precedent to the Lenders' making of an Advance, as determined from time to time by Administrative Agent in its Permitted Discretion, shall have been fulfilled as of such Credit Extension Date.

Each Advance Request and each issuance, amendment or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by each Loan Party on the date thereof and on the date of the funding of the related Advance, as to the matters specified in the foregoing clauses (a) through (l). The Administrative Agent shall determine, in its Permitted Discretion, whether each of the above conditions has been satisfied and its determination shall be binding on the parties hereto.

ARTICLE V

AFFIRMATIVE COVENANTS

Until the Revolving Commitments have expired or been terminated and the principal of and interest on the Advances and other Obligations payable hereunder shall have been paid in full in cash, each Loan Party (as applicable), each as to itself only and not as to any other, covenants and agrees with the Administrative Agent, Applicant and the Lenders that:

Section 5.01 Statements as to Compliance. Parent will deliver to the Administrative Agent, Applicant and each Lender, within 150 days after the end of each fiscal year of the Borrower, an officer's certificate stating, as to the Authorized Person signing such officer's certificate, that:

(a) a review of the activities of each Loan Party during such year and of each such party's performance under this Agreement and each of the other Basic Documents has been performed under such Authorized Person's supervision; and

(b) to the best of such Authorized Person's knowledge, based on such review, each Loan Party has complied in all material respects with all conditions and covenants applicable to

such Person under this Agreement and the other Basic Documents throughout such year and that no Default has occurred and is continuing, or, if there has been a default in its compliance with any such condition or covenant, or the occurrence of any Default, specifying each such Default known to such Authorized Person and the nature and status thereof.

Section 5.02 Notices of Certain Events; Information. Each Loan Party, as applicable, will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) Defaults. As soon as possible and in any event within two (2) Business Days after such Loan Party obtains, or reasonably should have obtained, knowledge of the occurrence of a Default or an Event of Default hereunder, or any Servicer Default, or any default or event of default by any party thereto under any Purchase Agreement.

(b) Changes in Address. Promptly and in any event within five (5) Business Days after the occurrence thereof, written notice of a change in address of the chief executive office or place of organization of any Loan Party.

(c) Other Information. Such information (including financial information), documents, records or reports with respect to the Collateral or any Loan Party as the Administrative Agent, on behalf of any Lender, may from time to time reasonably request.

Section 5.03 Existence, Licenses, Etc.

(a) Existence, Rights and Franchises, Insurance, Etc. Subject to Section 5.03(b), each Loan Party will keep in full effect its existence, rights and franchises under the laws of the State of its organization (unless it becomes or any successor hereunder becomes organized under the laws of any other State or of the United States of America, in which case such Person will keep in full effect its existence, rights and franchises under the laws of such other jurisdiction) and will obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, the other Basic Documents to which it is a party and the Collateral. The Borrower shall comply with the covenants contained in its operating agreement, including without limitation, the "special purpose entity" covenants set forth therein. Loan Parties will cause each of its Subsidiaries (that are not Loan Parties) that are a party to any Basic Document to keep in full effect its existence, rights and franchises under the laws of the jurisdiction of its organization and will obtain and preserve its qualification to do business in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of the Basic Documents to which it is a party and the Collateral and in which the failure to obtain or preserve such qualification could reasonably be expected to have a Material Adverse Effect.

(b) Licenses. Each Loan Party shall at all times possess all licenses, certificates, authorities or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct the business now operated by it or as contemplated by the other Basic Documents.

(c) Insurance. Each Loan Party shall keep all of its insurable properties and assets adequately insured against losses, damages and hazards as are customarily insured against by businesses of similar size engaging in similar activities or lines of business or owning similar assets or properties, applicable law and any agreement to which such Loan Party is a party or pursuant to which such Loan Party provides any services; all such insurance policies and coverage levels shall (a) be satisfactory in form and substance to Administrative Agent in its Permitted Discretion, (b)

name Administrative Agent, for the benefit of itself and the other Lenders, as a loss payee or additional insured thereunder, as applicable, and (c) expressly provide that such insurance policies and coverage levels cannot be altered, amended or modified in any manner which is adverse to Administrative Agent and/or Lenders, or canceled or terminated without thirty (30) calendar days prior written notice to Administrative Agent, and that they inure to the benefit of Administrative Agent and Lenders, notwithstanding any action or omission or negligence of or by such Loan Party, or any insured thereunder. .

Section 5.04 Access to Information.

(a) The Loan Parties shall, during regular business hours and with at least ten (10) days (or such lesser time as may be agreed by the Loan Parties) prior written notice to Borrower, permit the Administrative Agent, or its agents or representatives to (i) examine all books, records and other documents (including computer tapes and disks) in the possession or under the control of any Loan Party, its Affiliates, or agents (including but not limited to any Servicer) relating to the Financed Vehicles, the Basic Documents, the Seller, or the End Buyer as may be requested, (ii) visit the offices and property of each such Loan Party, its Affiliates, any Eligible NVOCC or any Servicer for the purpose of examining such materials described in clause (i) above; and (iii) and provide electronic copies of such documents referred to in (i) as are reasonably requested.

(b) The Borrower agrees to pay any and all reasonable and documented costs, fees and expenses actually incurred by the Administrative Agent, its agents and representatives in connection with such examinations, inspections, physical counts and other valuations; provided that so long as no Event of Default has occurred and is continuing, Borrower shall not be liable for reimbursing costs, fees and expenses (i) for more than two (2) examinations, inspections, physical counts or other valuations in any 12-month period (ii) which exceed $30,000 in the aggregate during any 12-month period.

Section 5.05 Ownership and Security Interests; Further Assurances. The Borrower will take all action reasonably necessary to maintain the respective ownership interests of the Borrower in the Fourth Tier Purchase Agreements, the Financed Vehicles and the other items sold by Parent to the Borrower pursuant to Transfer Documents or otherwise acquired (by way of assignment or otherwise) by the Borrower pursuant to any assignee or other conveyance document. The Borrower and Parent, as applicable, will take all action necessary to maintain the Administrative Agent's security interest in the Purchase Agreements, the Financed Vehicles and the other items pledged to the Administrative Agent pursuant to the Security Documents. The Borrower and Parent agree to (and agree to use its best efforts to cause the Servicer to) take any and all acts and to execute any and all further instruments reasonably necessary or requested by the Administrative Agent or any Lender to more fully effect the purposes of this Agreement.

Section 5.06 Covenants. Each Loan Party shall duly observe and perform each of their respective covenants set forth in each of the Basic Documents to which they are parties.

Section 5.07 Performance of Obligations; Servicing of Accounts.

(a) No Adverse Actions. No Loan Party shall take any action (and each Loan Party will use its best commercially reasonable efforts not to permit any action to be taken by others) that would release any Person from any of such Person's covenants or obligations under any instrument or agreement included in the Collateral or that would result in the amendment, hypothecation, subordination, termination or discharge of, or impair the validity or effectiveness of, any such instrument or agreement, except as expressly provided in the Basic Documents or such other instrument or agreement.

(b) Performance by Servicers, Etc. The Borrower may contract with or otherwise obtain the assistance of other Persons to assist it in performing its duties under this Agreement, and any performance of such duties by a Person identified to the Administrative Agent in an officer's certificate from an Authorized Person of the Borrower shall satisfy the obligations of the Borrower. Initially, the Borrower has contracted with the Servicer, pursuant to the Servicing Agreement to assist the Borrower in performing its duties under this Agreement. No Loan Party shall modify in any material respect the Servicing Agreement without the prior written consent of Administrative Agent. The Servicing Agreement and any new Servicing Agreement entered into shall be in form and substance satisfactory to Administrative Agent, in its Permitted Discretion, and accompanied by a multi-party agreement between Borrower, Servicer and Administrative Agent with respect to such Servicing Agreement, in form and substance satisfactory to Administrative Agent in its Permitted Discretion.

(c) Covenants under Agreements. Each Loan Party will punctually perform and observe all of its obligations and agreements contained in the instruments and agreements included in the Collateral. No Loan Party shall waive, amend, modify, supplement or terminate any Purchase Agreement, or any provision thereof, in each case, without the written consent of the Administrative Agent.

(d) Servicer Default. If a Servicer Default shall be continuing due to the failure of the Servicer to perform any of its duties or obligations under the Servicing Agreement or any Basic Document with respect to the Financed Vehicles, the Borrower shall take all reasonable steps and enforce any remedies under any agreement available to it to remedy such failure.

(e) Successor Servicer. Administrative Agent shall approve, in its sole discretion, any termination of the Servicing Agreement and the replacement of Servicer. Notwithstanding anything set forth herein to the contrary, Administrative Agent shall have the right, in its sole discretion at any time following the occurrence and during the continuance of an Event of Default, to terminate the Servicing Agreement and to replace Servicer with the Backup Servicer or any other Person selected by Administrative Agent in its sole discretion. Borrower shall be required to provide (and to cause to be provided) all servicing reports and other information related to the Financed Vehicles in computer "data tape" form to such replacement Servicer and Administrative Agent and shall cause all of Servicer's and Borrower's files related to any of the Collateral to be in a form that can be transferred electronically to the replacement Servicer upon request. The Borrower shall cooperate with Administrative Agent and any such replacement Servicer in connection with any such transfer of servicing, and the Borrower shall be responsible for all costs, fees and expenses relating to any such change in servicing of the Collateral as well as any fees and expenses due and owing to any such replacement Servicer.

(f) Amendments of Collateral Documents; Waivers. Without derogating from the absolute nature of the assignment granted to the Administrative Agent under the Security Documents or the rights of the Administrative Agent hereunder and thereunder, the Loan Parties agree that they will not, without the prior written consent of the Administrative Agent, amend, modify, waive, supplement, terminate or surrender, or agree to any amendment, modification, supplement, termination, waiver or surrender of, the terms of any Collateral, that no such amendment shall increase or reduce in any manner the amount of, or accelerate or delay the timing of, distributions that are required to be made for the benefit of the Lenders. If any such amendment, modification, supplement or waiver shall so be consented to by the Administrative Agent, the Applicant and the Borrower agrees, promptly following a request by the Administrative Agent to do so, to execute and deliver, each in its own name and at its own expense, such agreements, instruments, consents and other documents as the Administrative Agent may deem necessary or

appropriate in the circumstances.

Section 5.08 Treatment of Advances as Debt for All Purposes. The Borrower shall treat the Advances as indebtedness for all purposes.

Section 5.09 Use of Proceeds.

(a) Each of the Loan Parties hereby authorize the Administrative Agent to pay the proceeds of the Letters of Credit and the Advances (excluding Advances made pursuant Section 2.02 and any Protective Advance) and under this Agreement directly to TX OPS Canada to finance the purchase of the Eligible Assets in accordance with the terms hereof and the Transfer Documents. The Borrower shall use any amounts received pursuant to Section 8.01(c)(v) to pay costs and expenses associated with the Basic Documents. Each Loan Party hereby agrees all Collections shall be held by such Loan Party (or such Loan Party shall cause the Servicer, if the Servicer is an Affiliate of a Loan Party, to hold such products or proceeds) in trust for the benefit of the Lenders until the payment in full of all financial obligations of the Loan Parties under this Agreement and the termination of the Revolving Commitments.

(b) The Borrower will not request any Advances or Letters of Credit, and the Borrower shall not use, and shall procure that its Affiliates and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Advances or Letter of Credit (i) in furtherance of any offer, payment, transaction, promise to pay, or authorization of the payment or giving of money, or anything else of value, to or with any Person where there is a reasonable suspicion (whether on the part of any of TX OPS Canada, the Loan Parties, any of the Trade X Group of Companies, or in each case any of their directors, officers, employees or agents) of any violation of any Anti-Corruption Laws, Anti-Money Laundering Laws, or the procedures implemented by the Loan Parties (or TX OPS Canada or any of the Trade X Group of Companies) designed to secure compliance with Anti-Corruption Laws and/or Anti-Money Laundering Laws; (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(c) The Loan Parties agree to notify the Administrative Agent if any of the Loan Parties or TX Ops Canada or the Trade X Group of Companies (or any of their directors, officers, employees or agents) are or become suspicious that any End Buyer, Seller, customer, or counterparty has engaged or may engage in any activity, transaction or arrangement involving the acquisition, use or possession of funds or other property which constitutes or represents, directly or indirectly and whether in whole or in part, any Person's benefit from criminal conduct

Section 5.10 Further Assurances. The Borrower will take (and will use its best efforts to cause the Servicer to take) such action from time to time as shall be requested by the Administrative Agent to effectuate the purposes and objectives of this Agreement. Without limiting the generality of the foregoing, the Borrower and Parent, as applicable, will (and agree to cause the Servicer, if the Servicer is an Affiliate of the Borrower, to) from time to time execute and deliver all such supplements and amendments hereto and all such financing statements, continuation statements, instruments of further assurance and other instruments, and will take such other action necessary or advisable to:

(a) provide further assurance with respect to the Grant of all or any portion of the Collateral;

(b) maintain or preserve the lien and security interest (and the priority thereof) of this Agreement or carry out more effectively the purposes hereof;

(c) perfect, publish notice of or protect the validity of any Grant made or to be made by the Security Documents;

(d) enforce any rights with respect to the Collateral; and

(e) preserve and defend title to the Collateral and the rights of the Administrative Agent, Applicant and the Lenders in such Collateral against the claims of all Persons and parties.

Section 5.11 Financial Statements and Projections. The Borrower and Parent shall furnish or cause to be furnished to the Administrative Agent, Applicant and the Lenders the following financial information:

(a) as soon as available and in any event within one hundred fifty (150) calendar days after the end of each fiscal year of Borrower beginning with the fiscal year ending December 31, 2021, and thereafter, audited consolidated balance sheets and statements of income, cash flows and changes in shareholders' equity (and, separately stated, Borrower's unaudited consolidating balance sheets and statements of income) of the Loan Parties as of the end of and for such fiscal year prepared by independent auditors of recognized standing selected by the Loan Parties and reasonably acceptable to Administrative Agent;

(b) as soon as available and in any event within forty-five (45) calendar days after the end of the first three quarters of each fiscal year of Borrower, unaudited consolidated balance sheet and statement of income (and, separately stated, Borrower's unaudited consolidating balance sheets and statements of income) of the Loan Parties as of the end of and for the portion of such fiscal year then ended;

(c) as soon as available and in any event within thirty (30) calendar days after the end of each fiscal month of Borrower, unaudited consolidated balance sheet and statement of income (and, separately stated, Borrower's unaudited consolidating balance sheets and statements of income) of the Loan Parties as of the end of and for the portion of such fiscal year then ended;

(d) as soon as available, but in no event later than thirty (30) calendar days prior to the end of each fiscal year of Borrower, an annual budget or business plan for the next succeeding fiscal year on a monthly basis, including projected balance sheet, and income statement of the Loan Parties, in each case, together with supporting assumptions, as of the end of such fiscal year, and, at the beginning of each fiscal quarter;

(e) the Loan Parties will maintain an administrative back office and cash management system that provides for the reporting, financial and accounting services necessary to perform all obligations under this Agreement. As soon as available, and in any event not later than ten (10) calendar days after the end of each calendar month ending after the Closing Date, Borrower shall furnish to Administrative Agent a report on the performance of each Financed Vehicle and provide an accounting and reconciliation for all cash receipts and disbursements relating to the Financed Vehicles, each in a format acceptable to Administrative Agent in its Permitted Discretion;

(f) as soon as available and in any event within thirty (30) calendar days after the end of each calendar month, Borrower shall furnish to Administrative Agent a report and underlying calculations of Borrower's compliance with the Financial Covenants, in a format acceptable to

Administrative Agent in its Permitted Discretion;

(g) On or prior to each Monday prior to any Payment Date, or, with respect to the final Maturity Date, five (5) Business Days prior to such final Maturity Date, the Borrower shall cause the Servicer to deliver to the Administrative Agent the Servicer Report as to the immediately following Payment Date with regard to the prior calendar week;

(h) Borrower shall furnish on or prior to each Payment Date in a calendar week (unless Borrower has made an Advance Request during such calendar week) a Borrowing Base Certificate, in a format acceptable to Administrative Agent in its Permitted Discretion; and

(i) as soon as available and in any event within fifteen (15) calendar days after the end of each calendar month, Borrower shall furnish to Administrative Agent a report and underlying filings evidencing TX OPS Canada or Davidson Motors', as applicable, application for HST Tax Credits for the calendar month prior to such calendar month (which shall include a copy of the return that claims the HST Tax Credits together with proof of filing of such return);

Each of the financial statements referred to in clauses (a), and (b) above shall have been prepared in accordance with GAAP (subject to year-end adjustments in the case of interim statements). Each of the financial statements and calculations referred to in clauses (a), (b), (d), (e) and (i) above shall be accompanied by a Monthly Compliance Certificate substantially in the form of Exhibit E pursuant to which such financial statements and calculations shall be certified by an Authorized Person of Parent and each of the financial statements and calculations referred to in clause (a) above shall be accompanied by the certifications required pursuant to Section 3.03(c) of the Security Agreement. The consolidating financial statements referred to in clause (a) above shall be accompanied by a statement of the independent auditors for Parent to the effect that such consolidating statements have been subjected to the auditing procedures applied to the audits of the corresponding consolidated financial statements and are fairly stated in all material respects in relation to such consolidated financial statements taken as a whole. The Loan Parties shall promptly furnish or cause to be furnished to the Administrative Agent any other financial information regarding the Loan Parties reasonably requested by the Administrative Agent. The projections and estimates referred to in clause (c) above shall have been prepared in good faith and represent Borrower's best estimate of the matters set forth therein.

Section 5.12 Applicable Operating Procedures and Terms and Conditions; Modifications. The Loan Parties shall not make any material modification to or change the Applicable Operating Procedures or Terms and Conditions without the prior written consent of Administrative Agent, in its Permitted Discretion. In the event that material modifications are made to the Applicable Operating Procedures or Terms and Conditions without Administrative Agent's consent, that will, in any manner, adversely affect the value, enforceability, or collectability of any Eligible Asset, as determined by Administrative Agent in its Permitted Discretion, then Administrative Agent may declare, by notice to Borrower, that the Financed Vehicles that have been modified or purchased by Borrower in reliance upon such unapproved policies and procedures or which, in the Permitted Discretion of Administrative Agent, have been adversely impacted as to the value, enforceability, or collectability of such Financed Vehicles shall, three (3) Business Days after such notice is made (the "Adverse Change Notice Effective Date"), not be Eligible Assets, whereupon, on and after the Adverse Change Notice Effective Date, the applicable Financed Vehicles shall not be Eligible Assets. For the avoidance of doubt, Administrative Agent will not unreasonably impede the Loan Parties from amending the Applicable Operating Procedures or Terms and Conditions to implement more restrictive underwriting or sale policies and procedures.

Section 5.13 Compliance with Organizational Documents. The Borrower hereby covenants and agrees that until this Agreement is terminated in accordance with its terms, it will comply in all material respects with the provisions of its organizational documents in effect from time to time.

Section 5.14 Sales and Other Taxes. Parent and Borrower agree that the defined term "Collections" expressly excludes sales or other Taxes (other than HST Tax Credits), license, title registration and recordation fees, and any other fees, charges or amounts customarily payable relating to the disposition of such Financed Vehicle or item of Collateral, and that all such amounts collected by Parent from any End Buyer, or any other Person in respect of the disposition of such Financed Vehicle or item of Collateral, in respect of the obligations under the Purchase Agreements, or any other agreement, shall be collected by Parent and promptly remitted to the appropriate Governmental Authority when due and payable. For the avoidance of doubt, at no time shall Parent or Borrower permit any money to be deposited in the Collection Account which is to be used to pay sales or other Taxes, license, title registration and recordation fees, and any other fees, charges or amounts customarily payable relating to the disposition of such Financed Vehicle or item of Collateral. All HST Tax Credits claimed by either TX OPS Canada or Davidson Motors will be properly and correctly calculated and documented in accordance with the *Excise Tax Act* (Canada) and applicable provincial laws and the regulations thereunder. Each of TX OPS Canada and Davidson Motors will duly file their applicable returns to claim any HST Tax Credits for a month as soon as possible following the end of such month.

Section 5.15 Prospective Equity Holder. Notwithstanding anything to the contrary contained herein, (a) no transfer of any equity in any Restricted Party shall be made to any Prohibited Person, and (b) in the event any transfer, results in any Person and its Affiliates owning in excess of ten percent (10%) of the ownership interest in a Restricted Party (excluding any Person that is an owner of at least ten percent (10%) of the ownership interest in a Restricted Party as the Closing Date) Borrower shall provide to Administrative Agent, not less than thirty (30) days prior to such transfer, the name and identity of each proposed transferee, together with the names of its controlling principals, the social security number or employee identification number of such transferee and controlling principals, and such transferee's and controlling principal's home address or principal place of business, and home or business telephone number. The intended transferee of any transfer described in clause (b) of this Section 5.15 shall be a Person which otherwise meets Administrative Agent's underwriting criteria (applied in a non-discriminatory manner by Administrative Agent in the use of its sole, but good faith, discretion) to be a borrower/customer of Administrative Agent or is otherwise reasonably acceptable to Administrative Agent (and as to which Administrative Agent has received all information it shall reasonably request to perform its customary "know your customer" procedures), all of the foregoing as reasonably determined by Administrative Agent. In connection with any transfer, Borrower shall pay all fees and costs incurred by Administrative Agent.

Section 5.16 Special Purpose Entity.Borrower has not, and for so long as the Obligations are outstanding, shall not:

(a) engage in any business or activity other than the acquisition and ownership of Financed Vehicles, and activities incidental thereto, provided, that for the avoidance of doubt, Borrower hereby agrees that it shall not originate Financed Vehicles;

(b) acquire or own any material assets other than Financed Vehicles and the other Collateral, and such incidental personal property as may be necessary for the operation of the Financed Vehicles;

(c) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Administrative Agent's consent;

(d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, and qualifications to do business, or without the prior written consent of Administrative Agent, amend, modify, terminate or fail to comply with the provisions of its operating agreement, articles of organization, or other similar organizational documents, as the case may be;

(e) own any Subsidiary or make any investment in, any Person without the consent of Administrative Agent;

(f) commingle its assets with the assets of any of its members, general or limited partners, shareholders, Affiliates, principals or of any other Person;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Obligations;

(h) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due;

(i) fail to maintain its records, books of accounts and bank accounts separate and apart from those of the members, partners, shareholders, principals and Affiliates of Parent and Servicer or any other Person;

(j) other than any Basic Documents or the Transfer Documents and or as otherwise required by the Basic Documents, without the consent of the Administrative Agent, enter into any contract or agreement with any member, general or limited partner, shareholder, principal or Affiliate of Borrower, Servicer or Parent, or any member, general or limited partner, shareholder, principal or Affiliate of any of the foregoing, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general or limited partner, shareholder, principal or Affiliate of Borrower or Parent, or any member, general or limited partner, shareholder or Affiliate of any of the foregoing;

(k) seek the dissolution or winding up in whole, or in part, of Borrower;

(l) fail to correct any known misunderstandings regarding the separate identity of Borrower, as applicable;

(m) hold itself out to be responsible for the debts of another Person;

(n) other than owning Financed Vehicles and other Collateral purchased from Parent pursuant to the Transfer Documents, make or extend any financial accommodations or leases to any third party, including any member, general or limited partner, shareholder, principal or Affiliate of Borrower, Servicer, Parent, or any member, general or limited partner, shareholder, principal or Affiliate of any of the foregoing;

(o) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not (i) to mislead others

as to the identity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any member, general or limited partner, shareholder, principal or Affiliate of Borrower, Servicer or Parent, or any member, general or limited partner, shareholder, principal or Affiliate of any of the foregoing);

(p) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(q) except for invoicing for collections and servicing of Financed Vehicles, share any common logo with or hold itself out as or be considered as a department or division of (i) any general or limited partner, shareholder, principal, member or Affiliate of Borrower, (ii) any Affiliate of a general or limited partner, shareholder, principal or member of Borrower, or (iii) any other Person;

(r) without the unanimous written consent of its directors, managers or managing members, or general or limited partners, as the case may be, and the consent of any independent directors or independent managers required herein, file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors; or

(s) fail at any time from and after the Closing Date to have at least one (1) of its directors or managers being independent directors or managers that is not and has not been for at least five (5) years a director, manager, officer, employee, trade creditor, supplier or shareholder (or spouse, parent, sibling or child of the foregoing) of (or a Person who directly or indirectly controls) (i) Borrower, (ii) any general or limited partner, shareholder, principal, member or Affiliate of Borrower, unless such Person is also a special purpose entity, or (iii) any Affiliate of any general or limited partner, shareholder, principal or member of Borrower, unless such Person is also a special purpose entity.

Section 5.17 Reserve Collateral. Parent hereby covenants and agrees that until this Agreement is terminated in accordance with its terms, Parent will take all action necessary to maintain the respective ownership interests of Parent in the Reserve Collateral, as determined in the Administrative Agent's Permitted Discretion, and in such amounts not less than the Reserve Collateral Amount.

Section 5.18 Rating Agency Requirements. Borrower shall further materially comply with any other customary rating agency (including S&P and Moody's) requirements for a single purpose entity as Administrative Agent may require from time to time at its sole discretion by notice to Borrower.

Section 5.19 Access to Trade X Platform. The Loan Parties shall provide Administrative Agent with sufficient access to the CRM (Customer Retention Management) application to review, evaluate and otherwise access the Purchase Agreements and all other information related to any Financed Vehicles hereunder.

Section 5.20 Export Authorization Requirements. Prior to the export of any Vehicle from the United States or Canada, the Loan Parties shall comply with all applicable laws, rules, and regulations related to the export, export reporting, reexport, import and customs laws and regulations, including, but not limited to, those administered by U.S. Customs and Border Protection, the U.S. Census Bureau, the Canada Border Services Agency and Global Affairs Canada. The Loan Parties shall comply with the advance notice requirements and other export filing requirements applicable to Vehicles, including as set forth in 19 C.F.R. § 192.2, and make Electronic Export Information ("EEI") filings in accordance with the Foreign Trade Regulations at 15 C.F.R. §§ 30.26, 30.37(a).

Section 5.21 International Trade Compliance.

(a) The Loan Parties shall comply with all Anti-Terrorism Laws, Anti-Money Laundering Laws, Anti-Corruption Laws, and Sanctions and Export Control Laws and implement procedures to ensure such compliance, including, but not limited to, conducting third-party screening of its customers and ultimate end-users of the Vehicles.

(b) Prior to any business relationship being commenced or continued between TX OPS Canada (or any of the Trade X Group of Companies, or any of the Loan Parties), and any (i) user of the Trade X Platform, Seller, End Buyer or customer which is classified or treated by any of the Loan Parties (or TX OPS Canada or any of the Trade X Group of Companies) as a high risk customer in accordance with any of their Anti-Money Laundering & Counter Terrorist Financing Policy and/or Anti-Money Laundering & Counter Terrorist Financing Procedures and/or Money Laundering & Terrorist Financing Risk Assessment; or (ii) customer, user of the Trade X Platform, Seller, or End Buyer not located in an Approved Country of Origin or Approved Country of Destination (as applicable), the Borrower must in each case notify the Administrative Agent, which may in its sole discretion decline to approve the aforesaid business relationship with the customer, user of the Trade X Platform, Seller, or End Buyer (as the case may be), in which case the Administrative Agent and Lenders shall not be required to make any Advances under this Agreement.

ARTICLE VI

NEGATIVE COVENANTS

Section 6.01 Negative Covenants of the Loan Parties. Until the Revolving Commitments and Letters of Credit have expired or terminated and the principal of and interest on each Advance, Letter of Credit and all fees and other Obligations payable hereunder have been paid in full in cash, the Loan Parties covenant and agree with the Lenders and the Administrative Agent that they will not, without the prior written consent of Administrative Agent:

(a) except as expressly permitted by the Basic Documents or in the ordinary course of business, sell, transfer, exchange or otherwise dispose of any of its properties or assets, including those included in any part of the Collateral, unless directed to do so by the Administrative Agent on behalf of the Lenders as permitted herein; provided, however, that so long as no Event of Default shall then be continuing or result therefrom (i) Borrower shall be permitted to sell Ineligible Assets (including, without limitation, Defaulted Assets) through the Remarketing Agent from time to time so long as the proceeds of such sale are deposited into the Collection Account for application thereof to repayment of the Obligations as Collections; and (ii) the Loan Parties shall have the right to (A) sell, transfer or otherwise dispose of equipment that is substantially worn, damaged, or obsolete in the ordinary course of business, and (B) the use or transfer of money or cash equivalents in a manner that is not prohibited by the terms of this Agreement or the other Basic Documents.

(b) claim any credit on, or make any deduction from the principal or interest payable in respect of, the Advances (other than amounts properly withheld from such payments under the Code) or assert any claim against any present or former Lender or Administrative Agent by reason of the payment of the taxes levied or assessed upon any part of the Collateral;

(c) allow the Borrower to engage in any business or activity other than as expressly permitted by this Agreement and the other Basic Documents, other than in connection with, or

relating to, the Advances pursuant to this Agreement, or amend this Agreement as in effect on the Closing Date other than in accordance with Article XI;

(d) dissolve or liquidate in whole or in part or merge or consolidate with any other Person;

(e) permit the validity or effectiveness of this Agreement, any other Basic Document or any document or agreement to be impaired, or permit the Liens granted pursuant to the Security Documents to be amended, hypothecated, subordinated, terminated or discharged, or permit any Person to be released from any covenants or obligations hereunder or under any other Basic Document or any document or agreement, except as may expressly be permitted hereby;

(f) except as provided in the Basic Documents, permit any Lien (other than Permitted Liens) to be created on or extend to or otherwise arise upon or burden the Collateral or any part thereof or any interest therein or the proceeds thereof or, except as provided in the Basic Documents, permit any Person other than itself, the Administrative Agent, Applicant and the Lenders to have any right, title or interest in the Collateral;

(g) during the existence of a Default or Event of Default, solely with respect to Borrower, (i) pay any dividend or make any distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, to any owner of a beneficial interest in the Borrower with respect to any ownership or equity interest or security in or of the Borrower, (ii) redeem, purchase, retire or otherwise acquire for value any such ownership or equity interest or security, or (iii) set aside or otherwise segregate any amounts for any such purpose;

(h) amend, supplement, restate or otherwise modify any of the contracts or agreements;

(i) except for the Basic Documents, allow Borrower to enter into, assume or otherwise be bound or obligated under any agreement creating or evidencing Indebtedness;

(j) substantially change the nature of the business in which any Loan Party is presently engaged, nor except as specifically permitted hereby purchase or invest, directly or indirectly, in any assets or property other than in the ordinary course of business for assets or property which are useful in, necessary for and are to be used in its business as presently conducted;

(k) permit the Borrower to have any Subsidiaries;

(l) sell, convey, lease, export, or transfer title to any Collateral in violation of applicable Anti-Corruption Laws, Anti-Terrorism Laws, Sanctions and Export Control Laws, or in any manner that would cause the Administrative Agent, the Applicant, the Lenders, the Borrower, or any other Loan Party to be in breach of such laws;

(m) (i) maintain, or permit Borrower or its ERISA Affiliates to maintain, any Plan, (ii) become obligated to contribute, or permit Borrower or its ERISA Affiliates to become obligated to contribute, to any Plan, (iii) engage, or permit Borrower or its ERISA Affiliates to engage, in any non-exempt "prohibited transaction", as that term is defined in Section 406 of ERISA or Section 4975 of the Code, or (iv) cause, or permit any Loan Party to cause, a representation or warranty in Section 3.01(s) to cease to be true and correct;

(n) repay any obligation under this Agreement with funds that shall constitute property of, or shall be beneficially owned directly or indirectly by, any Sanctioned Person, or derived from business with any Sanctioned Person or Sanctioned Country; or

(o) permit: (i) any Covered Entity to (A) become a Sanctioned Person, (B) have, either in its own right or through any third party acting on behalf of such Covered Entity, any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person; or (C) either in its own right or through any third party acting on behalf of such Covered Entity do business in or with, or derive any of its operating income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any applicable law, regulation, order or directive enforced by any Compliance Authority; (ii) the Advances to be used to fund any operations in, finance any investments or activities in, or, make any payments to, a Sanctioned Country or Sanctioned Person in violation of any applicable law, regulation, order or directive enforced by any Compliance Authority; (iii) the funds used to repay the Obligations to be derived from any unlawful activity; or (iv) any Covered Entity either in its own right or through any third party to fail to be in material compliance with, or engage in any dealings or transactions prohibited by, any applicable Governmental Rules, including but not limited to any Anti-Terrorism Laws. The Loan Parties covenant and agree that they shall immediately notify the Administrative Agent in writing upon the occurrence of a Reportable Compliance Event.

ARTICLE VII

FINANCIAL COVENANTS

Section 7.01 Excess Spread Ratio. On and following the third Collection Period after the Closing Date, the Rolling Average Excess Spread Ratio during the Measurement Period then ended shall be greater than 18% on an annualized basis.

Section 7.02 Breakage Ratio. On and following the third Collection Period after the Closing Date, the Rolling Average Breakage Ratio for the Measurement Period then ended shall be less than the applicable levels in the table below.

Months after Closing Date	1 through 6	7 through 12	13 and each Test Period thereafter
Ratio	15%	10%	5%

Section 7.03 Net Loss Ratio. On and following the third Collection Period after the Closing Date, the Rolling Average Net Loss Ratio for the Measurement Period then ended shall be less than 10%.

Section 7.04 Consolidated Fixed Charge Coverage Ratio. Parent will not permit, as of the last day of any fiscal quarter on a trailing four-quarter basis, the Fixed Charge Coverage Ratio to be less than 1.50 to 1.00.

Section 7.05 Minimum Tangible Net Worth. Beginning on the earlier of (i) August 15, 2021 or (ii) fifteen (15) calendar days after TX OPS Canada's "Series A" equity offering raising at least $21,000,000 (the "Qualified Offering") in the aggregate, Parent will not permit, as of the last day of any fiscal quarter, its Tangible Net Worth to be less than $3,000,000, which shall increase on any Determination Date by (x) fifty percent (50%) of Parent's positive Net Income, if any, plus (y) seventy five percent (75%) of the proceeds received by TX OPS Canada and contributed to Parent from the Qualified Offering or any subsequent equity offering.

Section 7.06 Reserve Collateral. At all times, Parent shall have Reserve Collateral equal to or in excess of the Reserve Collateral Amount.

ARTICLE VIII

ESTABLISHMENT OF ACCOUNTS

Section 8.01 Collection Account

(a) Establishment of Accounts.

(i) Establishment of Collection Account. On or prior to the Closing Date, the Borrower shall establish the Collection Account and the Administrative Agent and the Borrower shall enter into the Collection Account Control Agreement. Each Loan Party stipulates and agrees that all Collections deposited to, or on deposit from time to time in, the Collection Account, are and shall at all times be (until withdrawn therefrom in accordance with the terms of this Agreement, and subject to any Liens and interests of the Administrative Agent therein, whether now existing or hereafter arising), the sole and exclusive property of Borrower, and not the property of any other Person, and to the extent that the Collection Account is now or hereafter established or titled in the name of Parent or Servicer, or any other Affiliate of Parent or Servicer, any such titling of the Collection Account is solely for the purpose of facilitating the processing of Collections and other funds hereunder, and shall not, in and of itself, give rise to any property right or claim of Parent or Servicer or any other Affiliate of Parent or Servicer with respect to such funds.

(ii) Location of Collection Account. The Collection Account shall initially be maintained with Cash Management Bank or any other bank approved by Administrative Agent in its Permitted Discretion. If, at any time, the Collection Account ceases to be an Eligible Deposit Account or any applicable Collection Account Control Agreement ceases to be in full force and effect (or the Borrower contests the validity or enforceability thereof, or any provision thereof, in writing), then the Borrower or the Administrative Agent, as applicable, shall, within ten (10) Business Days (A) establish a new Collection Account with another depository institution selected by the Administrative Agent (and acceptable to the Required Lenders) as an Eligible Deposit Account, (B) terminate the ineligible Collection Account, and (C) transfer any cash and investments from such ineligible Collection Account to such new Collection Account. The Administrative Agent will inform the Borrower of any such transfer to a new Collection Account.

(iii) Establishment of Canadian Collection Account. Each Loan Party stipulates and agrees that all HST Tax Credits shall direct the applicable Governmental Authorities on the payment of an HST Tax Credit to deposit into the applicable Canadian Collection Account. Each Loan Party further agrees that such amounts deposited to, or on deposit from time to time in, each Canadian Collection Account, are and shall at all times be (until withdrawn therefrom in accordance with the terms of this Agreement, and subject to any Liens and interests of the Administrative Agent therein, whether now existing or hereafter arising), the sole and exclusive property of TX OPS Canada or Davidson Motors, as applicable, and not the property of any other Person, and that such Canadian Collection Account Control Agreement shall stipulate and require that all funds deposited into each Canadian Collection Account shall be automatically swept to the Collection Account at least one (1) time per week (or as often as Administrative Agent may agree in its sole discretion).

(b) Cash Management.

(i) The Loan Parties shall, or shall cause Servicer to, deposit, or cause to be deposited (without duplication), into the Collection Account within three (3) Business Days after receipt and availability (but in no event later than four (4) Business Days after receipt in the Servicer Account) from Cash Management Bank all Collections and other payments on or in respect of each item of Collateral collected on or after the related Transfer Date, including without limitation, as the result of the sale or other disposition of Collateral. So long as (w) no Event of Default has occurred and is continuing, (x) no Overadvance would exist after giving effect thereto, (y) the Excess Concentration Amount would not be greater than zero after giving effect thereto and (z) the balance remaining in the Collection Account will be greater than the Accrued Facility Costs after giving effect thereto, the Borrower may use the funds on deposit in the Collection Account from time to time during the Revolving Commitment Period to acquire Eligible Assets in accordance with the terms hereof and the Transfer Documents. In addition, the Borrower may withdraw funds on deposit in the Collection Account from time to time that relate to harmonized sales tax credits which are not HST Tax Credits upon providing a certification to such effect to the Administrative Agent.

(ii) To the extent that the Servicer or a Loan Party receives any such amounts directly or in any manner other than via deposit into the Collection Account, such Loan Party shall hold all such payments in trust for the sole and exclusive benefit of Administrative Agent and Servicer or such Loan Party shall deposit, or cause to be deposited, to the Collection Account all such amounts received within three (3) Business Days after receipt and availability from Cash Management Bank (but in no event later than four (4) Business Days after receipt in the Servicer Account), unless Administrative Agent shall have notified Servicer or such Loan Party to deliver directly to Administrative Agent all payments in respect of the Financed Vehicles after the occurrence and during the continuance of an Event of Default, in which event all such payments (in the form received) shall be endorsed by such Loan Party to Administrative Agent and delivered to Administrative Agent promptly upon Servicer's or such Loan Party's receipt thereof.

(iii) At any time after the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the right to directly notify any End Buyer to deliver payments with respect to any Financed Vehicles directly into the Collection Account or any other deposit account established by Administrative Agent from time to time.

(c) Application of Collections and other Proceeds from the Collection Account. On each Payment Date, until such time as Administrative Agent shall exercise its rights pursuant to Section 8.01(e), Servicer shall, pursuant to the Servicer Report, apply all amounts in the Collection Account in the following order of priority:

(i) to any Eligible NVOCC in an amount equal to Taxes then due and owing with respect to any Vehicle underlying the Eligible Assets;

(ii) *pro rata* (A) to Cash Management Bank, an amount equal to fees, expenses and indemnities then owing to the Cash Management Bank in accordance with the Control Agreements, (B) to Custodian, if any, an amount equal to fees, expenses and indemnities then owing to the Custodian in accordance with the Custodial Agreement, and (C) to Backup Servicer, if any, an amount equal to fees, expenses and indemnities then owing to

the Backup Servicer in accordance with the Backup Servicing Agreement;

(iii) to the applicable Person, an amount necessary to pay any unpaid fees, expenses or costs of the Lenders and the Administrative Agent, including but not limited to (A) fees owed to the Administrative Agent in accordance with Section 2.08 hereof, (B) Lenders' and Administrative Agent's third-party expenses and (C) any unpaid Protective Advances;

(iv) (A) to prepay or repay unreimbursed LC Disbursements, (B) to the extent required pursuant to Section 2.16(j), to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate LC Exposure, or (C) to the extent required pursuant to Section 2.16(j), to deposit cash collateral for the aggregate LC Exposure into the LC Collateral Account;

(v) to the Administrative Agent, for the ratable benefit of the Lenders, an amount necessary to first (A) pay accrued but unpaid interest in respect of the Obligations at the applicable interest rate set forth in this Agreement, and then (B) make any Required Principal Payment then owing;

(vi) on and after the expiration of the Revolving Commitment Period, to the Administrative Agent, for the ratable benefit of the Lenders, to repay all Obligations until all such Obligations have been paid in full; and

(vii) if the Maturity Date has not yet occurred, any remainder to be paid to the Borrower; provided that, at all times, Borrower shall maintain a balance in the Collection Account equal to, or in excess of, the total Accrued Facility Costs.

(d) Insufficient Amounts in Collection Account. In the event that amounts distributed under Section 8.01(c) as of each Payment Date are insufficient for payment of the amounts set forth in Section 8.01(c)(i), (ii), (iii) and (iv) for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency, (i) through an Advance hereunder, on such Determination Date, or (ii) from a wire transfer of immediately available funds by Borrower within two (2) Business Days of request by the Administrative Agent. The Administrative Agent shall distribute any such payment received by it for the account of the Lenders, in accordance with their respective *Pro Rata* Shares.

(e) Payments Upon Event of Default. Notwithstanding anything to the contrary contained in this Section 8.01, following the occurrence and during the continuance of an Event of Default, an Authorized Person of the Administrative Agent shall have the immediate right to direct in writing and to apply all Collections, other funds in any Controlled Account, proceeds of Collateral, prepayments, and other amounts received of every description otherwise payable to the Borrower, to the Obligations in such order and in such manner as an Authorized Person of the Administrative Agent shall elect in its sole discretion.

(f) No Set-Off. Borrower absolutely and unconditionally promises to pay, when due and payable pursuant hereto, principal, interest and all other amounts and Obligations payable, hereunder or under any other Basic Document, without any right of rescission and without any deduction whatsoever, including any deduction for set-off, recoupment or counterclaim, notwithstanding any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any property or improvements. Except as expressly provided for herein, Borrower hereby irrevocably waives set-off, recoupment, demand, presentment, protest, and all

notices and demands of any description, and the pleading of any statute of limitations as a defense to any demand under this Agreement and any other Basic Document, all to the extent permitted by Governmental Rules. Each Advance shall be due and payable in full, if not earlier in accordance with this Agreement, on the applicable Maturity Date.

Section 8.02 Control of Controlled Accounts; Collection Account Property.

(a) Control of Accounts. The Controlled Accounts have been pledged by the Borrower to the Administrative Agent under the Security Agreement and shall be subject to the lien of the Security Agreement. Amounts distributed from any Controlled Account in accordance with the terms of this Agreement shall be released from the Collateral upon such distribution thereunder or hereunder, unless distributed to another Controlled Account. All funds on deposit from time to time in the Controlled Accounts and in all proceeds thereof (including all income thereon) and all such funds, investments, proceeds and income shall be part of the Collateral, except to the extent such funds relate to harmonized sales tax credits which are not HST Tax Credits.

(b) Certain Collection Account Matters.

(i) Investment of Funds. Funds held in the Collection Account may be invested (to the extent practicable and consistent with any requirements of the Code) in Permitted Investments by or at the written direction of the Borrower; provided that, at all times, the Administrative Agent, for the benefit of the Lenders, shall have a first-priority perfected security interest in all funds and Permitted Investments in the Collection Account. Absent such direction the funds shall remain uninvested. In any case, funds in the Collection Account must be available for withdrawal without penalty, and any Permitted Investments must mature or otherwise be available for withdrawal, one (1) Business Day prior to the next Record Date and shall not (subject to Section 8.02(b)(ii)) be sold or disposed of prior to its maturity. All interest and any other investment earnings on amounts or investments held in the Collection Account shall be retained by the Borrower.

(ii) Insufficiency and Losses in Trust Accounts. If any amounts are needed for disbursement from the Collection Account and sufficient uninvested funds are not available to make such disbursement, the Borrower shall or shall cause to be sold or otherwise converted to cash a sufficient amount of the investments in the Collection Account. The Borrower shall be liable for any investment loss or other charge resulting therefrom and the Administrative Agent shall have no obligation or liability with respect thereto.

If any losses are realized in connection with any investment in the Collection Account pursuant to this Agreement, then the Borrower shall deposit the amount of such losses (to the extent not offset by income from other investments in the Collection Account) into the Collection Account promptly upon the realization of such loss.

(c) Administrative Agent Not Liable. The Administrative Agent shall not in any way be held liable by reason of any insufficiency in the Collection Account resulting from any investment loss on any Permitted Investment included therein.

ARTICLE IX

EVENTS OF DEFAULT

If any of the following events ("Events of Default") shall occur and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of Governmental Rules or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) default in the payment of any interest on any Advance or of any reimbursement obligation in respect of any LC Disbursement when the same becomes due and payable and such default is not remedied within two (2) Business Days after the date such payment is due; provided, however, that such two (2) Business Day cure period shall not apply to any amounts due and payable on the Maturity Date; or

(b) notwithstanding any insufficiency of funds in the Collection Account for payment thereof on the related Payment Date, default in the payment of any installment of the principal required to be made pursuant to this Agreement of any Advance or any fees required to be made pursuant to any Basic Document (i) on any Payment Date or (ii) when otherwise due and payable pursuant to the Basic Documents and, in each case, such default is not remedied within two (2) Business Days after the date such payment is due; provided, however, that such two (2) Business Day cure period shall not apply to any amounts due and payable on the Maturity Date; or

(c) default in the observance of Section 2.01(d) or 2.07(b), at any time, which is not remedied within three (3) Business Days; or

(d) the occurrence of a Servicer Default; or

(e) default in the observance or performance of any covenant or agreement of any Loan Party under any Basic Document to which it is a party (other than a covenant or agreement, a default in the observance or performance of which is elsewhere in this Article IX specifically dealt with), or any representation or warranty of a Loan Party made in any Basic Document to which it is a party or in any certificate or other writing delivered pursuant thereto or in connection therewith proving to have been incorrect in any material respect as of the time when the same shall have been made, and the circumstance or condition in respect of which such misrepresentation or warranty was incorrect or that gave rise to such covenant or agreement breach shall not have been eliminated or otherwise cured to the satisfaction of the Administrative Agent in its Permitted Discretion, for a period of ten (10) Business Days after the earlier of (i) the date written notice has been given to the Loan Parties by the Administrative Agent, the Applicant or any Lender specifying such default or incorrect representation or warranty and stating that such notice is a notice of Default hereunder and (ii) the date the Loan Party, as applicable, knew or reasonably should have known of such default or inaccurate representation and warranty requiring it to be remedied; or

(f) the occurrence of any event which causes or may reasonably be expected to cause a default in the observance or performance of any covenant or agreement of any Loan Party made in, or the acceleration, upon default, of, any repurchase agreement, loan and security agreement, or other similar credit facility agreement entered into by a Loan Party for borrowed funds in excess of $500,000, after giving effect to any grace periods applicable to such agreements; or

(g) the occurrence of a Material Adverse Effect; or

(h) the Borrower shall become an "investment company" within the meaning of the Investment Company Act of 1940; or

(i) the filing of a decree or order for relief by a court having jurisdiction over the

Servicer or any Loan Party or with respect to all or substantially all of the Collateral in an involuntary case under any applicable federal or state bankruptcy, insolvency or other similar Governmental Rules now or hereafter in effect, or the appointing of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Servicer or any Loan Party or for all or substantially all of the Collateral, or the ordering of the winding-up or liquidation of the affairs of the Servicer or any Loan Party, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days; or

(j) the commencement by the Servicer or any Loan Party pursuant to a voluntary case under the Bankruptcy Code or under any applicable federal or state bankruptcy, insolvency or other similar Governmental Rules now or hereafter in effect, or the consent by the Servicer or any Loan Party to the entry of an order for relief in an involuntary case under any such Governmental Rules, or the consent by the Servicer or any Loan Party to the appointment or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Servicer or any Loan Party, or for any substantial part of the Collateral, or the making by the Servicer or any Loan Party of any general assignment for the benefit of creditors, or the failure by the Servicer or any Loan Party generally to pay its respective debts as such debts become due, or the taking of any action by the Servicer or any Loan Party in furtherance of any of the foregoing; or

(k) the insolvency of the Servicer or any Loan Party; or

(l) a Change of Control shall occur without the prior written consent of the Administrative Agent; or

(m) the occurrence of a default in the observance or performance of Section 5.15 or, 5.16, or Article VI, VII or VIII; or

(n) the failure by Borrower to repay on any Payment Date to Administrative Agent the full amount of any Protective Advance outstanding on such date, together with interest thereon, as provided in this Agreement, which failure is not remedied by payment within ten (10) Business Days of the date such payment was due; or

(o) Borrower violates any representation, warranty, or covenant regarding compliance with Anti-Terrorism Laws, Anti-Corruption Laws, or Sanctions and Export Control Laws; or

(p) all or any material portion of any Basic Document shall at any time and for any reason cease to be in full force and effect or be declared by a court of competent jurisdiction in a suit with respect to such Basic Document to be null and void, or a proceeding shall be commenced by a Loan Party, or by any Governmental Authority having jurisdiction over such Loan Party, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Loan Party shall deny that it has any liability or obligation for the payment of principal or interest purported to be owed under any Basic Document, or any Loan Party shall contest the validity or enforceability of any Basic Document or any provision thereof (including, without limitation, any Lien created thereunder) in writing.

then, and in every such event (other than an event with respect to the Borrower described in clause (i), (j), or (k) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Revolving Commitments, and thereupon the Revolving Commitments shall terminate immediately, and (ii) declare the unpaid principal

amount of each Advance then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable so long as such Event of Default is continuing, which Event of Default, for the avoidance of doubt, shall automatically be deemed to be continuing upon the expiry of any applicable cure period expressly provided for hereunder (if any), and the making by Administrative Agent of a notice to Borrower hereunder with respect to the occurrence of such Event of Default), and thereupon the principal of each unpaid Advance so declared to be due and payable, together with accrued interest thereon and all fees and other Obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (i), (j), or (k) of this Article, the Revolving Commitments shall automatically terminate and the principal of the then outstanding Obligations, together with accrued interest thereon and all fees and other Obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and (iii) require cash collateral for the LC Exposure in accordance with Section 2.16(j) hereof; and in the case of any event with respect to the Borrower described in clause (i), (j), or (k) of this Article, the Revolving Commitments shall automatically terminate and the principal of the Advances then outstanding, and cash collateral for the LC Exposure, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrower accrued hereunder and under any other Loan Documents, shall automatically become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Notwithstanding anything to the contrary contained in this Article IX (other than upon an event with respect to the Borrower described in clause (i), (j), or (k) of this Article IX, or at any time the Administrative Agent or the Lenders are stayed or otherwise prevented by applicable Governmental Rules from giving notice hereunder), Borrower shall have the right to cure any Event of Default at any time prior to a notice thereof (which notice accelerates the Advances) becoming effective pursuant to Section 11.01.

ARTICLE X

THE ADMINISTRATIVE AGENT

(a) Each Lender and Applicant hereby designates and appoints MBL Administrative Agent II LLC as the administrative agent under this Agreement and the other Basic Documents, and each Lender and Applicant hereby irrevocably authorizes MBL Administrative Agent II LLC, as Administrative Agent for such Lender and Applicant, to take such action or to refrain from taking such action on its behalf under the provisions of this Agreement and the other Basic Documents and to exercise such powers and perform such duties as are delegated to Administrative Agent by the terms of this Agreement and the other Basic Documents, together with such other powers as are reasonably incidental thereto. Administrative Agent agrees to act as such on the conditions contained in this Article X. The provisions of this Article X are solely for the benefit of Administrative Agent and Lenders, and neither the Loan Parties nor their Affiliates shall have any rights as third-party beneficiaries of any of the provisions of this Article X other than as provided in this Article X. Administrative Agent may perform any of its duties hereunder, or under the Basic Documents, by or through its agents, employees or sub-agents.

(b) In performing its functions and duties under this Agreement, Administrative Agent is acting solely on behalf of Lenders, and its duties are administrative in nature, and does not assume and shall not be deemed to have assumed, any obligation toward or relationship of agency or trust with or for Lenders or the Applicant, other than as expressly set forth herein and in the other

Basic Documents, or any Loan Party or their Affiliates. Administrative Agent shall have no duties, obligations or responsibilities except those expressly set forth in this Agreement or in the other Basic Documents. Administrative Agent shall not have by reason of this Agreement or any other Basic Document a fiduciary relationship in respect of any Lender. Each Lender shall make its own independent investigation of the financial condition and affairs of Borrower and guarantors in connection with the extension of credit hereunder and shall make its own appraisal of the creditworthiness of Borrower and guarantors. Except for information, notices, reports and other documents expressly required to be furnished to Lenders or Applicant by Administrative Agent hereunder or given to Administrative Agent for the account of, or with copies for, Lenders and Applicant, Administrative Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender or Applicant with any credit or other information with respect thereto, whether coming into its possession before the Closing Date or at any time or times thereafter. If Administrative Agent seeks the consent or approval of any Lenders to the taking or refraining from taking any action hereunder, then Administrative Agent shall send prior written notice thereof to each Lender. Administrative Agent shall promptly notify each Lender in writing any time that the applicable percentage of Lenders have instructed Administrative Agent to act or refrain from acting pursuant hereto.

(c) Neither Administrative Agent nor any of its officers, directors, managers, members, equity owners, employees, attorneys or agents shall be liable to any Lender for any action lawfully taken or omitted by them hereunder or under any of the other Basic Documents, or in connection herewith or therewith; provided, that the foregoing shall not prevent Administrative Agent from being liable to the extent of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction on a final and nonappealable basis. Notwithstanding the foregoing, Administrative Agent shall be obligated on the terms set forth herein for performance of its express duties and obligations hereunder. Administrative Agent shall not be liable for any apportionment or distribution of payments made by it in good faith, and if any such apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Lender to whom payment was due but not made shall be to recover from the other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree promptly to return to such Lender any such erroneous payments received by them). In performing its functions and duties hereunder, Administrative Agent shall exercise the same care which it would in dealing with loans for its own account. Administrative Agent shall not be responsible to any Lender for any recitals, statements, representations or warranties made by any Loan Party herein or for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement or any of the other Basic Documents or the transactions contemplated thereby, or for the financial condition of any Loan Party. Administrative Agent shall not be required to make any inquiry concerning either the performance or observance of any of the terms, provisions, or conditions of this Agreement or any of the Basic Documents or the financial condition of Borrower or guarantors, or the existence or possible existence of any Default or Event of Default. Administrative Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the other Basic Documents Administrative Agent is permitted or required to take or to grant, and Administrative Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from taking any action or withholding any approval under any of the Basic Documents until it shall have received such instructions from the applicable percentage of Lenders. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Administrative Agent as a result of Administrative Agent acting or refraining from acting under this Agreement or any of the other Basic Documents in accordance with the instructions of the applicable percentage of Lenders and, notwithstanding the instructions of Lenders, Administrative

Agent shall have no obligation to take any action if it, in good faith, believes that such action exposes Administrative Agent or any of its officers, directors, managers, members, equity owners, employees, attorneys or agents to any personal liability unless Administrative Agent receives an indemnification satisfactory to it from Lenders with respect to such action.

(d) Administrative Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message or other communication (including any writing, telecopy, email or other electronic communication) believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Agreement or any of the other Basic Documents and its duties hereunder or thereunder, upon advice of legal counsel, independent accountants and other experts selected by Administrative Agent in its sole discretion.

(e) Each Lender, severally and not (i) jointly or (ii) jointly and severally, agrees to reimburse and indemnify and hold harmless Administrative Agent and its officers, directors, managers, members, equity owners, employees, attorneys and agents (to the extent not reimbursed by Borrower), ratably according to their respective *Pro Rata* Share in effect on the date on which indemnification is sought under this subsection of the total outstanding Obligations (or, if indemnification is sought after the date upon which the Advances shall have been paid in full, ratably in accordance with their *Pro Rata* Share immediately prior to such date of the total outstanding Obligations), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Administrative Agent or any of its officers, directors, managers, members, equity owners, employees, attorneys or agents in any way relating to or arising out of this Agreement or any of the other Basic Documents or any action taken or omitted by Administrative Agent under this Agreement or any of the other Basic Documents; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements to the extent resulting from Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction on a final and non-appealable basis. The obligations of Lenders under this Article X shall survive the payment in full of the Obligations and the termination of this Agreement.

(f) With respect to the Advances made by it, if any, MBL Administrative Agent II LLC and its successors as Administrative Agent shall have, and may exercise, the same rights and powers under the Basic Documents, and is subject to the same obligations and liabilities, as and to the extent set forth in the Basic Documents, as any other Lender. The terms "Lenders" or "Required Lenders" or any similar terms shall include Administrative Agent in its individual capacity as a Lender. Administrative Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of lending, banking, trust, financial advisory or other business with, Borrower, guarantors, or any their Affiliates as if it were not acting as Administrative Agent pursuant hereto.

(g) Administrative Agent may resign from the performance of all or part of its functions and duties hereunder at any time by giving at least thirty (30) calendar days' prior written notice to the Lenders and Applicant. Such resignation shall take effect upon the acceptance by a successor Administrative Agent of appointment pursuant to this Section X(g), or as otherwise provided below. Upon any such notice of resignation pursuant to this Section X(g), Required Lenders shall appoint a successor Administrative Agent. If a successor Administrative Agent shall not have been so appointed within such thirty (30) calendar day period, the retiring Administrative Agent may, on behalf of Lenders and Applicant, appoint a successor Administrative Agent, who

shall serve as Administrative Agent until such time as Required Lenders appoint a successor Administrative Agent as provided above. If no successor Administrative Agent has been appointed pursuant to the foregoing within such thirty (30) calendar day period, the resignation shall become effective and Required Lenders thereafter shall perform all the duties of Administrative Agent hereunder, until such time, if any, as Required Lenders appoint a successor Administrative Agent as provided above. Upon the acceptance of any appointment as Administrative Agent under the Basic Documents by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and, upon the earlier of such acceptance or the effective date of the retiring Administrative Agent's resignation, the retiring Administrative Agent shall be discharged from its duties and obligations under the Basic Documents; provided that any indemnity rights or other rights in favor of such retiring Administrative Agent shall continue after and survive such resignation and succession. After any retiring Administrative Agent's resignation as Administrative Agent under the Basic Documents, the provisions of this Article X shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Basic Documents.

(h) Each Lender agrees that any action taken by Administrative Agent or the Required Lenders (or, where required by the express terms of this Agreement, a greater number of Lenders) in accordance with the provisions of this Agreement or of the other Basic Documents relating to the Collateral, and the exercise by Administrative Agent or the Required Lenders (or, where so required, such greater number of Lenders) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of Lenders and Administrative Agent. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive right and authority to (i) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection herewith and with the Basic Documents in connection with the Collateral; (ii) execute and deliver each Basic Document relating to the Collateral and accept delivery of each such agreement delivered by the Loan Parties, the Servicer or any of their Affiliates; (iii) act as Administrative Agent for Lenders for purposes of the perfection of all security interests and Liens created by such agreements and all other purposes stated therein; (iv) manage, supervise and otherwise deal with the Collateral; (v) take such action as is necessary or desirable to maintain the perfection and priority of the security interests and Liens created or purported to be created by the Basic Documents relating to the Collateral; and (vi) except as may be otherwise specifically restricted by the terms hereof or of any other Basic Document, exercise all right and remedies given to such Administrative Agent and Lenders with respect to the Collateral under the Basic Documents relating thereto, at law, or otherwise. Lenders hereby irrevocably authorize Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by Administrative Agent, for the benefit the of Lenders, upon any Collateral covered by the Basic Documents (x) upon termination of this Agreement and the payment and satisfaction in full in cash of all Obligations (other than contingent indemnification Obligations to the extent no claim giving rise thereto has been asserted); (y) constituting Collateral being sold or disposed of; or (z) constituting Collateral leased to Borrower under a lease which has expired or been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by Borrower to be, renewed or extended. So long as no Event of Default then exists, upon receipt by Administrative Agent of confirmation from the requisite percentage of Lenders of its authority to release any particular item or types of Collateral covered by this Agreement or the other Basic Documents, and upon at least five (5) Business Days' prior written request by Borrower, Administrative Agent shall authorize the release of the Liens granted to the Administrative Agent, for the benefit of the Administrative Agent and the Lenders, herein or pursuant hereto upon such Collateral; provided, however, that Administrative Agent shall not be required to execute any such

document on terms which, in Administrative Agent's opinion, would expose Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty (other than that such Collateral is free and clear, on the date of such delivery, of any and all Liens arising from such Person's own acts), and such release shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of Borrower in respect of) all interests retained by Borrower, including, without limitation, the proceeds of any sale, all of which shall continue to constitute part of the Collateral covered by this Agreement or the Basic Documents. Administrative Agent shall have no obligation whatsoever to any Lender or any other Person to assure that the Collateral covered by this Agreement or the other Basic Documents exists or is owned by Borrower or is cared for, protected or insured or has been encumbered or that the Liens granted to Administrative Agent, on behalf of the Lenders, herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected, enforced or maintained or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Administrative Agent in this Article X(h) or in any of the Basic Documents; it being understood and agreed that in respect of the Collateral covered by this Agreement or the other Basic Documents, or any act, omission or event related thereto, Administrative Agent may act in any manner it may deem appropriate, in its discretion, given Administrative Agent's own interest in Collateral covered by this Agreement or the Basic Documents and Administrative Agent shall have no duty or liability whatsoever to any of the other Lenders; provided, that Administrative Agent shall exercise the same care which it would in dealing with financial assets for its own account.

(i) Each Lender hereby appoints Administrative Agent as agent for the purpose of perfecting Lenders' security interest in Collateral which, in accordance with Article 9 of the UCC in any applicable jurisdiction, can be perfected only by possession. Should any Lender obtain possession of any such Collateral, such Lender shall hold such Collateral for purposes of perfecting a security interest therein for the benefit of the Lenders, notify Administrative Agent thereof and, promptly upon Administrative Agent's request therefor, deliver such Collateral to Administrative Agent or otherwise act in respect thereof in accordance with Administrative Agent's instructions.

(j) Each Lender agrees that it will not have any right individually to enforce or seek to enforce this Agreement or any other Basic Document or to realize upon any Collateral security for the Advances or other Obligations; it being understood and agreed that such rights and remedies may be exercised only by Administrative Agent in accordance with the terms of the Basic Documents.

(k) In the event Administrative Agent requests the consent of a Lender and does not receive a written denial thereof within five (5) Business Days after such Lender's receipt of such request, then such Lender shall be deemed to have given such consent so long as such request contained a notice stating that such failure to respond within five (5) Business Days would be deemed to be a consent by such Lender.

(l) In the event Administrative Agent requests the consent of a Lender in a situation where such Lender's consent would be required and such consent is denied, then Administrative Agent may, at its option, require such Lender to assign its interest in the Advance to Administrative Agent for a price equal to the then outstanding principal amount thereof due such Lender plus accrued and unpaid interest and fees due such Lender, which principal, interest and fees will be paid to the Lender when collected from Borrower. In the event that Administrative Agent elects to require any Lender to assign its interest to Administrative Agent pursuant to this Article X(l), Administrative Agent will so notify such Lender in writing within forty-five (45) days following

such Lender's denial, and such Lender will assign its interest to Administrative Agent no later than five (5) calendar days following receipt of such notice.

(m) As a matter of administrative convenience, as requested from time to time by a Lender, Administrative Agent may, either directly, or through one or more of its Affiliates, on behalf of one or more Lenders, disburse funds to Borrower for an Advance that is otherwise required to be funded pursuant to Section 2.04(a) by such Lender by advancing the amount thereof on behalf of such Lender (on terms to be agreed upon between Administrative Agent and such Lender (each such advance, an "Administrative Agent Advance")). With respect to each Administrative Agent Advance, Administrative Agent or its Affiliate(s) shall have, subject to the agreed upon terms related to such Administrative Agent Advance, the right to set off against the amounts of any payments or distributions to be made to such Lender hereunder, the entire amount of such Administrative Agent Advance, together with any agreed upon interest or fees thereon, until such Administrative Agent Advance is paid in full. For the avoidance of doubt, nothing in this Article X(m), or elsewhere in this Agreement or the other Basic Documents, including, without limitation, the provisions of this Article X(m), shall be deemed to require Administrative Agent or its Affiliates to advance funds on behalf of any Lender, whether in the form of an Administrative Agent Advance, or otherwise, or to relieve any Lender from such Lender's obligation to fulfill its commitments hereunder, or to prejudice any rights that Administrative Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

(n) If Administrative Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Administrative Agent from Borrower and such related payment is not received by Administrative Agent, then Administrative Agent will be entitled to recover such amount from such Lender without interest, set-off, counterclaim or deduction of any kind.

(o) If Administrative Agent is, at any time, required by Governmental Rule to return any amount received by Administrative Agent under this Agreement to Borrower, or to pay any such amount to any other Person (each such amount, an "Avoided Transfer"), then, notwithstanding any other term or condition of this Agreement: (i) to the extent the amount of such Avoided Transfer has not then been applied pursuant to Section 8.01(c), (d) or (e), as applicable, Administrative Agent will not be required to distribute any portion thereof to any Lender and shall promptly deliver the amount of such Avoided Transfer to the Person entitled thereto, in accordance with the requirements of applicable Governmental Rules; and (ii) with respect to such amounts received by Administrative Agent and applied pursuant to Section 8.01(c), (d) or (e), as applicable, each Lender shall, within two (2) Business Days of receiving notice thereof from Administrative Agent, fund to Administrative Agent such Lender's *Pro Rata* Share of such Avoided Transfer, whereupon, Administrative Agent shall promptly deliver the amount of such Avoided Transfer to the Person entitled thereto, in accordance with the requirements of applicable Governmental Rules.

(p) If Administrative Agent pays an amount to a Lender or Applicant under this Agreement in the belief or expectation that a related payment has been or will be received by Administrative Agent from Borrower and such related payment is not received by Administrative Agent, then Administrative Agent will be entitled to recover such amount from such Lender without interest, set-off, counterclaim or deduction of any kind.

ARTICLE XI

MISCELLANEOUS

Section 11.01 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or e-mail, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to any Loan Party, to:

TX OPS Indiana Limited
5053 E Court ST N STE G
Burton, Michigan 48509-1542
Email: luciano@tradexport.com
Attention: Luciano Butera
with a copy to:

TX OPS Canada Corporation
7401 Pacific Circle
Mississauga, ON Canada, L5T 2A
Email: luciano@tradexport.com
Attention: Luciano Butera

with a copy (which shall not constitute notice) to:

Alston & Bird LLP
2200 Ross Avenue, Suite 2300
Dallas, Texas 75201-2748
Email: mark.harris@alston.com
Attention: Mark Harris
Telephone: (214) 922-3504

(ii) if to the Administrative Agent/Applicant, to:

MBL Administrative Agent II LLC
452 Fifth Avenue, 27th Floor
New York, New York 10018
Email: Wes.Lovy@man.com
Attention: Wes Lovy
Facsimile: (203) 584-9692

with a copy to:

MBL Administrative Agent II LLC
c/o Man Investments USA Holdings Inc.
452 Fifth Avenue, 27th Floor
New York, New York 10018
Email: legalgpm@man.com
Attention: Legal GPM

with a copy to:

Holland & Knight LLP
200 Crescent Court, Suite 1600
Dallas, TX 75201
Email: joe.steinberg@hklaw.com
Attention: Joe Steinberg, Esq.
Facsimile: (214) 964-9501

(iii) if to a Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto (or, in the case of any such change by a Lender, by notice to the Borrower, Applicant and the Administrative Agent). All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2.03(a) if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent, Applicant or the Borrower may agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

Section 11.02 Waivers; Amendments.

(a) No Deemed Waivers; Remedies Cumulative. No failure or delay by the Administrative Agent, the Applicant or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Applicant and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted under Section 11.02(b), and then such waiver or consent shall be effective only in the specific instance and for the No failure or delay by the Administrative Agent, the Applicant or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other

or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Applicant and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted under Section 11.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of any Advances or LC Disbursement payments shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, Applicant or any Lender may have had notice or knowledge of such Default at the time.

(b) Amendments. Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower, the Administrative Agent, Applicant and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders and Applicant; provided that no such agreement, amendment, waiver, or modification that attempts to do any of the following shall be effective unless consented to by the Lenders referenced below (including, in each instance, any initial Lender that is a Defaulting Lender):

(i) increase the Revolving Commitment of any Lender without the written consent of such Lender;

(ii) reduce the principal amount of any Advance or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby;

(iii) postpone the scheduled date of payment of the principal amount of any Advance, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Revolving Commitment, without the written consent of each Lender affected thereby;

(iv) change Section 2.12(d) without the consent of each Lender affected thereby;

(v) change any of the provisions of this Section or the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(vi) release the Borrower from its Obligations under the Security Documents without the written consent of each Lender; or

(vii) without the written consent of each Lender, release all or substantially all of the collateral security or otherwise terminate all or substantially all of the Liens under the Security Documents, agree to additional obligations being secured by all or substantially all of the collateral security thereto, alter the relative priorities of the obligations entitled to the Liens created under the Security Documents with respect to all or substantially all of the collateral security provided thereby, except that no such consent shall be required, and the Administrative Agent is hereby authorized (and so agrees with the Borrower) to release any Lien covering property (and to release any such guarantor) that is the subject of either a disposition of property permitted hereunder or a disposition

to which the Required Lenders have consented.

and provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent.

Section 11.03 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all out-of-pocket expenses actually incurred by the Administrative Agent and their respective Affiliates, including all due diligence costs, costs of asset validations, field examination, appraisals and the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the preparation and administration (including, without limitation, any "know your customer" procedures) of this Agreement and the other Basic Documents and the transactions contemplated hereby or thereby or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable out-of-pocket expenses incurred by the Applicant in connection with the application, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses actually incurred by the Administrative Agent or Applicant, including all reasonable fees, charges and disbursements of any counsel for the Administrative Agent, Applicant, or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement and the other Basic Documents, including its rights under this Section, or in connection with the Advances hereunder, including in connection with any workout, restructuring or negotiations in respect thereof and (iv) all out-of-pocket costs, expenses, assessments and other charges actually incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Security Document or any other document referred to therein, or in connection with the Advances made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Advances or Letters of Credit. Upon written request of Borrower, any request for reimbursement of any of the costs and expenses in which the Borrower is required to reimburse a Person pursuant to this Section 11.03(a) shall be accompanied by an invoice evidencing such cost or expense, which invoice shall be in reasonable form and substance in respect of such cost or expense.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent, Applicant and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of a single counsel for the Indemnitees in each relevant jurisdiction (provided, that if the interests of the Indemnitees conflict with regard to the representation, each Indemnitee having such a conflict shall be reimbursed for the reasonable fees, charges and disbursements of its own counsel), incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) the making of any Advances or issuance of Letter of Credit or the use of the proceeds therefrom (including any refusal by an Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any payments that the Administrative Agent is required to make under any indemnity issued to any bank referred to in the Basic Documents to which remittances in respect of the Fourth Tier Purchase Agreements are to be made, or (iv) any

payments that the Administrative Agent is required to make under any indemnity issued to Servicer or any replacement servicer, or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) Procedure for Indemnification for Third Party Claims. If the Indemnitee is seeking indemnification hereunder with respect to a third party claim (in such capacity, the "Indemnified Party"), it shall, except to the extent prohibited by any Governmental Rule, promptly notify the Borrower (in such capacity, the "Indemnifying Party"), in writing (each, a "Claim Notice"), of any notice of the assertion by a third party of a claim or of the commencement by a third party of any legal proceeding, arbitration or action, or if the Indemnified Party determines the existence of any such claim or the commencement by any third party of any such legal proceeding, arbitration or action, whether or not the same shall have been asserted or initiated, in any case with respect to which the Indemnifying Party is or may be obligated to provide indemnification (a "Third Party Claim"), specifying in reasonable detail the nature of the Third Party Claim and, if known, the amount, or an estimate of the amount, of the Third Party Claim, provided that failure to promptly give such notice shall only limit the liability of the Indemnifying Party to the extent of the actual prejudice, if any, suffered by the Indemnifying Party as a result of such failure. The Indemnifying Party shall have thirty (30) calendar days after receipt of any Claim Notice to notify the Indemnified Party of the Indemnifying Party's election to assume the defense of the Third Party Claim. If the Indemnifying Party has assumed such defense, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense of such claim. In the event that the Indemnifying Party elects to assume the defense of a Third Party Claim as contemplated herein, the Indemnified Party shall be entitled to participate in (but not control) the defense of such claim and to employ counsel of its choice for such purpose at its sole expense unless (i) the Indemnifying Party has agreed in writing to pay such fees and expenses, or (ii) the named parties to any such action, suit or proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party and such Indemnified Party shall have been advised by its counsel that there may be one or more legal defenses available to it which are different from or additional to or in conflict with those available to the Indemnifying Party and in the reasonable judgment of such counsel it is advisable for the Indemnified Party to employ separate counsel in connection with such different, additional, or conflicting defenses (in which case the Indemnifying Party shall not have the right to assume the defense of such action, suit or proceeding on behalf of the Indemnified Party solely in connection with such different, additional, or conflicting defenses). If the Indemnifying Party does not assume the defense of any Third Party Claim in accordance with this Section 11.03(c), the Indemnified Party may continue to defend such claim at the sole cost and expense of the Indemnifying Party and the Indemnifying Party may still participate in, but not control, the defense of such Third Party Claim at the Indemnifying Party's cost and expense; provided, however, that if the Indemnifying Party does not assume the defense and control of a Third Party Claim in accordance with this Section 11.03(c), the Indemnifying Party shall not be required to pay for more than one counsel for the Indemnified Party in connection with any Third Party Claim and a single local counsel in each jurisdiction where local counsel is reasonably required. In the event that the Indemnified Party assumes the defense of a Third Party Claim in accordance with this Section 11.03(c), the Indemnified Party will not consent to a settlement, compromise or discharge of, or the entry of any judgment arising from, any such claim, without the prior written consent of the applicable Indemnifying Party (such consent not to be unreasonably withheld, conditioned or delayed). In the event that the Indemnifying Party elects to assume the defense of a Third Party Claim in accordance with this Section 11.03(c), the

Indemnifying Party shall not, without the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld, conditioned or delayed), consent to a settlement, compromise or discharge of, or the entry of any judgment arising from, such claim, provided that the consent of the Indemnified Party is not so required if the sole relief provided by such settlement, compromise, discharge or entry of any judgment consists of monetary obligations that are paid by the Indemnifying Party and contains no admission of liability on the part of the Indemnified Party. In any such Third Party Claim, the party responsible for the defense of such claim hereunder shall, to the extent reasonably requested by the other party, keep such other party informed as to the status of such claim, including all settlement negotiations and offers. If the Indemnifying Party does not assume the defense of such Third Party Claim in accordance with this Section 11.03(c), the Indemnifying Party shall make available to the Indemnified Party and its attorneys and other representatives all relevant books, records, documents and other materials reasonably required by the Indemnified Party or its representatives and attorneys for use in contesting any Third Party Claim, and shall reasonably cooperate with the Indemnified Party in the defense of all such claims; provided, however, that nothing in this Section 11.03(c) will require the Indemnifying Party to provide information that could reasonably be expected to jeopardize the attorney-client privilege applicable to any such information. If the Indemnifying Party assumes the defense of such Third Party Claim in accordance with this Section 11.03(c), the Indemnified Party shall make available to the Indemnifying Party and its attorneys and other representatives all relevant books, records, documents and other materials reasonably required by the Indemnifying Party or its representatives and attorneys for use in contesting any Third Party Claim, and shall reasonably cooperate with the Indemnifying Party in the defense of all such claims; provided, however, that nothing in this Section 11.03(c) will require the Indemnified Party to provide information that could reasonably be expected to jeopardize the attorney-client privilege applicable to any such information.

(d) Reimbursement by Lenders. To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent or Applicant under Section 11.03(a), (b), or (c), each Lender severally agrees to pay to the Administrative Agent or Applicant, as applicable, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent in its capacity as such.

(e) Waiver of Consequential Damages, Etc. To the extent permitted by applicable Governmental Rules, each of the Loan Parties and the Indemnitees shall not assert, and hereby waives, any claim on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, Letters of Credit, any Advance or the use of the proceeds thereof.

(f) Payments. All amounts due under this Section shall be payable promptly after written demand therefor.

(g) Limitation with respect to Taxes. Notwithstanding anything to the contrary contained herein, Taxes shall be indemnifiable by the Borrower only if and to the extent provided in Section 2.11.

Section 11.04 Successors and Assigns.

(a) Assignments Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted

hereby (including any Affiliate of the Applicant that applies any Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and the Administrative Agent (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders.

(i) Assignments Generally. Subject to the conditions set forth in clause (ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment, participations in Letters of Credit and the Advances at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Administrative Agent (provided such Administrative Agent at the time of such request is not or is not affiliated with a Defaulting Lender) and the Borrower; provided, however, that no such consent shall be required by Borrower with respect to an assignment to any Eligible Assignee or at any time following the occurrence and during the continuance of an Event of Default.

(ii) Certain Conditions to Assignments. Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment or Advances, the amount of the Revolving Commitment or Advances of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $3,000,000 unless the Administrative Agent otherwise consent;

(B) each partial assignment of any Revolving Commitments or Advances shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations with respect to the applicable Advance under this Agreement in respect of such Revolving Commitments and Advances;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption in substantially the form of Exhibit A, together with a processing and recordation fee of $3,500 (for which no one other than the assignor and the assignee shall be obligated); and

(D) the assignee, if it shall not already be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire, all documentation and other information required by regulatory authorities under applicable "know your customer" and Anti-Money Laundering Laws, including, without limitation, the USA PATRIOT Act and a consent to the terms and provisions of this Agreement.

(iii) Effectiveness of Assignments. From and after the execution of an Assignment and Assumption and the acceptance and recording of such Assignment and Assumption by Administrative Agent pursuant to Section 11.04(b), the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.11 and Section 11.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.04(c).

(iv) Maintenance of Registers by Administrative Agent. Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of their offices, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal amount of the Advances owing to, each Lender pursuant to the terms hereof from time to time (the "Registers" and each individually, a "Register"). The entries in the Registers shall be conclusive, and the Loan Parties, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Registers pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Registers shall be available for inspection by the Borrower, and any Lender, at any reasonable time and from time to time upon reasonable prior written notice.

(v) Acceptance of Assignments by Administrative Agent. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.04(b) and any written consent to such assignment required by Section 11.04(b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this Section 11.04(b).

(c) Participations. Any Lender may, with the prior written consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) and the Administrative Agent, sell participations to one or more banks, financial institutions, funds or other entities (each, a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Basic Documents (including all or a portion of its Revolving Commitments and the Advances owing to it); provided that any Lender may, without the consent of the Borrower, sell participations to (i) one or more Persons set forth in clause (iv) and clause (v) of the definition of Eligible Assignee and (ii) one or more Person or Persons if an Event of Default has occurred and is continuing, and, in each case, such Person shall be a Participant as defined herein; provided further that (i) such Lender's obligations under this Agreement and the other Basic Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Loan Parties, the Servicer, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Basic

Documents and shall have no direct obligation or duty to any Participant. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Basic Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Basic Document; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 11.02(b) that affects such Participant. Subject to Section 11.04(f), the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.11 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 11.04(b); provided, however, that no participant shall be entitled to receive under Section 2.11 in excess of the amount that would have been payable under such Section by the Borrower to the Lender granting its participation had such participation not been granted, and no Lender granting a participation shall be entitled to receive payment under Section 2.11 in an amount which exceeds the sum of (A) the amount to which such Lender is entitled under such Section with respect to any portion of any Advance owned by such Lender which is not subject to any participation, plus (B) the aggregate amount to which its participants are entitled under Section 2.11 with respect to the amounts of their respective participations.

(d) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Section 2.11 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any such pledge or assignment to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

(f) No Assignments to the Borrower or Affiliates. Anything in this Section to the contrary notwithstanding, no Lender may assign or participate any interest in any Advance held by it hereunder to the Borrower or any of its Affiliates or Subsidiaries without the prior consent of each Lender.

Section 11.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement, the making of any Advances and issuance of Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, Applicant or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Advance or any fee or any other amount payable under this Agreement is outstanding and unpaid and so long as the Revolving Commitments have not expired or terminated. The provisions of Section 2.11, Section 11.03, Section 11.14, and Article X shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Advances and the Revolving Commitments, the expiration or termination of the Letters of Credit or the termination of this Agreement or any provision hereof.

Section 11.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in

counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Applicant Sublimit of the Applicant constitute the entire contract between and among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof, including that certain Term Sheet, dated as of July 16, 2020, executed by Parent. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 11.08 Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender and Applicant is hereby authorized at any time and from time to time, to the fullest extent permitted by Governmental Rules, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender or Applicant to or for the credit or the account of the Borrower against any of and all the Obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such Obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of set-off) which such Lender may have.

Section 11.09 Governing Law; Jurisdiction; Etc.

(a) Governing Law. THIS AGREEMENT, AND THE PERFORMANCE HEREOF, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) Submission to Jurisdiction. Each of the Loan Parties, the Applicant, the Administrative Agent, and the Lenders hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County, N.Y., and of the United States District Court of the Southern District of New York sitting in New York County, N.Y., and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any of the other Basic Documents, whether sounding in contract, tort, or otherwise, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such State or, to the extent permitted by Governmental Rules, in such Federal court. Each of the parties hereto agrees that a final judgment after completion of appeals, if any, in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Governmental Rules. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Loan Party or any of their respective properties in the courts

of any jurisdiction.

(c) Waiver of Objection to Venue. Each of the Loan Parties, the Administrative Agent, and the Lenders hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 11.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Governmental Rules, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 11.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by Governmental Rules.

Section 11.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE GOVERNMENTAL RULES, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 11.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 11.12 USA PATRIOT Act. Each Lender hereby notifies the Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001, as amended and modified from time to time)), it is required to obtain, verify and record information that identifies each of the foregoing Persons, which information includes the name and address of such Persons and other information that will allow such Lender to identify such Persons in accordance with the USA PATRIOT Act.

Section 11.13 Interest Savings Clause. It is the intent of the Borrower and the Lenders to conform strictly to all applicable state and federal usury laws. All agreements between the Borrower and Lenders, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof or otherwise, shall the amount contracted for, charged, received or collected by Lenders for the use, forbearance, or detention of the money loaned hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to the Obligations evidenced hereby which may be legally deemed to be for the use, forbearance or detention of money, exceed the maximum amount which the Borrower is legally entitled to contract for, charge, receive or collect under applicable Governmental Rules. If from any circumstances whatsoever fulfillment of any provision hereof or of such other documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by Governmental Rules, then the obligation to be fulfilled shall be automatically reduced to the limit of such validity, and if from any such circumstance

Lenders shall ever receive as interest or otherwise an amount in excess of the maximum that can be legally collected, then such amount which would be excessive interest shall be applied to the reduction of the principal indebtedness hereof and any other amounts due with respect to the Obligations evidenced hereby, but not to the payment of interest and if such amount which would be excess interest exceeds the Obligations and all other non-interest indebtedness described above, then such additional amount shall be refunded to the Borrower. In determining whether or not all sums paid or agreed to be paid by the Borrower for the use, forbearance or detention of the Obligations hereunder to Lenders, under any specific contingency, exceeds the maximum amount permitted by applicable Governmental Rules, the Borrower and Lenders shall to the maximum extent permitted under applicable Governmental Rules, (a) treat all Obligations evidenced hereby as but a single extension of credit, (b) characterize any non-principal payment as an expense, fee or premium rather than as sums paid or agreed to be paid by the Borrower for the use, forbearance or detention of the Obligations evidenced hereby, (c) exclude voluntary prepayments and the effect thereof, and (d) amortize, prorate, allocate and spread in equal parts, the total amount of such sums paid or agreed to be paid by the Borrower for the use, forbearance or detention of the Obligations to Lenders evidenced hereby throughout the entire contemplated term of such Obligations so that the interest rate is uniform through the entire term of such Obligations. The terms and provisions of this paragraph shall control and supersede every other provision hereof and all other agreements between the Borrower and Lenders.

Section 11.14 Right of First Refusal.

(a) The Loan Parties hereby agree, from the Closing Date until the four (4) year anniversary of the earlier of (i) the date of the first Advance and (ii) the six (6) month anniversary of the Closing Date, if:

(i) (x) any one or more of the Loan Parties receives a *bona fide*, written offer from any third party to (A) refinance the financing provided to the Borrower hereunder, or (B) provide any debt financing to any Loan Party, in any such case (an "Initial Offer"), (x) the terms of the Initial Offer are acceptable to the applicable Loan Party(ies), (y) the applicable Loan Party(ies) desire(s) to accept the Initial Offer from the offeror thereof ("Offeror"), and (z) MBL Administrative Agent II LLC does not exercise their right of first refusal pursuant to the terms of that certain Senior Secured Revolving Credit Agreement dated as February 5, 2021 (as amended, restated, supplemented or otherwise modified from time to time) by and between TX Ops Funding II, LLC, TX Ops Indiana Limited, and MBL Administrative Agent II LLC (the "Existing ROFR"), such Loan Party will advise the Administrative Agent in writing of the Initial Offer, the material terms and conditions of the Initial Offer and, to the extent permitted by applicable Governmental Rules, a copy of the Initial Offer. Each Loan Party agrees not to accept the Initial Offer until fifteen (15) Business Days after the Administrative Agent's receipt of the foregoing items (the "Initial Offer Matching Period"). Each Loan Party further agrees that in the event Administrative Agent or its Affiliate(s) delivers a written commitment letter or term sheet (a "Financing Commitment") which matches the material terms (other than the commitment amount) set forth in the Initial Offer within the Initial Offer Matching Period, and agrees to close such financing within sixty (60) days after the expiration of the Initial Offer Matching Period, such Loan Party will not accept the Initial Offer and will accept the Financing Commitment.

(ii) (x) any one or more of the Loan Parties receives a *bona fide*, written offer from an Offeror, after Administrative Agent has not delivered a Financing Commitment within the Initial Offer Matching Period with respect to such Offeror's Initial Offer, the material terms and conditions of which are more favorable to the Offeror than the Initial

Offer (a "Subsequent Offer"), (x) the terms of the Subsequent Offer are acceptable to the applicable Loan Party(ies), (y) the applicable Loan Party(ies) desire(s) to accept the Subsequent Offer from the Offeror and (z) MBL Administrative Agent II LLC does not exercise the Existing ROFR, such Loan Party will advise the Administrative Agent in writing of the Subsequent Offer, the material terms and conditions of the Subsequent Offer and, to the extent permitted by applicable Governmental Rules, a copy of the Subsequent Offer. Each Loan Party agrees not to accept the Subsequent Offer until fifteen (15) Business Days after the Administrative Agent's receipt of the foregoing items (the "Subsequent Offer Matching Period"). Each Loan Party further agrees that in the event Administrative Agent or its Affiliate(s) delivers a Financing Commitment which matches the material terms set forth in the Subsequent Offer within the Subsequent Offer Matching Period, and agrees to close such financing within sixty (60) days after the expiration of the Subsequent Offer Matching Period, such Loan Party will not accept the Subsequent Offer and will accept the Financing Commitment.

(b) The Administrative Agent's right to deliver a Financing Commitment with respect to Initial Offers or Subsequent Offers is limited to, with respect to all Financing Commitments, the aggregate sum $100,000,000. The applicable Loan Party(ies) shall have the right to consummate any financing contemplated by an Initial Offer or Subsequent Offer on any scheduled closing date, on terms no less favorable to the applicable Loan Parties than the terms set forth in such Initial Offer or Subsequent Offer with respect to which the Administrative Agent delivered a Financing Commitment, with respect to that portion of the commitment that exceeds the foregoing limit.

(c) In the event the Administrative Agent or its Affiliate(s) do(es) not execute final and binding financing documentation memorializing the terms of a Financing Commitment after negotiation in good faith by the Administrative Agent and its Affiliate(s) (if applicable) (and the cause thereof is not due to any Loan Party's refusal to cooperate, negotiate in good faith, or provide information or documentation reasonably requested by the Administrative Agent or its Affiliate(s) in connection with such refinancing) within sixty (60) days after the expiration of the Initial Offer Matching Period or Subsequent Offer Matching Period, as applicable, the applicable Loan Party(ies) may close on the Initial Offer or Subsequent Offer, as applicable, within one hundred twenty (120) calendar days after the expiration of the Initial Offer Matching Period or Subsequent Offer Matching Period, as applicable. The applicable Loan Party(ies) shall also have the right to consummate any Initial Offer or Subsequent Offer on any scheduled closing date, on terms no less favorable to the applicable Loan Parties than the terms set forth in such Initial Offer or Subsequent Offer, in the event the Loan Parties do not receive a Financing Commitment prior to the expiry of the applicable Initial Offer Matching Period or Subsequent Offer Matching Period.

Section 11.15 Acknowledgment and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in this Agreement or any Basic Document, each party hereto acknowledges that any liability of any Lender which is an Affected Financial Institution arising under this Agreement or any Basic Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by: (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender party hereto that is an Affected Financial Institution; and (b) the effects of any Bail-In Action on any such liability, including, if applicable, (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in

lieu of any rights with respect to any such liability under this Agreement or any Basic Document; or (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

Section 11.16 Confidentiality. Borrower agrees, and agrees to cause each of its Affiliates, (i) except to the extent required by applicable laws or regulations (in which case Borrower shall, and shall cause its Affiliates to, request and use its best efforts to obtain confidential treatment of such information to the extent permitted by applicable law), not to transmit or disclose any provision of any Basic Document to any Person (other than to Borrower's directors, advisors, tax preparers, accountants and officers on a need-to-know basis, or in connection with any audit or investigation by any Governmental Authority) without Administrative Agent's prior written consent, and (ii) to inform all Persons of the confidential nature of the Basic Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions. Administrative Agent reserves the right to review and approve all materials that Borrower or any of its Affiliates prepares that contain Administrative Agent's name or describes or refers to any Basic Document, any of the terms thereof or any of the transactions contemplated thereby. Administrative Agent shall not unreasonably withhold, condition or delay any such consent if the consent is requested with respect to any audit or governmental investigation or otherwise required by applicable law. Borrower shall not, and shall not permit any of its Affiliates to, use Administrative Agent's or any Lender's name (or the name of any of Administrative Agent's or Lender's affiliates) in connection with any of its business operations. Nothing contained in any Basic Document is intended to permit or authorize Borrower or any of its Affiliates to contract on behalf of Administrative Agent or any Lender. Further, the Borrower agrees that Administrative Agent or any affiliate of Administrative Agent may (1) disclose a general description of transactions arising under the Basic Documents for advertising, marketing or other similar purposes, (2) disclose confidential information and any Basic Documents to prospective and actual participants and assignees of Administrative Agent, Applicant and those of any Lender, which parties shall also be bound by the terms of this Section 11.16 and, to the extent they may not be so bound because they do not become participants or assignees, Administrative Agent, Applicant and the Lenders shall cause such parties to enter into an appropriate confidentiality agreements with similar effect, and (3) use Borrower's name, logo or other indicia germane to such party in connection with such advertising, marketing or other similar purposes. Information required to be disclosed pursuant to applicable law shall nevertheless continue to be confidential information as to the parties and their respective Affiliates despite such disclosure and, in each such case, the Loan Parties and their respective Affiliates who are required to make such disclosure shall request and use its commercially reasonable efforts to obtain confidential treatment of such information to the extent permitted by applicable law before making any such disclosure and cooperate with the Administrative Agent or any Lender (at such Loan Party's expense) in Administrative Agent's or any Lender's efforts to protect against such disclosure or to obtain confidential treatment or a protective order with respect to such information.

ARTICLE XII

TERMINATION

Section 12.01 Termination.

(a) Date of Termination. This Agreement shall terminate upon either: (i) the disposition of all funds with respect to the last item of Collateral and the remittance of all funds due hereunder and the payment of all amounts due and payable, including, in both cases, without limitation, indemnification payments payable pursuant to any Basic Document to the Administrative Agent or the Servicer, written notice of the occurrence of either of which shall be provided to the Administrative Agent by the Borrower; or (ii) the mutual consent of the Borrower

and all Lenders in writing and delivered to the Administrative Agent by Borrower and upon the occurrence of the foregoing events described in this Section 12.01(a), the Administrative Agent and the Lenders shall authorize the filing of such documents as set forth in Section 2.06(b).

(b) Termination of the Borrower. Neither the Administrative Agent, nor any of the Lenders nor the Borrower shall be entitled to revoke or terminate this Agreement except as contemplated herein.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the date first above-written.

TX OPS GLOBAL FUNDING I, LLC,
as Borrower

By: _____
Name: Ryan Davidson
Title: Chief Executive Officer

TX OPS INDIANA LIMITED,
as Parent and Servicer

By: _____
Name: Ryan Davidson
Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

MBL ADMINISTRATIVE AGENT II LLC,
as Administrative Agent and Applicant

By: Man Global Private Markets (USA) Inc.,
its services manager

By: _____
Name: Kaitlin Carroll
Title: Assistant Secretary

MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP,
as a Lender

By: Man Global Private Markets (USA) Inc.,
its investment manager

By: _____
Name: Kaitlin Carroll
Title: Assistant Secretary

SCHEDULE I

Initial Revolving Commitments

Name of Lender	Revolving Commitment ($)
Man Bridge Lane Specialty Lending Fund II (US) LP	$25,000,000.00

SCHEDULE II

Approved Countries of Destination

None.

SCHEDULE III

Equity Holders

Ryan Davidson, in his individual capacity and through 2653638 Ontario Inc., collectively owns 61.3% of the voting equity of Trade X Group of Companies Inc. (on a fully-diluted basis as of August 11, 2021), which owns 100% of 12771888 Canada Inc., which owns 100% of TX OPS Canada Corporation.

SCHEDULE IV

Eligible NVOCC

None.

SCHEDULE 3.1

Disclosure Schedule

None.

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION

Reference is made to the **SENIOR SECURED REVOLVING CREDIT AGREEMENT**, dated as of September 27, 2021 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among **TX OPS GLOBAL FUNDING I, LLC**, a Delaware limited liability company (the "Borrower"), **TX OPS INDIANA LIMITED**, an Indiana corporation ("Parent"), each of the **LENDERS** from time to time party thereto (individually, each a "Lender" and, together, the "Lenders"), and **MBL ADMINISTRATIVE AGENT II LLC**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"). Terms defined in the Credit Agreement are used herein with the same meanings.

The Assignor named below hereby sells and assigns, without recourse, to the Assignee named below, and the Assignee hereby purchases and assumes, without recourse, from the Assignor, effective as of the Assignment Date set forth below, the interests set forth below (the "Assigned Interest") in the Assignor's rights and obligations under the Credit Agreement, including the interests set forth below in the Revolving Commitment of the Assignor on the Assignment Date and Advances owing to the Assignor which are outstanding on the Assignment Date, together with unpaid interest accrued on the assigned Advances to the Assignment Date, and the amount, if any, set forth below of the fees accrued to the Assignment Date for account of the Assignor. The Assignee hereby acknowledges receipt of a copy of the Credit Agreement. From and after the Assignment Date (i) the Assignee shall be a party to and be bound by the provisions of the Credit Agreement and, to the extent of the interests assigned by this Assignment and Assumption, have the rights and obligations of a Lender thereunder and (ii) the Assignor shall, with respect to the Assigned Interests, relinquish its rights and be released from its obligations under the Credit Agreement.

This Assignment and Assumption is being delivered to the Administrative Agent together with, if the Assignee is not already a Lender under the Credit Agreement, an Administrative Questionnaire in the form supplied by the Administrative Agent, duly completed by the Assignee. The **[Assignee/Assignor]** shall pay the fee payable to the Administrative Agent pursuant to Section 11.04(b) of the Credit Agreement.

This Assignment and Assumption shall be governed by and construed in accordance with the laws of the State of New York.

Date of Assignment:
Legal Name of Assignor:
Legal Name of Assignee:
Assignee's Address for Notices:
Effective Date of Assignment ("Assignment Date")[1]:
Principal Amount Assigned:
Revolving Commitment Assigned:
Advances:
Fees Assigned (if any):

[1] Must be at least five (5) Business Days after execution hereof by all required parties.

The terms set forth above and below are hereby agreed to:

[NAME OF ASSIGNOR], as Assignor

By:_____
Name:
Title:

[NAME OF ASSIGNEE], as Assignee

By:_____
Name:
Title:

The undersigned hereby consent to the within assignment[2]:

TX OPS GLOBAL FUNDING II, LLC,
as Borrower

By:_____
Name:
Title:

MBL ADMINISTRATIVE AGENT II LLC,
as Administrative Agent and Applicant

By: Man Global Private Markets (USA) Inc.,
its services manager

By:_____
Name:
Title:

[2] Consents to be included to the extent required by Section 11.04(b) of the Credit Agreement.

EXHIBIT B

FORM OF PROMISSORY NOTE

$[_____] New York, New York

[_____] [__], 20[__]

FOR VALUE RECEIVED, the undersigned **TX OPS GLOBAL FUNDING I, LLC**, a Delaware limited liability company (the "Borrower"), hereby promises to pay to the order of **[LENDER NAME], a [LENDER ENTITY TYPE]** ("Lender"), or its registered assigns, c/o **[_____]** (the "Administrative Agent") or such other place as Lender or Administrative Agent may designate from time to time in writing, in lawful money of the United States of America and in immediately available funds, the principal amount of up to **[_____]** ($**[_____]**), or such other principal amount as may be owing to Lender under and in accordance with the provisions of the Senior Secured Revolving Credit Agreement, dated as of September 27, 2021, among Borrower, **TX OPS INDIANA LIMITED**, an Indiana corporation ("Parent"), the Lenders from time to time party thereto, and Administrative Agent (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"). This Senior Secured Promissory Note (this "Note") is entitled to the benefit and security of the Collateral, the Credit Agreement, the Security Agreement, and all of the other Basic Documents. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Credit Agreement, the terms of which are hereby incorporated in their entirety herein by reference.

Reference is hereby made to the Credit Agreement for a statement of all of the terms and conditions under which the Advances evidenced hereby from time to time are made and are to be repaid. Advances may be prepaid, but subject to the terms and conditions of prepayment provided in the Credit Agreement. The principal balance of the Advances, the rates of interest applicable thereto, and the date and amount of each payment made on account of the principal thereof, shall be recorded by the Administrative Agent on its books; provided, that, the failure of the Administrative Agent to make any such recordation shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or this Note.

The principal amount of the indebtedness evidenced hereby shall be payable in the amounts and on the dates specified in the Credit Agreement. Interest thereon shall be paid until such principal amount is paid in full at such interest rates and at such times, and pursuant to such calculations, as are specified in the Credit Agreement. In no event, however, shall interest exceed the maximum interest rate permitted by applicable law. Payments of interest and principal shall be made without set-off, recoupment, counterclaim or any deduction whatsoever until the entirety of the Obligations is repaid in full and in cash.

Upon the occurrence and during the continuation of any Event of Default, all principal and all accrued interest then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable, all as provided in the Credit Agreement. Time is of the essence of this Note. Borrower hereby irrevocably waives diligence, presentment, demand, protest, notice of intent to accelerate, notice of acceleration, and any other notice of any kind not expressly mandated by the Credit Agreement. No failure on the part of the holder hereof to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Except as provided in the Credit Agreement, this Note may not be assigned to any Person.

THIS NOTE, AND THE PERFORMANCE HEREOF, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first written above.

BORROWER:

[]

By: _____
Name: _____
Title: _____

* * *

EXHIBIT C

FORM OF BORROWING BASE CERTIFICATE

[DATE]

MBL Administrative Agent II LLC,
as Administrative Agent
452 Fifth Avenue, 27th Floor
New York, New York 10018
Email: Wes.Lovy@man.com
Attention: Wes Lovy
Facsimile: (203) 584-9692

Attention:

Ladies and Gentlemen:

This Borrowing Base Certificate is delivered to you pursuant to the terms of the SENIOR SECURED REVOLVING CREDIT AGREEMENT, dated as of September 27, 2021 (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement"), by and among **TX OPS GLOBAL FUNDING I, LLC**, a Delaware limited liability company (the "Borrower"), **TX OPS INDIANA LIMITED**, an Indiana corporation ("Parent"), each of the **LENDERS** from time to time party thereto (individually, a "Lender" and collectively, the "Lenders"), and **MBL ADMINISTRATIVE AGENT LLC**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, the "Administrative Agent"). Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

This Borrowing Base Certificate is being delivered to you pursuant to Section 4.02 of the Credit Agreement. The Borrower hereby makes the following representations and warranties:

(1) Schedule 1 is a true, correct and complete calculation of the borrowing base report as of the date hereof (the "Borrowing Base Report"), which sets forth the calculation of the Borrowing Base for the relevant Advance and all components thereof.

(2) All of the representations and warranties set forth in Article III of the Credit Agreement are true and correct in all material respects as of the date hereof and as of the related Transfer Date and/or Credit Extension Date, as applicable (except (A) to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date and (B) for such representations and warranties which are qualified by their terms by references to "materiality" or "material adverse effect," which such representations and warranties as so qualified shall be true and correct in all respects).

(3) All of the conditions precedent set forth in Sections 4.01 and 4.02 of the Credit Agreement, to the extent they can be satisfied on a date prior to the Credit Extension Date, have been satisfied as of the date hereof and will be or will remain satisfied on the related Credit Extension Date.

(4) Each Loan Party is in compliance in all material respects with the terms and conditions set forth in the Basic Documents.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Borrowing Base Certificate this ___ day of _____, 20__.

[]

By:_____
Name:
Title:

Schedule 1

BORROWING BASE REPORT

[To be prepared by Borrower and attached]

EXHIBIT D

FORM OF ADVANCE REQUEST

_____, 20__

MBL Administrative Agent II LLC,
as Administrative Agent
452 Fifth Avenue, 27th Floor
New York, New York 10018
Email: Wes.Lovy@man.com
Attention: Wes Lovy
Facsimile: (203) 584-9692

Re: Senior Secured Revolving Credit Agreement, dated as of September 27, 2021, by and among **TX OPS GLOBAL FUNDING I, LLC**, a Delaware limited liability company (the "Borrower"), **TX OPS INDIANA LIMITED**, an Indiana corporation ("Parent"), and the Lenders from time to time party thereto, and **MBL ADMINISTRATIVE AGENT II LLC**, as Administrative Agent (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement")

Gentlemen/Ladies:

Borrower hereby irrevocably requests that Lenders make an Advance in the amount of $_____ on [_____] [__], 20[__][1] (the "Advance Request"), via wire transfer, pursuant to the following instructions:

Account Name: [_____]
Account Number: [_____]
Bank Name: [_____]
ABA Routing Number: [_____]

Borrower acknowledges and agrees that: (i) this Advance Request is made pursuant to, and is governed in all respects by, the terms of the Credit Agreement; (ii) this Advance Request may not be revoked, amended, or otherwise modified except by a writing signed by Borrower and Administrative Agent and delivered in accordance with Section 11.01 of the Credit Agreement; (iii) on or prior to the Credit Extension Date of such Advance Request, Borrower shall have delivered to Administrative Agent a Borrowing Base Certificate with respect to such Advance Request which includes among other things, the information set forth in Section 2.03(b)(vii) of the Credit Agreement, and (iv) capitalized terms used herein but not defined shall have the meaning ascribed to such terms in the Credit Agreement.

Borrower hereby represents and warrants that any Financed Vehicles being pledged in connection with the Advance being requested herein (A) are Eligible Assets and that each such Financed Vehicle was purchased in accordance with and remains in compliance with the Applicable Operating Procedures, (B) that all Purchase Agreement Documents for each such Financed Vehicle have been delivered to Servicer and Administrative Agent, and (C) that the Vehicle Title (to the extent required by the Approved Country of Destination) and an Acceptable Bill of Lading for such Financed Vehicle have been delivered to Custodian.

[1] To be at least 2 Business Days after date of this Advance Request.

{The remainder of this page is blank; the next page is a signature page.}

Very truly yours,

[]

By:_____
Name:_____
Title:_____

REQUESTED ADVANCE APPROVED:

MBL ADMINISTRATIVE AGENT II LLC,
as Administrative Agent

By: Man Global Private Markets (USA) Inc.,
its services manager

By:_____
Name:_____
Its Authorized Signatory

Date:_____

* * *

EXHIBIT E

FORM OF MONTHLY COMPLIANCE CERTIFICATE

Reference is made to that certain Senior Secured Revolving Credit Agreement, dated as of September 27, 2021, by and among **TX OPS GLOBAL FUNDING I, LLC**, a Delaware limited liability company (the "Borrower"), **TX OPS INDIANA LIMITED**, an Indiana corporation ("Parent"), and the Lenders from time to time party thereto, and **MBL ADMINISTRATIVE AGENT II LLC**, as Administrative Agent (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement").

I, _____, am the _____ of Parent, and do hereby certify that:

(i) each Loan Party is in compliance with all provisions and terms of the Credit Agreement and the other Basic Documents to which they are party;

(ii) no Event of Default (or, to the Parent's knowledge, any event that with notice or the lapse of time or both, would become an Event of Default), Level One Regulatory Event, or Level Two Regulatory Event has occurred under the Credit Agreement;

(iii) [attached hereto are complete and correct copies of [specify financial statement or calculations being delivered pursuant to Section 5.11 of the Credit Agreement], each of which has been prepared in accordance with GAAP;][1] and

(iv) attached hereto as Schedule I are calculations demonstrating the Loan Parties compliance with each Financial Covenant.

Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Credit Agreement.

IN WITNESS WHEREOF, I have signed this certificate.

Date: _____, 20__

_____
[Name]
the [Authorized Person] of TX OPS INDIANA LIMITED

[1] To be included if delivered in connection with financial statements.

SCHEDULE I TO MONTHLY COMPLIANCE CERTIFICATE

[To be attached]

EXHIBIT F-1

TRADE X OPERATING PROCEDURES

(See Attached)

Original Transaction Flow Chart:

1	Seller posts a vehicle on Trade X and completes a disclosure of the vehicle's condition	0	Trade X technology checks the VIN for eligibility, recalls and accidents
2	AIM is dispatched and performs an inpsection		
3	Vehicle is published in the marketplace once the inspection is completed		
4	Buyer finds vehicle in the marketplace, makes an offer		
5	Buyer and Seller agree on sale price	1	
3	Trade X generates all purchase and sale agreements on behalf of the buyer and seller and populates it in the application	1	
4	Trade X pulls a deposit from the Buyer via ACH	1	Deposit calculated so that LTV is less than or equal to 90% of wholesale value
5	picked up	2-4	
6	ownership, Trade X pays the Seller	2-4	
7	port	3-5	
8	Vehicle is loaded to a container by Trade X or a third party warehouse	7-10	
8	Bill of lading is issued by the carrier	7-14	
9	Copy of the bill of lading shared with the buyer	7-14	
10	Vehicle arrives at the destination port	30-45	
11	(Xport Corridor)	47-49	
12	Vehicle held in third party warehoouse until buyer payment is received	47-49	
13	Once payment is confirmed, vehicle is released to the buyer	47-49	

EXHIBIT F-2

TECHLANTIC OPERATING PROCEDURES

(See Attached)

EXHIBIT G

TERMS AND CONDITIONS

(See Attached)

Terms and Conditions
TX02- 09-27-2021

Welcome to Trade X, the world's first and largest two-sided global B2B automotive trading Platform, connecting Platform Buyers and Platform Sellers in an end-to-end service solution. By agreeing to utilize Trade X's application and services, whether at a Trade X property or online, you agree, for yourself, your company, your dealership, and your representatives (collectively "you", to abide by the following terms and conditions, as amended from time to time by Trade X;

1. Definitions

"ACH Authorization" – refers to an authorization for Trade X to debit directly from the Customer's checking or saving account for the purpose of Fee, bill or damages payments.

"Anti-Money Laundering" – refers to the set of laws, regulations, and procedures Trade X implements to prevent disguising illegally obtained funds as legitimate income.

" Platform Buyer" – refers to a Customer who offers to bid, offers to purchase or purchases a Vehicle or other asset by use of the Trade X Platform.

"Customer" – refers to Platform Buyers and Platform Sellers as well as any person or business using or accessing the Trade X Platform. All users must be authorized users of Trade X or an authorized delegate of the authorized user (i.e. employee of an authorized user).

"Fees" – refers to charges applied to Customer accounts for use of, and access to, the Trade X Platform and for services rendered by Trade X in relation to the buying and selling of Vehicles. You agree that Trade X may deduct Fees and any other amounts owing from any amounts payable to you including sale proceeds.

"KYC" – refers to *Know Your Client* standards with respect to the process of a business verifying the identity of its clients and assessing potential risks of illegal intentions of the business relationship.

"Platform" – refers to the Trade X online application and all of Trade X's associated products and services.

"PAD Agreement" – refers to the agreement between Trade X and Customer authorizing Trade X to arrange for funds to be debited from Customer accounts, for the purposes of settling payments arising from use of the Platform.

"Purchase Agreement" – refers to an agreement outlining the amount to be paid by the Platform Buyer for the vehicle to Trade X and the amount to be paid to the Platform Seller by Trade X.

" Platform Seller" – refers to a Customer who offers a Vehicle for sale or who sells a Vehicle on the Platform.

"Services" – refers to the Platform, tools and services provided by Trade X to facilitate the sale of Vehicles, including any associated products and services provided to its Customers.

"Trade X" – refers to Trade X Group of Companies Inc. as a parent company and any wholly owned subsidiary of Trade X Group of Companies Inc.

"Terms of Use" – refers to these Terms and Conditions, the Privacy Policy, the Cookie Policy, and all other policies posted on the Trade X website, as amended from time to time.

"Vehicle" – refers to any automobile, truck or sport utility vehicle listed on the Platform. Vehicle may also include, but is not limited to, recreational vehicles, motorcycles, trailers, boats, and off-road sport vehicles.

"XPort Transactioin" - Any XPort transactions will be sold under the Inco Term, CIF- Cost, Freight and Insurance. As such, platform buyers must check admissibility and import guidelines and restrictions pertaining to that Vehicle and the intended port of call;

"Xpress Transaction" - Any Xpress transactions will be sold under the Inco Term, DDP2020- Delivered Duty Paid. Trade X will be responsible for freight, duty and customs clearance.

2. Scope of Application

2.1 **Trade X** - These Terms and Conditions shall benefit Trade X, and its various subsidiaries and affiliates, including but not limited to certain Trade X properties (collectively "Trade X," "we," "our," or "us"). These Terms and Conditions are in addition to, and not in lieu of, any more specific agreements you may have entered into or made with

Trade X. To the extent that there is any conflict between these Terms and Conditions and other more specific agreements you have signed with Trade X, those other more specific agreements will control. Trade X may amend these terms any time by posting an amended version at its website www.tradexport.com, which shall become effective on the date in which it was posted. Time is of the essence with respect to all of your duties hereunder.

2.2 **Trade X Platform** – Trade X provides a digital Platform for Customers to enter into Purchase Agreements and Services Agreements ("Agreements"). Trade X reserves the right to suspend or remove any delinquent Buyers or Sellers from the Platform.

2.3 Once a Platform Buyer and Platform Seller agree to a transaction on the Platform, and the Platform Seller delivers the vehicle to a Trade X warehouse, Trade X takes ownership of the vehicle(s), and once the vehicle has been transported, made compliant / homologated, it will then work to complete the transaction by selling it on to the Platform Buyer.

3. User Guidelines

3.1 **Accuracy of Information** - By agreeing to utilize Trade X, you certify and agree that all registration and representative information you have provided us, via Trade X application and otherwise, is true, correct, and complete, and you will promptly notify us in writing, via Trade X application, if there is any change to the information you have provided.

3.2 **Username and Password** - Every Customer must choose a username and password and it is the user's sole responsibility to protect his/her credentials. Sharing or lending your credentials is prohibited and in violation of Trade X's Terms of Use. Customers are responsible and liable for all activities conducted under the use of their username and password. Unauthorized use of your username and password must be reported to Trade X immediately.

3.3 **Compliance** - Every Customer must comply with all applicable legislation with respect to their buying and selling activities on the Platform. Trade X reserves the right to suspend and remove any delinquent Platform Buyers and Sellers from the Platform or any Platform Buyer or Seller that breaches any part of the Terms of Use.

3.4 **Reputational Scoring** - By using the Platform, both Parties agree to their participation in the reputational scoring system and the full disclosure thereof. Trade X may use third party reputational scoring systems to both evaluate and report on customer behaviour.

3.5 **Fairness and Courtesy** – By agreeing to utilize Trade X, you agree to behave in a fair, ethical, courteous, and civil manner in your interactions both with Trade X, Trade X

personnel, and other Customers of Trade X while using any of Trade X Services. Should any issues or concerns with the behaviour of Trade X personnel or other users of Trade X arise that cannot be resolved expeditiously and civilly on their own, you agree to raise those issues discreetly with our management.

3.6 **Authorized User Only** – The Customer may only be permitted to register on the Platform if they can prove with verifiable documentation that they are licensed and that their license is in good standing in their home jurisdiction. All Canadian and US Sellers must hold a valid dealer license. Canadian Platform Sellers must also hold a valid GST/HST number for their registered company. Customers are explicitly prohibited from allowing straw purchasers, agents or nominees to utilize their profile in order to buy and sell Vehicles on the Platform. Sharing your credentials/profile is prohibited and in violation of Trade X's Terms of Use. Trade X reserves the right to suspend and remove any Customer for breach of any part of these Terms and Conditions. Trade X reserves the right to limit or deny the use of the Platform for users that do not comply with this licensing requirement.

3.7 **KYC Requirement –** All Parties shall be required to undertake industry standard KYC requirements and adhere to the Trade X Anti-Bribery and Anti-Money Laundering policy in accordance with global industry standards. If a party is unable to provide verifiable KYC documentation, Trade X may refuse to grant or remove access to the Platform.

3.8 **Limitation of Liability** – The Platform Buyer agrees that Trade X will not be held liable for loss of profits or for any claim against it as a result of any vehicle defect or inaccurate or erroneous disclosure statements. Trade X agrees to assist the Platform Buyer with its claim against the Platform seller of the vehicle. The Platform Seller agrees to indemnify and hold Trade X harmless from, and against, any and all liabilities, damages, losses, expenses, demands, claims or suits as Trade X may suffer with respect to the sale of the vehicle to the Platform Buyer.

3.9 **Outside Service Provider -** In the event that either party uses the services of any outside service provider that is accessible through the Platform, Trade X does not assume any responsibility or liability thereof.

3.10 **Offer to Purchase** – A Platform Buyer may offer on a Vehicle that is listed on the Trade X Platform by entering the dollar amount that he/she wishes to offer. Once an offer is submitted, it cannot be withdrawn. All offers are final and binding. Trade X imposes a penalty for non-payment for a Vehicle after the user has offered on the Vehicle, as described below.

4. Terms of Sale - You agree to the following terms of sale for each Vehicle you purchase or sell through Trade X:

4.1 The Platform Buyer is the transferee and agrees to purchase the Vehicle from Trade X. Platform Seller is the transferor and agrees to sell the Vehicle to Trade X. Trade X facilitates the transaction between the Buyer and the Seller, by taking ownership of the vehicle during the interim export and importation period and expressly disclaims any and all express and/or implied warranties as to merchantability, fitness for a particular purpose, and any other matter whatsoever with respect to a Vehicle. Customer acknowledges and agrees to be a sophisticated buyer and agrees to satisfy themselves of the particulars of the subject Vehicle prior to buying or selling. Trade X shall have no legal claim or right of action for any purchase or sale transaction it facilitates.

4.2 Any adjustments or rejections must be raised the day of the sale and resolved prior to settlement. Deposits must be paid on the day of purchase, unless otherwise stated, or the sale may be considered null and void in Trade X's sole discretion. Should the Platform Buyer fail to pay a deposit for any reason, including without limitation, a negotiable payment instrument returned for non-sufficient funds ("NSF") Platform Buyer will be charged an NSF fee of CDN$150 per declined transaction and Platform Buyer will continue to remain obligated to fulfil the Purchase Agreement. Trade X will continue to attempt to collect the deposit up until the bond hold release date and if Platform Buyer fails to pay the deposit or the remaining balance due within two (2) business days following the bond release date then:

4.2.1 Platform Buyer will remain responsible for both the deposit and remaining balance owing in respect of such Vehicle;
4.2.2 Platform Buyer will be blocked from purchasing any other Vehicles on the Platform;
4.2.3 All Vehicle titles relating to the Platform Buyer's purchases will be held until all Buyer balances are settled;
4.2.4 Trade X will be entitled to sell the Vehicle (the "Second Sale") and collect (i) a CDN$595 administration fee; (ii) two percent (2%) interest on the sale price as set out in the applicable Purchase Agreement; (iii) the deficit, if any, between the Second Sale price and the price as set out in the applicable Purchase Agreement; and (iv) the FX penalty plus 25 basis points.

4.3 **Condition reports** - Condition reports will be performed by an accredited third party inspection service. Trade X will only report on discrepancies found between the Platform Seller's disclosure and the third party condition report. A Platform Buyer will only be asked to accept a Vehicle condition in the event there is a discrepancy between the Platform Seller disclosure and the condition report.

4.4 Vehicles shall be removed from Trade X premises or its affiliates premises no later than three (3) business days following the recipet of payment, and thereafter, Trade X may charge a daily storage fee of up to CAD $50.00 per day should any Vehicle be left on Trade X's premises.

4.5 Vehicles will not be released to the Platform Buyer until good funds are received. Platorm Buyer grants Trade X a security interest in each Vehicle to secure payment of the purchase price outlined in the Services Agreement and Purchase Agreement and any other debt owing from Buyer to Trade X, its affiliates, nominees and assigns. Trade X may hold any Vehicle in Trade X's possession for a reasonable period of time pending any odometer fraud, VIN-switch, or similar investigation.

4.6 **Platform Buyer Agrees:**

- 4.6.1 To purchase the applicable Vehicle for the purchase price agreed upon and reflected in the Services Agreement and Purchase Agreement with Trade X;
- 4.6.2 That before making an offer on a vehicle in an Xport transaction, the buyer has checked admissibility and import guidelines and restrictions pertaining to that Vehicle and the intended port of call;
- 4.6.3 To not resell such Vehicle until good funds for the purchase price, as well as all Fees owing, have been transmitted to Trade X;
- 4.6.4 That upon making settlement, regardless of payment method, to consider the sale a fully consummated cash transaction for present consideration;
- 4.6.5 That any stop payment order for payment methods, leaving the Vehicle intended for purchase unpaid shall be deemed to be evidence of fraud existing at the time of payment and shall be construed as an intent to defraud in order to obtain the Vehicle and/or its title/ownership;
- 4.6.6 To notify Trade X immediately of any defecfts in the vehicle pursuant to section 14.9 of these Terms and Conditions.
- 4.6.7 The completion of a transaction with the Platform Buyer means the Platform Buyer has paid Trade X and the Vehicle has been released;
- 4.6.8 That any recalls that occur after the bond release date are the responsibility of the Platform Buyer;
- 4.6.9 Trade X has the right to change the pick-up address for the Platform Buyer at any time.
- 4.6.10 That any storage or demmurage charges will be the responsibility of the Buyer in all Xport transactions

4.7 Platform Seller represents and promises that Platform Seller is the true and lawful owner of the Vehicle being sold; that the Vehicle is free from all liens and encumbrances; that Platform Seller has good right and full power and authority to sell and transfer title to the Vehicle; and that Platform Seller will warrant and defend the Vehicle against the claims and demands of all persons whomsoever.

4.8 **Platform Seller agrees**:

4.8.1 If the Platform Seller fails to drop the Vehicle at Trade X warehouse or fails to make Vehicle accessible for pick up, Platform Seller will be charged an administration fee equal to CDN$295 and the FX penalty plus 25 basis points;

4.8.2 If an inspection has been performed, the Platform Seller will be charged CDN$150 for the inspection;

4.8.3 That Platform Seller is responsible for clearing all recalls prior to delivering the Vehicle to the Trade X warehouse or making the Vehicle accessible for pick up. Platform Seller must provide proof of completing recall work.

4.8.4 Platform Seller is responsible for obtaining a conformance letter if required;

4.8.5 Platform Seller will not be paid until Trade X has the Vehicle in its care and control and has received an original hard copy of the Vehicle registration or Title with assignment to Trade X;

4.8.6 That completion of a transaction with the Platform Seller means that the funds have been released to the Platform Seller from Trade X.

4.9 Upon payment to Platform Seller by Trade X, the Platform Seller hereby agrees that it shall waive any and all rights it may have to defend against any claim made by Trade X, now or in the future, as against it for any loss or damages suffered by Trade X as a result of any incorrect odometer reading and/or misrepresented disclosure provided at the time of listing the vehicle on the Platform, regardless if made in the absence of bad faith.

5. Conclusion of the Contract

5.1 The listings displayed on the Platform do not constitute a binding offer to enter into an Agreement. They merely represent non-binding invitation to submit a binding offer to the Seller.

5.2 An Agreement for the purchase of a Vehicle shall be concluded only when the Platform Seller accepts the offer of the Platform Buyer in writing. When the Platform Buyer clicks the “accept offer” button within the application that offer is deemed to be accepted as valid and binding on all parties.

5.3 In the event that one of the Parties fails to comply with the terms of the Agreement, both Trade X and the other party reserve the right to withdrawal as set out below in Section 6.

6. Buyer Withdrawal Right

6.1 In the event that the Vehicle is not identical to the (1) specification; and (2) quality as specified in the Vehicle Condition Report, the Buyer may, at their sole and absolute discretion, withdraw from the Purchase Agreement.

6.2 In the event of withdrawal, the Platform Buyer may receive its deposit refunded in certain circumstances, to be determined by Trade X in its sole discretion.

7. Vehicle Disclosure

7.1 Disclaimers and Indemnification Platform Seller warrants it is the legal owner of the vehicle it posts for sale on the Platform and that it is unencumbered. The Platform Seller further warrants to Trade X that the odometer reading, representations and any other disclosure statements provided at time of listing the vehicle on the Platform are accurate at the time of sale to Trade X. The Platform Seller also hereby further indemnifies Trade X for any and all losses, claims and or damages it may suffer as a result of the end buyer's purchase of said vehicle from Trade X.

7.2 **Vehicle Identification Number** - All Vehicles offered on the Platform must have a visible, intact and properly affixed public VIN plate or a valid replacement VIN plate in accordance with Provincial and Federal/State and local regulatory requirements. If a VIN has been replaced the Seller must provide disclosure to that effect.

7.3 **Odometer Mileage - Platform** Seller acknowledges responsibility for completion and execution of the required odometer mileage statement pertaining to any Vehicle on the Purchase Agreement for such Vehicle and/or on the certificate of title for such Vehicle.

7.4 **Vehicle History Report** – Trade X uses third party Vehicle history report integration for with respect to previously owned Vehicles. Platform Sellers are bound to disclose all material facts about previously owned Vehicles being offered for sale. In the case that the aforementioned Vehicle history report contains error as to the true state of the Vehicle, the Platform Buyer and Platform Seller agree that all claims will be directed to the supplier of the report and not Trade X.

7.5 Platform **Seller Content** – The Platform Seller is solely responsible for all content it posts on the Trade X Platform and Trade X shall not be held responsible for liability to any Customer or third party for damages of costs resulting from such content. Trade X reserves the right to modify, refuse or remove any and all Platform Seller content in its sole and absolute discretion. The Platform Seller represents that all content is accurate and truthful and in compliance with applicable governing law.

7.6 **Warranties** – Trade X will not be liable to either the Platform Buyer or Platform Seller for any defects of any Vehicle. Trade X does not make any guarantees or warranties with respect to the condition of any Vehicle offered for sale on the Platform.

7.7 **Investigations** - By conducting business on the Platform, you, as the Customer, authorize Trade X to comply with authorities requests for information and/or

documents concerning you and your business if, and when, reasonable requests arise from such authorities.

7.8 **Sale Cancellation –** Trade X may, in its sole and absolute discretion, cancel any sale transacted on the Platform. Reasons for cancellation include, but are not limited to, errors or omissions in Vehicle descriptions or disclosures, pricing errors, title problems or any other matter deemed to be relevant by Trade X personnel.

7.9 **Transportation of Vehicles** - We may, from time to time at our discretion, transport or arrange via third parties to transport Vehicles. In all cases, and once the Vehicle(s) has been aquired by Trade X, it accepts full liablty theft, conversion, loss, injuries, damage, claims, expenses (including legal fees), suits, or demands related to such Vehicles (collectively, "Transportation Claims"), howsoever caused and to whomever caused. Trade X does not accept any liability for Vehicle transported to the Trade X warehouse and/or after Buyer has accepted delivery.

8 Insurance Requirements

8.2 **Liability and Risk –** Trade X holds a valid insurance policy for all Vehicles contained once under Trade X's care and control within a certified Trade X facility. For clarity, Trade X does not have nor does it provide insurance coverage for any Vehicles in transit to and from a Trade X facility.

8.3 **Transport Insurance –** Once the vehicle is in the Platform Buyer's possession**,** transport insurance is the sole responsibility of the Platform Buyer. If the Vehicle is damaged in transport, it is the sole responsibility of the Platform Buyer and the applicable transport company. Trade X will not be held liable in any way for any damage to a Vehicle incurred while being transported.

9 Payment Terms

9.1 Accepted Payment Methods – Trade X will accept payment via ACH, PAD, EFT or bank wire. Trade X will not accept cash payments or cheques.

9.2 **Collection of Funds –** Payments for goods and services must be made by the registered Customer purchasing those goods and services or designated agent or pre-established direct floor planner on that Customer's behalf. Any agent of pre-established direct floor planner must be duly authorized in writing by the Customer. Trade X reserves the right to retain the discretion to make appropriate exceptions. Trade X reserves the right, in its sole discretion, to change the forms and types of payment that are accepted by Trade X.

9.3 **Platform Buyer Fees "PAY NOW" –** Platform Buyers must pay for the Vehicle, together with all Fees owing to Trade X, within two (2) business days of following acceptance of the

condition report by the Platform Buyer. Platform Buyers are subject to a fee equal to one percent (1%) of the sale price for each purchased Vehicle.

9.4 **Platform Buyer Fees "PAY LATER" -** Any payments received after two (2) business days will be deemed "pay later" and will be subject to the Trade X borrowing fee equal to one percent (1%) of the sale price for such Vehicle.

9.5 **Platform Seller Fees -** Platform Sellers are subject to a fee equal to three-point five percent (3.5%) of the sale price for such Vehicle, plus HST, payable to Trade X and deducted from the net payout from Trade X to Platform Seller.

9.6 **Late Fees -** In addition to any other rights held by Trade X, Customers agree to pay a late fee of one percent (1%) of the sale price for such Vehicle on any unpaid obligations to Trade X. Trade X may waive the fee in its sole discretion.

9.7 **ACH Authorization –** You agree that, if you designate a bank account for payment of amounts owing to Trade X, including, but not limited to, by adding a bank account to your online profile, Trade X may use such account information to initiate an ACH debit to your bank account for such amounts owed. Additionally, you agree that, if any ACH debit we initiate to your bank account must comply with applicable law and NACHA Operating Rules. This authorization is in addition to, and does not terminate, any other authorization for electronic or ACH payments that Trade X has on file or that you provide Trade X in the future.

9.8 **Deduction of Fees -** Customer agrees that any amounts owing to Trade X, including any penalties, and damages applicable as described in these Terms and Conditions, may be pulled by Trade X via ACH Authorization, under the PAD Agreement, or deducted from any proceeds due to you and that Trade X may stop payment or refuse to authorize payment on any funding to you pursuant to this right of setoff.

9.9 **Electronic Approval and Signatures** - You acknowledge and agree that Trade X may, from time to time, find it expedient to utilize electronic signature(s), acknowledgment(s), consent(s), "click-through(s)," or other approval(s), direct or indirect, for access to sales, bills of sale, receipts, titles, and other documents or disclosures necessary or incidental to the transaction of business at Trade X, whether online, in email, or otherwise, which makes your business with us easier, faster and more efficient. You agree that any such forms of approval from you shall be effective and binding upon you, in the same manner as a handwritten signature, where circumstances indicate your intent to be bound and/or we choose to rely on such approval(s). Regardless of whether your consent or approval was given, or in what form, you agree that you will be deemed to have ratified any transaction that you do not dispute in writing within 24 hours of confirmation by Trade X. Customers authorize Trade X to capture, store and apply digital or electronic signatures to sales agreements and other such related documents and instruments.

10 PAD Agreement

10.1 Customer Agreement – Customers accept that Trade X will inform their financial institution as to the amount and timing of payments debited from the Customer account, in accordance with the PAD Agreement. The PAD Agreement provides ongoing authorization for Trade X to debit and credit Customer bank accounts to settle future agreed upon transactions.

10.2 **Business Day** – If the transaction is to occur outside of North American banking hours, Trade X may direct Customer financial institutions to debit accounts on the following business day. Therefore, Customers waive their right to receive advance notification of the debit payment prior to the debit day.

10.3 **Customer Obligation** – Direct debiting may not be available on all accounts. Customers must ensure that any arrangement necessary for debits to occur on the requested account be arranged with financial institutions in advance. Customers agree to notify Trade X immediately if the account is transferred or closed. Customers hereby warrant and guarantee that all persons whose signatures are required on the account identified have duly authorized or executed the transaction.

10.4 **Non-Sufficient Funds** – Customers must ensure that sufficient funds are available in the connected accounts for transactions entered into on the Platform. If at any time, there are insufficient funds in the account provided to meet a debit payment request, a notification will be provided, and a second debit attempt will be initiated on the following business day. If a debit is returned unpaid by a Customers financial institution, the Customer will be liable for any applicable fees charged by that financial institution.

10.5 **Recourse/Reimbursement –** The Customer retains the right of recourse if any Trade X debit does not comply with the PAD Agreement guidelines. To obtain more information on Customer rights of recourse, contact your financial institution or visit the National Automated Clearing House Association website at www.nacha.org.

10.6 **Confidentiality –** Trade X takes various precautions to protect the privacy of any personal information provided and makes reasonable efforts to keep Customer information supplied in the PAD Agreement secure. Trade X ensures that all employed personnel will not perform any unauthorized transaction(s), conduct any modification(s), reproduction(s) or disclose any information in Trade X possession to the extent specifically required by law or for the purposes of this PAD Agreement and the Client Agreement. You agree that Trade X may use any information provided to verify account information, this may include the use of third-party bank account verification providers.

11 INTELLECTUAL PROPERTY RIGHTS

11.1 Trade X is the owner of or licensee of all intellectual property rights in connection with the Platform. All content on the Platform is owned by Trade X and protected by copyright laws and treaties around the world. All such rights are reserved. You may not copy, reproduce, republish, download, post, broadcast, transmit, make available to the public or otherwise use any content except as specifically permitted in the Terms of Use or agreed by Trade X.

12 INCOTERMS2000

12.1 Trade X will decide, in its sole and absolute discretion, the applicable shipping, title transfer, and delivery terms based on the delivery destination. Except for situations where DDU (incoterm 2000 version) may be used, any stated Incoterms on shipping documents or order acknowledgments will be in reference to the Incoterms 2020 version. Unless otherwise specified by Trade X or in the Trade X Agreement(s), title to Vehicles will transfer at the same time as the risk in the Vehicle transfers in accordance with the applicable Incoterm. Platform Seller and Platform Buyer agree that ownership of the contract goods will pass from Trade X to the Platform Buyer upon full payment of the agreed upon price.

13 Anti-Corruption Laws

13.1 In this Anti-Corruption Laws section of the Terms and Conditions, the term "Included Scope" means, both collectively and separately, the Agreement and the portions of the Platform Sellers and Platform Buyers respective businesses that are involved in it.

13.2 In this Anti-Corruption Laws section of the Terms and Conditions "Anti-Corruption Laws" means, both collectively and separately, any anti-corruption, anti-bribery or similar governmental ethics and transparency laws that have particular jurisdiction or that govern the Included Scope in any general manner. Platform Seller and Platform Buyer are each responsible for determining the extent and applicability of Anti-Corruption Laws pertaining to each transaction entered into within the Platform.

13.3 Platform Seller and Platform Buyer each warrants to the other that, with respect to the Included Scope, and as of entering and during the term of the Agreement(s), they will not violate and Anti-Corruption Laws.

13.4 Platform Seller and Platform Buyer each warrants to the other that, with respect to the Included Scope, and as of entering and during the term of the Agreement(s), they will not directly or indirectly make any offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the gifting of anything of value to any Government Official or any other person while knowing or having reason to know that all or a portion of such money, gift or thing of value will be offered, paid or given, directly or indirectly, to a Government Official, for the purpose of;

13.4.1 Influencing an act or decision of the Government Official in his or her official capacity;

13.4.2 Inducing the Government Official to do or omit to do any act in violation of the lawful duty of such official;

13.4.3 Securing an improper advantage; or

13.4.4 Inducing the Government Official to use his influence to affect or influence any act or decision of government or instrumentality, in order to assist Intel or any of its affiliates in obtaining or retaining business.

13.5 If Platform Seller learns or comes to have reason to know of any payment or transfer (or any offer to promise to pay or transfer) in connection with the Included Scope that would violate Anti-Corruption Laws, it shall immediately disclose to the Platform Buyer and Trade X personnel.

14 Final Provisions

14.1 Should one or several of the provisions in this Agreement be or become invalid, this shall not affect the validity of the remaining provisions.

14.2 These Terms and Conditions shall be subject to the law of the Seller's home jurisdiction, to the exclusion, in its entirety, of the UN Convention on Contracts for the International Sale of Goods (as may be amended from time to time) (the "CISG").

14.3 You agree that these Terms and Conditions supersede any other previous contracts or relationships.

14.4 You agree that Customers are bound by these Terms and Conditions pertaining to any and all transactions from the date in which the Customer began its use of the Platform.

14.5 You hereby expressly authorize Trade X to communicate with you via any physical or electronic means in writing which may include but is not limited to email or certain social media applications.

14.6 **Understanding of Terms and Conditions –** You acknowledge and agree that you understand these Terms and Conditions written in English and that you have sought the help of an attorney and/or translator, as you deem necessary to understand them. You agree that these Terms and Conditions, the Agreements, and all correspondence and all documentation relating to these Terms and Conditions, be written in the English language. Any translated version of these Terms and Conditions offered by Trade X is provided as a courtesy only, with the English version being the binding version.

14.7 **Dispute Resolution –** Vehicles sold with undisclosed issues are subject to review by Trade X otherwise referred to as dispute resolution. The Vehicle will be subject to a thorough condition report. If differences are found which invalidate the sale, the Platform Seller is held responsible for any and all damages suffered by Trade X as a result of taking ownership of the vehicle. Using market research costs, the Platform

Seller will be provided with details and advised of a sale price reduction or cancellation.

14.7.1 **Fair and Reasonable Sale** – Transactions conducted with Trade X are intended to promote fair and reasonable treatment of both the Platform Buyer and Platform Seller. If Trade X determines that a sale fails to meet this standard at the fault of either party, or that a clerical or administrative error has occurred, the Platform Seller and the Platform Buyer agree that Trade X may, at its sole and absolute discretion, cancel or adjust the transaction. Federal, Provincial, and local laws supersede these policies where applicable.

Platform Seller Disclosure Standards – Trade X requires Platform Sellers to make disclosures when uploading a Vehicle in accordance with legal requirements for each jurisdiction.

Unsafe Vehicles – Trade X reserves the right to reject for sale any Vehicle Trade X deems, in its sole and absolute discretion, to be unsafe.

7.2.1 **VIN Policies** –

- All Vehicles traded on the Platform must have a public Vehicle Identification Number ("VIN") plate attached to the Vehicle. Trade X reserves the right to refuse the sale of any Vehicle in which the VIN plate appears to be missing or altered in any way.
- The Platform Seller guarantees VIN plates and years on any Vehicle up to (20) model years old.

7.2.2 **Right of Review** – Trade X reserves the right to review any digital documentation of a sale to verify its accuracy and fairness.

7.2.3 **Official Inspections** – All Vehicles registered and/or sold on Trade X are subject to inspection, with or without prior notice, by Trade X, the RCMP, Provincial Police, National Auto Theft Bureau, Local Police Authorities and any other governmental or quasi-governmental agency with apparent jurisdiction. Trade X assumes no liability for any non-disclosure by the Seller.

7.3 **Commencing Dispute Resolution** – Defects, conditions, or discrepancies described herein may be eligible for review if;

A. The defect, condition, or discrepancy was not disclosed or announced at the time of sale, despite a requirement to do so in accordance with these Terms and Conditions; and
B. The request is made by email to arbitration@tradexport.com

In order to be reviewed, the Vehicles must be returned to Trade X in the same or better condition than when purchased.

1. **Process –** Trade X will inspect only the defect(s), conditions, or

discrepancies described in the initial review request and only if covered by these Terms and Conditions. Each sale is allowed one review period. If a price adjustment is made and accepted, the Vehicle becomes AS-IS property of the Buyer and is not subject to any further review.

2. **Review Fees –** Trade X reserves the right to assess a review fee to the Platform Buyer in the event that Trade X finds, in its sole and absolute discretion, that the review request is without merit. Trade X reserves the right to assess a review fee to the Platform Seller in the event that Trade X finds in its sole and absolute discretion, that the Platform Seller has not met all of the disclosure obligations set out in these Terms and Conditions. Any fees assessed to either party pursuant to this paragraph are in addition to inspection fees, transportation costs and any awarded price adjustment as well as any additional fees that may have been incurred. Each review request must be properly documented in writing by the Platform Buyer.

3. **Exclusions –** The following exclusions apply;
    a. *Visible or Announced Conditions:* Trade X will not review disclosed conditions with respect to any sale and will not review visible defects except as provided below.
    b. *Vehicle Histories*: Trade X is not bound by information that appears in any Vehicle history report (i.e. Carfax, AutoCheck, Carproof, Etc.), and the Platform Buyer has no review right based solely on data contained in any such report. In connection with a review, Trade X may, in its sole and absolute discretion, obtain and use information found in Vehicle history reports.
    c. *Aged Vehicles*: Vehicles are not subject to review if they exceed twenty (20) model years in age. Such Vehicles are sold AS-IS.
    d. *Nonstandard and Modified Vehicles*: Kit vehicles, homemade Vehicles, or modified vehicles are sold AS-IS and are not subject to review for odometer, frame, VIN plates, warranty books, or model year.
    e. *Noise and Inherent Conditions* – The Platform Buyer has no review rights based on noises or conditions that are inherent or typical to a particular model or manufacturer, unless deemed “excessive” by the Trade X in its sole and absolute discretion, with respect to non-warranty items. OEM dealer warranty guidelines may be used where applicable to determine whether the condition is excessive.
    f. *As-Is* – Any Vehicle sold AS-IS is NOT subject to review for any of the following conditions: (i) Major Repair, Warranty Cancelled, Sludged Engine, Alternate Fuel or Conversion, and Non-Original Engine (each as described in Appendix 1); (ii) Vehicle not equipped with air conditions; and (iii) Paintwork (current model year or newer).

4. **Platform Buyer and Seller Obligations** –
    a. *Platform Sellers' Duties* – Platform Sellers are responsible for making all disclosures required regardless of whether the defect or condition is visible. As with all sales, Trade X will not review conditions that were disclosed at the time of sale. Any images used at the time of sale must show the actual Vehicle unless the Platform Seller makes it known, through proper disclosure, that the actual Vehicle is not shown.

i.

    b. *Platform Buyers Duties* – The Platform Buyer is responsible for understanding the buying procedure for all buying channels and payment methods. The Platform Buyer is also responsible to review a copy of the inspection report for all purchases. It is the Platform Buyer's sole responsibility to inspect each condition report immediately upon receipt.

    c.

    d. *Platform Sellers' Responsibility for Vehicle Descriptions/Disclosures*: The Platform Seller will be held responsible for the accuracy and completeness of all representations, disclosures and descriptions regarding any Vehicle offered for sale by or on behalf of the Seller. This includes, without limitation:
        - All images, text representations, Vehicle markings, and written statements made in the Vehicle listing, the Platform Seller, or the Platform Seller's delegate or agent with regard to the Vehicle;
        - Third-party condition reports made available by the Platform Seller, or the Platform Seller's delegate or agent; and
        - The Vehicle's year, make, model, odometer reading, and equipment.

    e. *Platform Seller's Reimbursement Obligation*: Trade X reserves the right, in its sole and absolute discretion, to require the Platform Seller to reimburse Trade X any reasonable, documented expenses incurred by the (excluding profit, commissions, and detail charges) on Vehicles successfully reviewed. Expense reimbursements will be at the sole and absolute discretion of Trade X and will, at times, be limited to reasonable and documented expenses and transportation only.

    f. *Platform Buyer Responsibilities and Liabilities:*
        - It is the Platform Buyer's responsibility to satisfy itself with a Vehicle's condition before placing, sending, or accepting an offer. Once the vehicle is sold, the Platform Buyer should

check the contract to confirm the Vehicle price and Vehicle details are correct before signing the purchase agreement. If there is any problem, the Platform Buyer must request a review within the applicable time limit set forth herein. The Platform Buyer assumes full responsibility for mechanical or electrical failure once the review period is over.

7.4 **In-House Dispute Guidelines** – Platform Buyers hereby agree to the following guidelines when transacting with Trade X;

a. Arbitration claims must be communicated to Trade X by way of email to arbitration@tradexport.com withing three (3) business days of delivery of the Vehicle to the Platform Buyer.
b. Claims emails must include all supporting documentation including the Trade X order ID, photos of the Vehicle and photos of the issue being claimed (if applicable).
c. A Vehicle may not be subject to review more than once.
d. Issues with a cost of less than CAD$700.00 will not be arbitrable.
e. Vehicles with a purchase price of $3,000.00 USD - CAD$4,000.00 or less are sold AS-IS.

7.5 **Third Party Dispute Resolution Mediation/Arbitration -** All matters arising out of or related to the Services, the PAD Agreement, or the Purchase Agreement (collectively, the "**Agreement**"), including without limitation all matters connected with their performance, shall be construed, interpreted, applied and governed in all respects in accordance with the laws of Canada and the Province of Ontario, without reference to conflict of laws principles.

All disputes arising out of or related to this Agreement which are not effectively resolved in-house, including without limitation matters connected with Trade X performance, shall be subject to the following procedures:

a. as a condition precedent to any litigation or arbitration proceedings, any party wishing to resolve a dispute must first do so under the National Mediation Rules (the "**Mediation Rules**") of the ADR Institute of Canada ("**ADRIC**"). The mediation shall be conducted virtually under the case management of Arbitration Place or such other mutually agreed upon service provider. The date on which a party initiates the mediation in accordance with the Mediation Rules (the "**Mediation Initiation Date**") shall be deemed to be the date on which the party filed their claim for the purposes of any applicable limitation legislation; and
b. in the event that the dispute has not been resolved within 90 days of the Mediation Initiation Date (or such other date as the parties may agree to in writing), then the following procedures shall apply:

i. any claim that seeks damages of not more than CAD $700.00 shall be filed in the applicable small claims court having jurisdiction over the parties; and
ii. any other claim shall be finally resolved by arbitration under the Simplified Arbitration Rules of ADRIC. The Seat of Arbitration shall be Toronto, Ontario. The language of the arbitration shall be English. Unless the parties agree otherwise in writing, all hearings shall be conducted virtually under the case management of Arbitration Place or such other mutually agreed upon service provider.

Customer agrees that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated, or representative action.

7.6 **UN Convention –** The provisions of the CISG shall not apply to Trade X Agreements.

7.7 **Regular Service** – We aim to update the Platform and any applicable sites on a regular basis, and may change the content and format at any time.

7.8 **Changes to Terms and Conditions** – These Terms and Conditions may be updated from time to time by Trade X and we may notify you when we do so although we are not obligated to do so. You can download and print out the currently valid version of these Terms and Conditions from our website at www.tradexport.com.

EXHIBIT H

FORM OF PURCHASE AGREEMENT DOCUMENTS

(See Attached)

PURCHASE AND SALE AGREEMENT

TX ORDER ID: **00000**
Date: **00/00/2020**

SELLER		PURCHASER	
Name		Name:	
Company:		Company:	
Address:	City:	Address:	City:
Province:	Postal:	Province:	Postal:
Dealer #	GST :	Dealer #	

STOCK #	YEAR	MAKE	MODEL	COLOUR	TRIM LEVEL	GAS/DIESEL/HYBRID	PRICE
V.I.N. #						☐ KMS ☐ MILES	

TERMS OF THIS AGREEMENT:
The purchaser and seller acknowledge having read the terms of the contract, including those on the reverse and understand and agree that the written terms on this contract form the entire agreement.

HST / GST	
SUBTOTAL	
TRADEX FEE HST / GST	
SUBTOTAL	
NET AMOUNT PAYABLE TO SELLER	

DECLARATION

☐ FREE OF LIENS ☐ CR RATING: _____

MANDATORY DISCLOSURE STATEMENT AS REQUIRED BY MVDA, 2002

MTO REGISTRATION BRAND: ☐ IRREPARABLE ☐ REBUILT ☐ SALVAGE ☐ NONE

DISTANCE TRAVELLED

IS THE ODOMETER FAULTY, BROKEN, REPLACED OR ROLLED BACK
IF YES, SEE SECTION 1 ON REVERSE AND CHECK APPROPRIATE BOX
IF 1A IS CHECKED SHOW PREVIOUS ODOMETER READING
AND DATE OF PREVIOUS READING _____

☐ Yes
☐ 1A ☐ 1B

DAILY RENTAL ☐ Yes
FIRE DAMAGE ☐ Yes
WATER DAMAGE ☐ Yes
POLICE CRUISER ☐ Yes
EMERG. SERVICES VEHICLE ☐ Yes
TAXI OR LIMO ☐ Yes

DOES VEHICLE REQUIRE REPAIRS TO SUSPENSION/SUBFRAME ☐ Yes
STRUCTURAL PARTS DAMAGED ALTERED OR REPAIRED ☐ Yes
ANY PREVIOUS ALTERED REP ☐ Yes
HAVE THE MANUFACTURER'S CHANGED OR HAVE THE ORIGINAL PRODUCTION SPECIFICATIONS BEEN CHANGED ☐ Yes
ANY OTHER DISCLOSURES:
IF YES TO ANY OF THE ABOVE, GIVE DETAILS:

WITHIN THE LAST SEVEN YEARS WAS THIS AN:

OUT-OF-PROVINCE VEHICLE ☐ Yes
U.S. VEHICLE ☐ Yes

IF YES, IDENTIFY PROVINCE(S) AND/OR STATE (S):

ANTI-LOCK BRAKES INOPERABLE ☐ Yes ☐ Not Applicable
AIR BAGS MISSING/INOPERABLE ☐ Yes ☐ Not Applicable
POLLUTION CONTROLS, INOPERABLE ☐ Yes

HAS VEHICLE EVER BEEN DECLARED:
A TOTAL LOSS BY AN INSURER ☐ Yes
THEFT RECOVERY ☐ Yes
MANUFACTURER'S WARRANTY ☐ Yes
ANY BODY PANELS PAINTED OR REPLACED ☐ Yes

☐

1. **DISTANCE TRAVELLED** - See distance travelled box
   (a) The dealer cannot determine the total distance that the vehicle has been driven but can determine that the vehicle has been driven as of some past date. The total distance that the vehicle has been driven is believed to be higher than the previously recorded distance.
   or
   (b) The dealer can determine neither the total distance that the vehicle has been driven, nor the distance that the vehicle has been driven as of some past date. The total distance that this vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer.
2. **WARRANTIES AND CONDITIONS**
   No implied conditions or warranties or verbal representations apply to the vehicle described in this agreement. All conditions, warranties, and representations other than those included in writing in this agreement are expressly excluded.
3. **LIENS**
   The seller warrants that the vehicle described in this agreement is free of any registered or unregistered liens, security interests, judgments, chattel mortgages or encumbrances of any kind.
4. **SELLER WARRANTS TITLE**
   The seller warrants to the buyer that the seller has good title to the vehicle, is the legal owner of the vehicle and has the right to sell the vehicle.
5. **LEGAL OWNERSHIP**
   Legal ownership of the vehicle shall not pass to the buyer until the entire purchase price has been paid in full.
6. **RISK OF DAMAGE**
   All risk of damage to the vehicle is the responsibility of the buyer once delivery has been taken.
7. **DISCLOSURE STATEMENTS**
   Disclosure statements contained in this agreement are in compliance with legal requirements and mandatory standards in Ontario as of January 1, 2010 and do not reflect changes made after this date.

PURCHASE AND SALE AGREEMENT

TX ORDER ID: **00000**
Date: **00/00/2020**

SELLER			PURCHASER		
Name			Name:		
Company:			Company:		
Address:		City:	Address:		City:
State:		Zip:	State:		Zip:
TAX ID #		DEALER NUMBER:	TAX ID #		DEALER NUMBER:

STOCK #	YEAR	MAKE	MODEL	COLOUR	TRIM LEVEL	GAS/DIESEL/HYBRID	PRICE
V.I.N. #						☐ KMS ☐ MILES	

BUYER FEE	
TRADE FINANCE FEE	
TOTAL DUE	

TERMS OF THIS AGREEMENT:
The buyer and seller acknowledge having read the terms of the contract, including those on the reverse and understand and agree that the written terms on this contract form the entire agreement.

CR DECLARATION

☐ FREE OF LIENS ☐ CR RATING: _____

1. WARRANTIES AND CONDITIONS
No implied conditions or warranties or verbal representations apply to the vehicle described in this agreement. All conditions, warranties, and representations other than those included in writing in this agreement are expressly excluded.
3. LIENS
The seller warrants that the vehicle described in this agreement is free of any registered or unregistered liens, security interests, judgments, chattel mortgages or encumbrances of any kind.
4. SELLER WARRANTS TITLE
The seller warrants to the buyer that the seller has good title to the vehicle, is the legal owner of the vehicle and has the right to sell the vehicle.
5. LEGAL OWNERSHIP
Legal ownership of the vehicle shall not pass to the buyer until the entire purchase price has been paid in full.
6. RISK OF DAMAGE
All risk of damage to the vehicle is the responsibility of the buyer once delivery has been taken.
7. RIGHT TO REPOSSESS
Should the total purchase price as shown on the front of this agreement not be paid in full within three days of the buyer taking delivery, then the seller shall have the right to repossess the vehicle from the buyer without notice. The seller may sell any vehicle repossessed and maintains all legal rights to recover any resulting loss.

EXHIBIT I

FORM OF SERVICER REPORT

(See Attached)

TRADE

TX OPS GLOBAL FUNDING I, LLC
MONTHLY REPORTING

Section 7.01 - Excess Spread Ratio:	Current Month	Prior Period 1	Prior Period 2
Gross Profit			
Profit %			
3 Month Rolling Average			
Annualized Gross Profit			
Target excess spread target to exceed 18% Annual	18%		
Pass/Fail			

Section 7.02 - Breakage Ratio:	Current Month	Prior Period 1	Prior Period 2
Wholesale Value of Vehicles			
Wholesale Value of Vehicle Trades Broken			
Monthly Breakage Rate			
3 Month Rolling Average			
Breakage Target - 3 Month Average	15%		
Pass/Fail			

Section 7.03 - Net Loss Ratio:	Current Month	Prior Period 1	Prior Period 2
Wholesale Value of Vehicles			
Wholesale Value of Vehicle Trades Broken			
Liquidation Price of Broken Trades			
Net Loss			
Net Loss Ratio			
3 Month Rolling Average			
Net Loss Target Ratio	10%		
Pass/Fail			

Section 7.04 - Consolidated Fixed Charge Coverage Ratio:	Previous Quarter
Trailing Four-Quarter Fixed Charge Coverage Ratio	
Fixed Charge Coverage Ratio Target	1.5 - 1.0
Pass/Fail	

Section 7.05 - Minimum Tangible Net Worth *:	Previous Quarter
Tangible Net Worth	
3 Month Rolling Average	
Tangible Net Worth Target	$ 3,000,000
Pass/Fail	

Section 7.06 - Reserve Collateral:	Current Month
Reserve Collateral Amount	
3 Month Rolling Average	
Reserve Collateral Target Amount	
Pass/Fail	

TX OPS GLOBAL FUNDING I, LLC
BORROWING BASE REPORT

Date		
		Amount ($)
Outstanding Principal Advance Balance		
a. Beginning Outstanding Advances		
b. New Advances during the period		
c. Less Repayment of Advances		
Ending Outstanding Principal Advances		**$ -**
A. Revolving Commitments		
B. Borrowing base value of all eligible assets		
Less Excess Concentration Amount		$ -
Eligible Assets pledged as Collateral, minus the Excess Concentratior		**$ -**
Borrowing Base (Lessor of A and B)		**$ -**
Availability (Borrowing Base less Ending Outstanding Principal		**$ -**

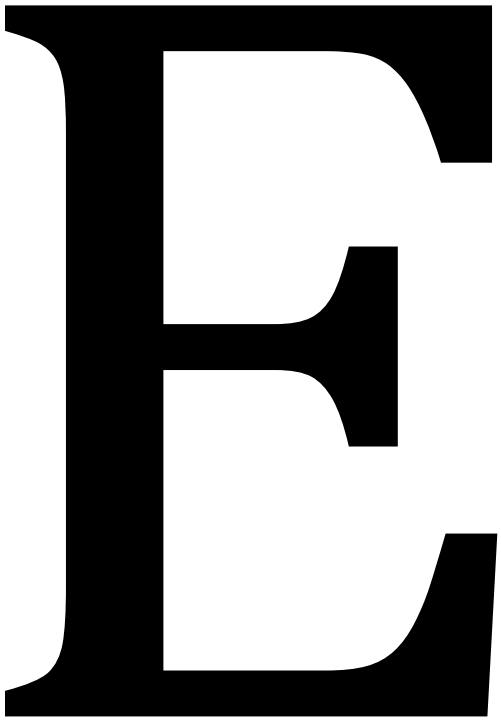
TRADE

TX OPS GLOBAL FUNDING I, LLC
BORROWING BASE REPORT

														Lesser of A & B								
															Amount Due From Buyer				Receipts			
Deal #	Deal Number	Tranche No.	Model Year	Make	Model	Trim	VIN	Purchase Amount USD	TradeX Fees USD	Export Fees USD	Deposit USD	Purchase Price Less Fees, Export and Down Payment USD	Borrowing Base Value	Amount Due From Buyer	Buyer	Amount Due less Purchase Price	Deal Advance Outstanding	Date	Amount	Excess

TX OPS GLOBAL FUNDING I, LLC
BORROWING BASE REPORT

Daily Loan Movement and Balance						Interest	
Date	Rate	Days O/S	Payments	Funding	Loan Balance	Daily Accrual	Total Interest



This is Exhibit “E” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

AMENDMENT NO. 1 AND JOINDER TO SENIOR SECURED REVOLVING CREDIT AGREEMENT

THIS AMENDMENT NO. 1 AND JOINDER TO SENIOR SECURED REVOLVING CREDIT AGREEMENT (this "Amendment") is made as of December 30, 2021 by and among **TX OPS GLOBAL FUNDING I, LLC**, a Delaware limited liability company (the "Existing Borrower"), **TX OPS INDIANA LIMITED**, an Indiana corporation (the "Parent" and "Servicer"), **TECHLANTIC LTD.**, a Canadian corporation ("New Borrower" and together with the Existing Borrower, each a "Borrower", and collectively, the "Borrowers"), each of the **LENDERS** from time to time party hereto (individually, a "Lender" and, together, the "Lenders"), and **MBL ADMINISTRATIVE AGENT II LLC**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, the Existing Borrower, Parent, Servicer, the Lenders and Administrative Agent have entered into that certain Senior Secured Revolving Credit Agreement, dated as of September 27, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), and certain other Basic Documents (as defined in the Credit Agreement);

WHEREAS, the Loan Parties (as defined in the Credit Agreement) have requested (i) the Lenders and the Administrative Agent amend the Credit Agreement on the terms and subject to the conditions set forth herein and (ii) to join New Borrower as a "Borrower" under the Credit Agreement and each of the Basic Documents, in each case, as a "Borrower", "Grantor" and "Loan Party", as applicable; and

WHEREAS, upon the execution and delivery of this Amendment by the parties hereto (a) New Borrower shall become a "Borrower," a "Grantor," and a "Loan Party, as applicable, under the Loan Agreement and the other Basic Documents, as applicable, with the same force and effect as if originally named as a "Borrower," a "Grantor," and a "Loan Party" thereunder

WHEREAS, the Lenders and the Administrative Agent have consented to such amendment on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS.

Capitalized terms used and not defined in this Amendment shall have the respective meanings given them in the Credit Agreement.

SECTION 2. ACKNOWLEDGMENTS.

2.1 Acknowledgment of Security Interests. Each Loan Party hereby acknowledges, confirms and agrees that Administrative Agent, for the benefit of Administrative Agent and the Lenders, has and shall continue to have valid, enforceable and perfected Liens, subject to Permitted Liens, upon and security interests in the Collateral of such Loan Party heretofore granted to Administrative Agent, for the benefit of Administrative Agent and the Lenders, pursuant to the Security Documents or otherwise granted to or held by Administrative Agent, for the benefit of Administrative Agent and the Lenders.

2.2 Binding Effect of Documents. Each Loan Party hereby acknowledges, confirms and agrees that: (a) the Credit Agreement and each of the other Basic Documents to which it is a party has been duly executed and delivered, and each is in full force and effect as of the date hereof, (b) the agreements and obligations of such Loan Party contained in the Credit Agreement, the other Basic Documents, and in this Amendment constitute the legal, valid and binding obligations of such Loan Party, enforceable against

it in accordance with their respective terms, and (c) Administrative Agent and Lenders are and shall be entitled to the rights, remedies and benefits provided for in the Credit Agreement and the other Basic Documents and applicable laws.

2.3 Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Credit Agreement and the other Basic Documents, and, except as expressly modified and superseded by this Amendment, the terms and provisions of the Credit Agreement and the other Basic Documents are ratified and confirmed and shall continue in full force and effect. Loan Parties agree that this Amendment is not intended to and shall not cause a novation with respect to any or all of the Obligations.

SECTION 3. JOINDER TO CREDIT AGREEMENT AND BASIC DOCUMENTS.

3.1 Joinder. Each party hereto hereby acknowledges and agrees that, effective as of the date hereof, New Borrower shall be deemed to be, and shall be, a "Borrower," "Grantor," and a "Loan Party" for all purposes under the Credit Agreement, the Security Agreement, and the other Loan Documents, and shall have all of the rights and obligations of a Borrower, a Grantor and a Loan Party thereunder as if it had executed such documents. New Borrower hereby ratifies, as of the date hereof, and agrees to be bound by, all of the covenants, terms, provisions, and conditions contained in all Loan Documents to which it is a party applicable to it by virtue of its status as a "Borrower," a "Grantor," and a "Loan Party" thereunder, including, without limitation, the grant of a lien on and security interest in New Borrower's right, title, and interest in and to its Collateral to the Administrative Agent. New Borrower represents and warrants that each representation and warranty by it as a "Borrower," a "Grantor," and a "Loan Party" under the Credit Agreement, the Security Agreement, and the other Loan Documents is true and correct in all material respects (provided, that if any representation or warranty is by its terms qualified by concepts of materiality, such representation as so qualified is true and correct in all respects) on and as of the date hereof, except to the extent that any such representation and warranty specifically refers to an earlier date, in which case it is true and correct as of such earlier date; provided, that, for purposes of this Agreement, any reference to "Closing Date" or "date hereof" or the like in any such representation and warranty shall instead be deemed to reference the date hereof. New Borrower confirms that by execution of this Amendment, it is jointly and severally liable with the Existing Borrower for all Obligations.

3.2 Grant of Security Interest. In furtherance of the foregoing, to secure the prompt payment and performance of all Obligations, New Borrower hereby grants, pledges, and collaterally assigns to Administrative Agent, for the benefit of itself and the Lenders, a continuing security interest in and Lien upon all of the following property of New Borrower, whether now owned or hereafter acquired, and wherever located or deemed located (collectively, the "***Collateral***"):

(i) all Accounts;

(ii) Grantor's equitable interest in all Financed Vehicles;

(iii) all chattel paper, including electronic chattel paper;

(iv) all commercial tort claims

(v) all deposit accounts, including the Controlled Accounts;

(vi) all documents;

(vii) all goods, including inventory (which, for the avoidance of doubt, includes the Vehicles corresponding to the Financed Vehicles), equipment and fixtures;

(viii) all General Intangibles;

(ix) all instruments;

(x) all investment property;

(xi) all letter-of-credit rights;

(xii) all letters-of-credit;

(xiii) all money;

(xiv) all books and records pertaining to the Article 9 Collateral;

(xv) all HST Tax Credits in respect of the Financed Vehicles; and

(xvi) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

Notwithstanding the foregoing, the term "Article 9 Collateral" shall not include (x) the Excluded Property (as defined below), and (y) any rights or interests in any lease, license, contract, or agreement, as such or the assets subject thereto if under the terms of such lease, license, contract, or agreement, or applicable law with respect thereto, the valid grant of a Lien therein or in such assets to the Administrative Agent is prohibited and such prohibition has not been or is not waived or the consent of the other party to such lease, license, contract, or agreement has not been or is not otherwise obtained or under applicable law such prohibition cannot be waived; provided, however, that the foregoing exclusions shall in no way be construed (i) to apply if any such prohibition would be rendered ineffective under the UCC (including Sections 9-406, 9-407 and 9-408 thereof) or other applicable law (including the Bankruptcy Code) or principles of equity, (ii) so as to limit, impair or otherwise affect Administrative Agent's unconditional continuing Liens upon any rights or interests of New Borrower in or to the Proceeds thereof (including proceeds from the sale, license, lease or other disposition thereof), including monies due or to become due under any such lease, license, contract, or agreement (including any Accounts), or (iii) to apply at such time as the condition causing such prohibition shall be remedied and, to the extent severable, "Article 9 Collateral" shall include any portion of such lease, license, contract, agreement or assets subject thereto that does not result in such prohibition (the assets described in clauses (x) and (y) above are referred to collectively as "Excluded Collateral").

SECTION 4. AMENDMENTS TO CREDIT AGREEMENT.

4.1 Effective upon the satisfaction of the conditions precedent set forth in Section 7.1 of this Amendment, the Credit Agreement is hereby amended as follows:

(a) **Amendment to Section 1.01.** Section 1.01 of the Credit Agreement is hereby amended by amending and restating in their entirety the following definitions to read as follows:

"Advance Rate" means for each Determination Date, (i) in respect of the Borrowing Base Value, ninety percent (90%) or (ii) in respect of the HST Tax Credit Value, (x) seventy-five percent (75%) for any HST Tax Credits paid by TX OPS Canada, Davidson Motors and/or Techlantic, as applicable, less than one hundred eighty (180) days prior to such Determination Date, (y) fifty percent (50%) for any HST Tax Credits paid by TX OPS Canada, Davidson Motors and/or

Techlantic, as applicable, one hundred eighty (180) days or more prior to such Determination Date and (z) zero percent (0%) for any HST Tax Credit not properly filed on the monthly Tax returns of either TX OPS Canada, Davidson Motors and/or Techlantic, as applicable, within sixty (60) days of the date on which such HST Tax Credit was first paid by TX OPS Canada, Davidson Motors and/or Techlantic, as applicable.

"Borrower" means, individually and collectively as context may require, TX OPS Global Funding I, LLC and Techlantic Ltd.

"Canadian Collection Account" means the deposit account number (i) 03232-1024777, held in the name of TX OPS Canada, (ii) 03232-1024801, held in the name of Davidson Motors, and (iii) as provided to Administrative Agent by Borrower, held in the name of Techlantic, in each case, at Canadian Cash Management Bank and each other or successor collection account established in accordance with the terms hereof.

"Canadian Collection Account Control Agreement" means one or more deposit account control agreements in form and substance acceptable to Administrative Agent, to be entered into among Canadian Cash Management Bank, Administrative Agent, TX OPS Canada, Davidson Motors and Techlantic, as applicable, with respect to the applicable Canadian Collection Account, in each instance as the same may be modified, amended or restated from time to time.

"HST Tax Credit" shall mean the amount of harmonized sales tax and goods and services tax or similar taxes imposed on any Financed Vehicle under the federal laws of Canada or a province thereof paid by, and to be refunded or credited to, TX OPS Canada, Davidson Motors or Techlantic, as applicable.

(b) **Amendment to Section 1.01.** Section 1.01 of the Credit Agreement is hereby amended by amending the definition of "Eligible Assets" to (i) amend and restate clauses (t), (z), (ee) and (ff) thereof in their entirety as follows, and (ii) insert a new clause (gg) as follows:

(t) other than Financed Vehicles covered by an Acceptable Credit Insurance Policy and any Unsold Vehicles, the original of the applicable Acceptable Bill of Lading for such Financed Vehicle has been delivered to the Custodian in accordance with this Agreement and the Custodial Agreement and Administrative Agent has a valid and perfected first priority security interest in Borrower's rights in such Financed Vehicle;

z) if such Financed Vehicle is an In-Transit Vehicle, such In-Transit Vehicle is on board (1) a marine vessel and in the possession of a common carrier or Eligible NVOCC that has issued an Acceptable Bill of Lading (unless such Financed Vehicle is covered by an Acceptable Credit Insurance Policy) or (2) an overland rail carrier or motor carrier in the United States or Canada and subject to a straight bill of lading in form and substance satisfactory to Administrative Agent in its sole discretion (unless such Financed Vehicle is covered by an Acceptable Credit Insurance Policy);

(ee) each Vehicle related to such Financed Vehicle must be shipped from an Approved Country of Origin to an Approved Country of Destination;

(ff) other than with respect to any Unsold Vehicle, such Financed Vehicle is subject to an Acceptable Purchase Order or Fourth Tier Purchase Agreement, as applicable; and

(gg) within 15 calendar days of Borrower's acquisition of any Unsold Vehicle, such Financed Vehicle shall be subject to an Acceptable Purchase Order or Fourth Tier Purchase Agreement.

(c) **Amendment to Section 1.01.** Section 1.01 of the Credit Agreement is hereby amended by amending the definition of "Excess Concentration Amount" to insert a new clause (e) as follows:

e) the amount by which the aggregate Wholesale Value of all Unsold Vehicles at any time exceeds ten percent (10%) of the aggregate Wholesale Value of all Financed Vehicles.

(d) **Amendment to Section 1.01.** Section 1.01 of the Credit Agreement is hereby amended by adding the following definitions in appropriate alphabetical order:

"Approved Credit Insurer" shall mean any company providing trade credit insurance that is acceptable to Administrative Agent in its sole discretion.

"Acceptable Credit Insurance Policy" shall mean a credit insurance policy in an amount at least equal to 90% of the then outstanding value of any Financed Vehicle in form and substance acceptable to Administrative Agent insuring such Financed Vehicle and naming Administrative Agent as lender loss payee.

"Trade X Group Limited Guaranty" shall mean the Limited Guaranty dated as of December 30, 2021 by Trade X Group for the benefit of the Administrative Agent and the Lenders, as amended, restated, amended and restated or otherwise modified from time to time in accordance with the terms of this Agreement.

"Unsold Vehicle" shall mean any Financed Vehicle which does not have an End Buyer.

(e) **Amendment to Section 2.03.** Section 2.03(b) of the Credit Agreement is hereby amended by amending and restating clause (vi) thereof in its entirety as follows:

(vi) unless such Financed Vehicle is subject to an Acceptable Credit Insurance Policy or is an Unsold Vehicle, a copy of the Acceptable Bill of Lading for such Vehicle;

(f) **Amendment to Section 3.02.** Section 3.02 of the Credit Agreement is hereby amended by amending and restating clause (b) thereof in its entirety as follows:

(b) Each of TX OPS Canada, Davidson Motors and Techlantic is duly registered under subdivision V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax with registration numbers 742208085RT0001, 715294286RT0001 and 884179318RT0001, respectively. All input tax credits claimed by either TX OPS Canada, Davidson Motors and Techlantic have been properly and correctly calculated and documented in accordance with the *Excise Tax Act* (Canada) and applicable provincial laws and the regulations thereunder.

(g) **Amendment to Section 5.11.** Section 5.11 of the Credit Agreement is hereby amended by amending and restating clause (i) thereof in its entirety as follows:

(i) as soon as available and in any event within fifteen (15) calendar days after the end of each calendar month, Borrower shall furnish to Administrative Agent a report and underlying filings evidencing the application of TX OPS Canada, Davidson Motors and/or Techlantic, as applicable,

for HST Tax Credits for the calendar month prior to such calendar month (which shall include a copy of the return that claims the HST Tax Credits together with proof of filing of such return);

(h) **Amendment to Section 5.14.** Section 5.14 of the Credit Agreement is hereby amended in its entirety as follows:

Section 5.14 Sales and Other Taxes. Parent and Borrower agree that the defined term "Collections" expressly excludes sales or other Taxes (other than HST Tax Credits), license, title registration and recordation fees, and any other fees, charges or amounts customarily payable relating to the disposition of such Financed Vehicle or item of Collateral, and that all such amounts collected by Parent from any End Buyer, or any other Person in respect of the disposition of such Financed Vehicle or item of Collateral, in respect of the obligations under the Purchase Agreements, or any other agreement, shall be collected by Parent and promptly remitted to the appropriate Governmental Authority when due and payable. For the avoidance of doubt, at no time shall Parent or Borrower permit any money to be deposited in the Collection Account which is to be used to pay sales or other Taxes, license, title registration and recordation fees, and any other fees, charges or amounts customarily payable relating to the disposition of such Financed Vehicle or item of Collateral. All HST Tax Credits claimed by TX OPS Canada, Davidson Motors and/or Techlantic will be properly and correctly calculated and documented in accordance with the Excise Tax Act (Canada) and applicable provincial laws and the regulations thereunder. Each of TX OPS Canada, Davidson Motors and Techlantic will duly file their applicable returns to claim any HST Tax Credits for a month as soon as possible following the end of such month.

(i) **Amendment to Section 8.01.** Section 8.01 of the Credit Agreement is hereby amended by amending and restating clause (a)(iii) thereof in its entirety as follows:

(iii) Establishment of Canadian Collection Account. Each Loan Party stipulates and agrees that all HST Tax Credits shall direct the applicable Governmental Authorities on the payment of an HST Tax Credit to deposit into the applicable Canadian Collection Account. Each Loan Party further agrees that such amounts deposited to, or on deposit from time to time in, each Canadian Collection Account, are and shall at all times be (until withdrawn therefrom in accordance with the terms of this Agreement, and subject to any Liens and interests of the Administrative Agent therein, whether now existing or hereafter arising), the sole and exclusive property of TX OPS Canada, Davidson Motors or Techlantic, as applicable, and not the property of any other Person, and that such Canadian Collection Account Control Agreement shall stipulate and require that all funds deposited into each Canadian Collection Account shall be automatically swept to the Collection Account at least one (1) time per week (or as often as Administrative Agent may agree in its sole discretion).

(j) **Credit Agreement and Security Agreement Schedules.** The schedules to the Credit Agreement and Security Agreement are hereby replaced in their entirety with the schedules set forth on Exhibit A and Exhibit B attached hereto.

(k) **Form of Borrowing Base Certificate.** Exhibit C to the Credit Agreement is hereby replaced in its entirety with the exhibit set forth on Exhibit C attached hereto.

SECTION 5. NO WAIVER.

5.1 Each Loan Party is hereby notified that irrespective of (i) any waivers or consents previously granted by Administrative Agent regarding the Credit Agreement and the other Basic Documents,

(ii) any previous failures or delays of Administrative Agent in exercising any right, power or privilege under the Credit Agreement or the other Basic Documents, or (iii) any previous failures or delays of Administrative Agent in the monitoring or in the requiring of compliance by any Loan Party with the duties, obligations, and agreements of the Loan Parties in the Credit Agreement and the other Basic Documents, the Loan Parties will be expected to comply strictly with its duties, obligations and agreements under the Credit Agreement and the other Basic Documents.

5.2 Nothing contained in this Amendment or any other communication between Administrative Agent or any Lender and Loan Party shall be a waiver of any past, present or future violation, Default or Event of Default of Borrower or any other Loan Party under the Credit Agreement or any other Basic Document. Similarly, Administrative Agent hereby expressly reserves any rights, privileges and remedies under the Credit Agreement and each other Basic Document that Administrative Agent may have with respect to each violation, Default or Event of Default, and any failure by Administrative Agent to exercise any right, privilege or remedy as a result of the violations set forth above shall not directly or indirectly in any way whatsoever either (i) impair, prejudice or otherwise adversely affect the rights of Administrative Agent at any time to exercise any right, privilege or remedy in connection with the Credit Agreement or any other Basic Document, (ii) amend or alter any provision of the Credit Agreement or any other Basic Document or any other contract or instrument, or (iii) constitute any course of dealing or other basis for altering any obligation of Borrower or any other Loan Party or any rights, privilege or remedy of Administrative Agent under the Credit Agreement or any other Basic Document or any other contract or instrument. Nothing in this Amendment shall be construed to be a consent by Administrative Agent to any prior, existing or future violations of the Credit Agreement or any other Basic Document.

SECTION 6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Each Loan Party hereby represents, warrants and covenants with and to Administrative Agent and Lenders as follows:

6.1 Authorization.

(a) Each Loan Party has the limited liability company power and authority to execute, deliver and perform this Amendment.

(b) This Amendment has been duly authorized, executed and delivered by the Loan Parties, as applicable, and (assuming due authorization, execution and delivery by each other party thereto) is a valid and legally binding obligation of the Loan Parties, as applicable, enforceable against the Loan Parties, as applicable, in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws relating to or affecting the rights of creditors generally, and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

6.2 Representations. Each of the representations and warranties made by or on behalf of such Loan Party to Administrative Agent and Lenders in the Credit Agreement or any of the other Basic Documents was true and correct in all material respects when made (except to the extent they expressly relate to an earlier time) and is true and correct in all material respects on and as of the date of this Amendment with the same full force and effect as if each of such representations and warranties had been made by or on behalf of such Loan Party on the date hereof and in this Amendment (except to the extent they expressly relate to an earlier time).

6.3 Binding Effect of Documents. This Amendment and the other Basic Documents have been duly executed and delivered to the Administrative Agent and Lenders by such Loan Parties and are in full force and effect, as modified hereby.

6.4 No Conflict, Etc. The execution, delivery and performance of this Amendment by such Borrower will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, or result in the creation or imposition of any Lien (other than any Lien created by the Basic Documents) upon any of the property or assets of the Loan Parties pursuant to the terms of, any of its organizational documents or any indenture, mortgage, deed of trust, credit agreement or other agreement or instrument to which it or any Subsidiary of Parent is bound or to which any of its property or assets is subject, nor will such action result in any violation of the provisions of its organizational documents or any Governmental Rule applicable to the Loan Parties or any of their properties.

6.5 No Default or Event of Default. No Default or Event of Default exists immediately prior to the execution of this Amendment and no Default or Event of Default will exist immediately after the execution of this Amendment and the other documents, instruments and agreements executed and delivered in connection herewith.

SECTION 7. CONDITIONS PRECEDENT.

7.1 The effectiveness of the terms and provisions of this Amendment shall be subject to satisfaction of each of the following conditions precedent in a manner satisfactory to Administrative Agent, unless specifically waived in writing by Administrative Agent:

(a) the receipt by Administrative Agent of (i) this Amendment executed and delivered by a duly authorized officer of each of the Loan Parties, the Administrative Agent and the Lenders and (ii) the Trade X Group Limited Guaranty executed and delivered by a duly authorized officer of Trade X Group;

(b) an officer's certificate from an Authorized Person of New Borrower, dated as of the date hereof, (i) that all the terms, covenants, agreements and conditions of this Amendment, the Credit Agreement and each of the other Basic Documents to be complied with and performed by New Borrower on or before the date hereof have been complied with and performed in all material respects, (ii) that each of the representations and warranties of the New Borrower made in this Amendment, the Credit Agreement and each of the other Basic Documents are true and correct in all material respects as of the date hereof, and (iii) that no Default or Event of Default shall have occurred and be continuing;

(c) such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of New Borrower and Trade X Group, the authorization of the transactions contemplated by each of the Basic Documents to which each of New Borrower and Trade X Group is a party and any other material legal matters relating to New Borrower and Trade X Group, this Amendment or such transactions which shall include a duly completed IRS Form W-9, or other applicable tax form;

(d) counsel to New Borrower shall have delivered to the Administrative Agent favorable opinions with respect to corporate, enforceability, perfection, and other matters (as reasonably requested by the Administrative Agent) dated as of the date hereof;

(e) copies of all Governmental Actions of all Governmental Authorities required with respect to the transactions contemplated by the Basic Documents and the documents related thereto;

(f) Administrative Agent shall have completed its review of the Collateral and the management and financial performance of the New Borrower, the results of which shall be satisfactory to Administrative Agent in its sole and absolute discretion;

(g) Administrative Agent shall be satisfied that New Borrower and each Financed Vehicle is in compliance with all applicable Governmental Rules in its sole and absolute discretion;

(h) certified copies of the property and liability insurance policies of New Borrower, or certificates evidencing the same, together with additional insured and lender loss payable endorsements naming Administrative Agent as a co-insured;

(i) Administrative Agent shall be satisfied, in its Permitted Discretion, of the results of customary UCC and other lien searches on the New Borrower;

(j) the Borrower shall have paid all costs, fees and expenses (including, without limitation, reasonable fees, charges and disbursements of counsel for the Administrative Agent) due and payable pursuant to or in connection with this Amendment;

(k) all corporate proceedings taken in connection with the transactions contemplated by this Amendment and all documents, instruments and other legal matters incident thereto shall be reasonably satisfactory to Administrative Agent;

(l) evidence satisfactory to Administrative Agent that the Credit Agreement by and between Royal Bank of Canada and New Borrower, dated as of May 13, 2020, has been paid in full and such credit agreement and each document ancillary thereto, has otherwise been terminated and all collateral secured thereunder, including but not limited to any applicable deposit account control agreements, UCC-1 financing statements and PPSA financing statements have been released by Royal Bank of Canada.

SECTION 8. CONDITION SUBSEQUENT.

8.1 Borrower covenants and agrees to deliver to Administrative Agent within five (5) Business Days of the date hereof, an EDC insurance policy naming Administrative Agent as loss payee thereon.

8.2 Borrower covenants and agrees to deliver evidence that the Canadian Collection Account and Operating Account for New Borrower has been established in accordance with the terms hereof and a Canadian Collection Account Control Agreement shall have been executed and implemented in favor of Administrative Agent, for the benefit of the Lenders within thirty (30) calendar days of the date hereof;

SECTION 9. PROVISIONS OF GENERAL APPLICATION.

9.1 Effect of this Amendment. Except as modified pursuant hereto, and pursuant to the other documents, instruments and agreements executed and delivered in connection herewith, no other changes or modifications to the Credit Agreement or any other Basic Documents are intended or implied and in all other respects the Credit Agreement and the other Basic Documents are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof. To the extent of conflict between the terms of this Amendment and the Credit Agreement or any other Basic Documents, the terms of this Amendment shall control. The Credit Agreement as amended hereby shall be read and construed with this Amendment as one agreement.

9.2 Costs and Expenses. Each Loan Party hereby affirms its obligations under Section 11.03 of the Credit Agreement in connection with this Amendment.

9.3 Further Assurances. The parties hereto shall execute and deliver such additional documents and take such additional action as may be reasonably necessary or desirable to effectuate the provisions and purposes of this Amendment.

9.4 Binding Effect. This Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

9.5 Merger. This Amendment sets forth the entire agreement and understanding of the parties with respect to the matters set forth herein. This Amendment cannot be changed, modified, amended or terminated except in a writing executed by the party to be charged.

9.6 Severability. Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

9.7 Governing Law; Consent to Jurisdiction and Venue.

(a) THIS AMENDMENT, AND THE PERFORMANCE HEREOF, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS EXECUTED AND TO BE FULLY PERFORMED IN SUCH STATE. CHOICE OF LAW RULES THAT MIGHT CAUSE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION SHALL NOT APPLY.

(b) Each of the Loan Parties, the Administrative Agent, and the Lenders hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County, N.Y., and of the United States District Court of the Southern District of New York sitting in New York County, N.Y., and any appellate court from any thereof, in any action or proceeding arising out of or relating to the Credit Agreement or any of the other Basic Documents, whether sounding in contract, tort, or otherwise, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such State or, to the extent permitted by Governmental Rules, in such Federal court. Each of the parties hereto agrees that a final judgment after completion of appeals, if any, in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Governmental Rules. Nothing in this Amendment shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Loan Party or any of their respective properties in the courts of any jurisdiction.

9.8 Waiver. Each of the Loan Parties, the Administrative Agent, and the Lenders hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in Section 11.09(b) of the Credit Agreement. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Governmental Rules, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

9.9 Counterparts. This Amendment may be executed in one or more counterparts, each of which shall constitute but one and the same Amendment. In making proof of this Amendment, it shall not be necessary to produce or account for more than one counterpart thereof signed by each of the parties hereto. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.

9.10 Release. EACH LOAN PARTY HEREBY ACKNOWLEDGES THAT IT HAS NO DEFENSE, COUNTERCLAIM, OFFSET, CROSS-COMPLAINT, CLAIM OR DEMAND OF ANY KIND OR NATURE WHATSOEVER THAT CAN BE ASSERTED TO REDUCE OR ELIMINATE ALL OR ANY PART OF ITS LIABILITY TO REPAY ANY ADVANCES, BORROWINGS, OR EXTENSIONS OF CREDIT FROM ADMINISTRATIVE AGENT AND LENDERS UNDER THE CREDIT AGREEMENT OR THE OTHER BASIC DOCUMENTS OR TO SEEK AFFIRMATIVE RELIEF OR DAMAGES OF ANY KIND OR NATURE FROM LENDERS OR ADMINISTRATIVE AGENT. EACH OF THE LOAN PARTIES HEREBY VOLUNTARILY AND KNOWINGLY RELEASES AND FOREVER DISCHARGES LENDERS, ADMINISTRATIVE AGENT, THEIR

PREDECESSORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, FROM ALL POSSIBLE CLAIMS, DEMANDS, ACTIONS, CAUSES OF ACTION, DAMAGES, COSTS, EXPENSES, AND LIABILITIES WHATSOEVER, KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, SUSPECTED OR UNSUSPECTED, FIXED, CONTINGENT, OR CONDITIONAL, AT LAW OR IN EQUITY, ORIGINATING IN WHOLE OR IN PART ON OR BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT, WHICH ANY OF THE LOAN PARTIES MAY NOW OR HEREAFTER HAVE AGAINST LENDERS AND ADMINISTRATIVE AGENT, THEIR PREDECESSORS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS, IF ANY, AND IRRESPECTIVE OF WHETHER ANY SUCH CLAIMS ARISE OUT OF CONTRACT, TORT, VIOLATION OF LAW OR REGULATIONS, OR OTHERWISE, AND ARISING FROM ANY ADVANCES, BORROWINGS, OR EXTENSIONS OF CREDIT FROM LENDERS AND ADMINISTRATIVE AGENT UNDER THE CREDIT AGREEMENT OR THE OTHER BASIC DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY CONTRACTING FOR, CHARGING, TAKING, RESERVING, COLLECTING OR RECEIVING INTEREST IN EXCESS OF THE HIGHEST LAWFUL RATE APPLICABLE, THE EXERCISE OF ANY RIGHTS AND REMEDIES UNDER THE CREDIT AGREEMENT OR OTHER BASIC DOCUMENTS, AND NEGOTIATION FOR AND EXECUTION OF THIS AMENDMENT.

[**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the date first written above.

TX OPS FUNDING II, LLC,
as Borrower

By: 

Name: Ryan Davidson
Title: Chief Executive Officer

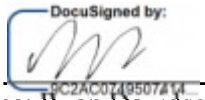
TX OPS INDIANA LIMITED,
as Parent and Servicer

By: 

Name: Ryan Davidson
Title: Chief Executive Officer

NEW BORROWER:

TECHLANTIC, LTD.,
as a Borrower

By: 

Name: Ryan Davidson
Title: Chief Executive Officer

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

MBL ADMINISTRATIVE AGENT II LLC,
as Administrative Agent

By: Man Global Private Markets (USA) Inc., its services manager

By: _____
Name: Kaitlin Carroll
Title: Assistant Secretary

MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP, as a Lender

By: Man Global Private Markets (USA) Inc., its investment manager

By: _____
Name: Kaitlin Carroll
Title: Assistant Secretary

EXHIBIT A

Schedules to Senior Secured Revolving Credit Agreement

[Attached]

SCHEDULE 3.1

Disclosure Schedule

None, except:

Section 3.01(j) – Ownership of Financed Vehicles. New Borrower acquired such Financed Vehicle from an unaffiliated third party without notice of any adverse claims other than Permitted Liens and New Borrower has good and valid title to, and is the sole owner of, such Financed Vehicle, free and clear of any Liens other than Permitted Liens.

Section 3.01(m) – Chief Executive Offices. The principal place of business and chief executive office of the New Borrower is located at 7401 Pacific Circle, Mississauga, ON Canada, L5T 2A or, with the written consent of the Administrative Agent, such other address as shall be designated by the New Borrower, as applicable, in a written notice to the other parties hereto.

Section 3.01(p) – Citizenship. New Borrower is a citizen of Canada and shall maintain such citizenship status until all of the Obligations have been satisfied in full.

EXHIBIT B

Schedules to Security Agreement

[None]

EXHIBIT C

Form of Borrowing Base Certificate

[Attached]

TX OPS FUNDING II, LLC
BORROWING BASE REPORT

Date		
		Amount ($)
Outstanding Principal Advance Balance		
a. Beginning Outstanding Advances		
b. New Advances during the period		
c. Less Repayment of Advances		
Ending Outstanding Principal Advances		**$ -**
A. Revolving Commitments		
B. Borrowing base value of all eligible assets		
Less Excess Concentration Amount		$ -
Eligible Assets pledged as Collateral, minus the Excess Concentration		**$ -**
Borrowing Base (Lessor of A and B)		**$ -**
Availability (Borrowing Base less Ending Outstanding Principal		**$ -**

TRADE

TX OPS FUNDING II, LLC
BORROWING BASE REPORT

										A		B					Advance Rate				Receipts				Excess Concentration			
Deal #	Deal Number	Tranche No.	Model Year	Make	Model	Trim	VIN	RI Location / Bill of Landing	Registered Importer / In Transit	MMR/ Wholesale Value USD	90% of Wholesale Value (USD MMR)	TX Indiana Purchase Amount USD	TradeX Fees USD	Export Fees USD	Deposit USD	TX Indiana Purchase Price Less Fees, Export and Down Payment USD	HST Claim	Date	HST Claim Date	HST BB repaid	Deal Advance Outstanding	Date	Amount	Excess	Make & Model (Concentration)	Wholesale value equal or greater than $100,000	Wholesale value equal or greater than $200,000	End Buyer

TX OPS FUNDING II, LLC
BORROWING BASE REPORT

Daily Loan Movement and Balance						Interest	
Date	Rate	Days O/S	Payments	Funding	Loan Balance	Daily Accrual	Total Interest

F

This is Exhibit “F” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

FW: Payment received from Stephen applied to outstanding invoices

Wouter Van Essen <wouter@techlanticconsulting.com>

Tue 2024-01-02 7:55 PM

To:eric@techlantic.com <eric@techlantic.com>;june@techlantic.com <june@techlantic.com>;Michelle Ralph (michelle@techlantic.com) <michelle@techlantic.com>

1 attachments (17 KB)

Balance_Due_to_Purchasing_Company and Dec Payment Application - B.xlsx;

Hi June, Michelle, and Eric,

I am writing to inform you of recent transactions between 1309767 Ontario Limited and Techlantic Ltd. Our company deposited six cheques from Mr. Stephen Zhou, dated from November 28th to December 19th. These funds include a payment due to Techlantic Ltd. of $1,723,495 CAD for vehicle orders from August 2023 (S23835, S23863, S23864, S23865, S23877, S23878, S23879, S23849, S23850, S23862, S23897, S23898, S23942, and S23943). These details are in the first tab of the attached spreadsheet.

There is also an outstanding balance for vehicles purchased by my companies last year, which has not been settled by Techlantic Ltd., detailed on the second tab. Our invoice terms state that title to the vehicles only transfers when payment is received in full. We never received this payment, so when Techlantic proceeded to transfer these cars, it did so without title.

In resolution, I have applied the payments from Mr. Zhou against the overdue amounts for these vehicles, a process detailed in column Q of the second tab, with the date of the transaction recorded as December 20th.

After this application, the remaining balance due to my purchasing companies is $189,093.28 CAD. I request that you confirm this balance and update the records of Techlantic Ltd. accordingly.

I await your confirmation of the adjusted balance.

Kind regards,
Wouter

Wouter van Essen
Techlantic Consulting Ltd. |700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Mobile: +1-416-414-1967

Order Number	Model	VIN	Payment Due	
S23835	GLS450	4JGFF5KE1PA973760	$	143,100.00
S23863	GLE450	4JGFB5KB9RB007915	$	105,175.00
S23864	GLE450	4JGFB5KB3RB017808	$	105,360.00
S23865	GLE450	4JGFB5KB8RB017822	$	102,400.00
S23877	GLE450	4JGFB5KB3RB017792	$	106,100.00
S23878	GLS450	4JGFF5KE5PB010225	$	139,400.00
S23879	GLS450	4JGFF5KE3PB023524	$	143,100.00
S23849	GLS450	4JGFF5KE1PB021786	$	139,400.00
S23850	GLS450	4JGFF5KE4PB023497	$	139,400.00
S23862	GLE450	4JGFB5KB7RB032375	$	104,435.00
S23897	GLS450	4JGFF5KE3PB023538	$	140,325.00
S23898	GLS450	4JGFF5KE7PA982429	$	143,100.00
S23942	GLE450	4JGFB5KB6RB025787	$	106,100.00
S23943	GLE450	4JGFB5KBXRB025775	$	106,100.00
			$	1,723,495.00

Order Number	Vehicle Name	Purchasing Dealer Name	Source Dealer Name	Control Location	Date of Control Date	Reference Num	Account Name	Sales Currency	Model	Manufacturer	Model Year	Purchasing Currency	TX Shipping Dat	Date Purchasing Comp Pa	Balance Due to Purchasing Comp	Payment Applied	New Balance Outstanding	Payment Application Date
S22395	KMHLM4AG2NU355774	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	09-08-2022	Inv919 / T11109	TX OPS Indiana Limited	USD	ELANTRA PREFERRED S	HYUNDAI	2022	CAD	Aug 10, 2022	Aug 09, 2022	$33,617.50	$33,617.50	$0.00	20-Dec-23
S22400	1GYS4GKT3NR276649	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	10-08-2022	Inv920 / T11099	TX OPS Indiana Limited	USD	ESCALADE	CADILLAC	2022	CAD	Aug 10, 2022	Aug 11, 2022	$145,084.09	$145,084.09	$0.00	20-Dec-23
S22428	KMHLM4AG8NU308680	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	15-08-2022	Inv940 / T10769	TX OPS Indiana Limited	USD	ELANTRA	HYUNDAI	2022	CAD	Aug 16, 2022	Aug 15, 2022	$31,600.45	$31,600.45	$0.00	20-Dec-23
S22429	KMHLM4AG4NU247344	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	15-08-2022	Inv940 / T11100	TX OPS Indiana Limited	USD	ELANTRA	HYUNDAI	2022	CAD	Aug 16, 2022	Aug 15, 2022	$32,042.28	$32,042.28	$0.00	20-Dec-23
S22430	KMHLM4AG2NU319642	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	15-08-2022	Inv940 / T11069	TX OPS Indiana Limited	USD	ELANTRA	HYUNDAI	2022	CAD	Aug 15, 2022	Aug 15, 2022	$33,515.80	$33,515.80	$0.00	20-Dec-23
S22531	3GKALVEX1LL163525	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	31-08-2022	Inv949 / T11633	TX OPS Indiana Limited	USD	TERRAIN 4X4 SLT 4DR SL	GMC	2020	CAD	Aug 31, 2022	Aug 26, 2022	$35,649.24	$35,649.24	$0.00	20-Dec-23
S22534	1FTEW1EP2KKE01041	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	16-06-2022	Inv954 / T11216	TX OPS Indiana Limited	USD	F150 XLT 301A SPORT	FORD	2019	CAD	Jun 16. 2022	Aug 26. 2022	$45,200.00	$45,200.00	$0.00	20-Dec-23
S22547	KNDPNCAC8N7020229	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	26-08-2022	Inv945 / T9469	TX OPS Indiana Limited	USD	SPORTAGE EX PREMIUM	KIA	2022	CAD	Aug 29, 2022	Aug 29, 2022	$44,578.50	$44,578.50	$0.00	20-Dec-23
S22552	KMBK12AB7PU938030	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	29-08-2022	Inv948 / T11654	TX OPS Indiana Limited	USD	KONA	HYUNDAI	2023	CAD	Aug 30, 2022	Aug 31, 2022	$33,165.50	$33,165.50	$0.00	20-Dec-23
S22556	3PCAJ5M35LF100622	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	31-08-2022	Inv959 / T11648	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Aug 31, 2022	Sep 01, 2022	$48,081.50	$48,081.50	$0.00	20-Dec-23
S22561	4T1G11AK4PU719994	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	30-08-2022	Inv948 / T11652	TX OPS Indiana Limited	USD	CAMRY SE	TOYOTA	2023	CAD	Aug 31. 2022	Aug 31. 2022	$43,221.37	$43,221.37	$0.00	20-Dec-23
S22580	3PCAJ5M31LF101282	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11645	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 02, 2022	Sep 06, 2022	$46,154.85	$46,154.85	$0.00	20-Dec-23
S22581	4T1K61AK9LU318091	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11661	TX OPS Indiana Limited	USD	CAMRY XSE	TOYOTA	2020	CAD	Sep 02, 2022	Sep 06, 2022	$39,945.50	$39,945.50	$0.00	20-Dec-23
S22582	JN1FV7DR9MM880629	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11678	TX OPS Indiana Limited	USD	Q50	INFINITI	2021	CAD	Sep 01, 2022	Sep 01, 2022	$61,980.50	$61,980.50	$0.00	20-Dec-23
S22583	4T1G11AK0PU077239	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11679	TX OPS Indiana Limited	USD	CAMRY SE	TOYOTA	2023	CAD	Seo 01. 2022	Seo 01. 2022	$43,221.37	$43,221.37	$0.00	20-Dec-23
S22584	3PCAJ5M39LF105600	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv962 / T11684	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 01, 2022	Sep 06, 2022	$43,335.50	$43,335.50	$0.00	20-Dec-23
S22585	JM3TCBDY2M0454442	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11611	TX OPS Indiana Limited	USD	CX-9 KURO EDITION	MAZDA	2021	CAD	Sep 01, 2022	Sep 01, 2022	$51,628.57	$51,628.57	$0.00	20-Dec-23
S22587	1C6SRFLTXMN627361	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11642	TX OPS Indiana Limited	USD	1500 REBEL CREWCAB	RAM	2021	CAD	Sep 01, 2022	Sep 01, 2022	$68,986.50	$68,986.50	$0.00	20-Dec-23
S22588	1C6SRFLT2MN692771	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11650	TX OPS Indiana Limited	USD	1500 REBEL CREWCAB	RAM	2021	CAD	Seo 01. 2022	Seo 01. 2022	$68,986.50	$68,986.50	$0.00	20-Dec-23
S22589	1GYS4GKLXPR115749	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11695	TX OPS Indiana Limited	USD	ESCALADE SPORT PLATI	CADILLAC	2023	CAD	Sep 02, 2022	Sep 06, 2022	$168,765.50	$168,765.50	$0.00	20-Dec-23
S22593	1C6SRFLT4MN681657	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv962 / T11657	TX OPS Indiana Limited	USD	1500 REBEL CREWCAB	RAM	2021	CAD	Sep 01, 2022	Sep 06, 2022	$66,500.50	$66,500.50	$0.00	20-Dec-23
S22609	1C4HJXDG9MW634071	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11687	TX OPS Indiana Limited	USD	WRANGLER	JEEP	2021	CAD	Sep 02, 2022	Sep 06, 2022	$48,985.50	$48,985.50	$0.00	20-Dec-23
S22610	KNDNB5H34P6220616	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11688	TX OPS Indiana Limited	USD	CARNIVAL	KIA	2023	CAD	Sep 02, 2022	Sep 06, 2022	$48,897.36	$48,897.36	$0.00	20-Dec-23
S22611	5XYRKDLF0NG139569	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11689	TX OPS Indiana Limited	USD	SORENTO	KIA	2022	CAD	Sep 02, 2022	Sep 06, 2022	$58,025.50	$58,025.50	$0.00	20-Dec-23
S22612	5XYP5DHC7NG305423	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11690	TX OPS Indiana Limited	USD	TELLURIDE	KIA	2022	CAD	Sep 02, 2022	Sep 06, 2022	$63,248.36	$63,248.36	$0.00	20-Dec-23
S22614	5XYRKDLF6NG139656	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11694	TX OPS Indiana Limited	USD	SORENTO	KIA	2022	CAD	Sep 02, 2022	Sep 06, 2022	$58,025.50	$58,025.50	$0.00	20-Dec-23
S22586	3PCAJ5M3XLF103404	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	07-09-2022	Inv186 / T11665	TX OPS Indiana Limited	USD	QX50 ESSENTIAL	INFINITI	2020	CAD	Sep 07, 2022	Sep 07, 2022	$47,573.00	$47,573.00	$0.00	20-Dec-23
S22599	3GKALMEV1NL304427	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	21-09-2022	Inv191 / T11659	TX OPS Indiana Limited	USD	TERRAIN	GMC	2022	CAD	Sep 21, 2022	Sep 07, 2022	$41,300.37	$41,300.37	$0.00	20-Dec-23
S22602	3PCAJ5M39LF115236	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11672	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 08, 2022	Sep 07, 2022	$48,420.50	$48,420.50	$0.00	20-Dec-23
S22604	JTJJARDZ0L2220212	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11675	TX OPS Indiana Limited	USD	NX300	LEXUS	2020	CAD	Sep 08, 2022	Sep 07, 2022	$48,420.50	$48,420.50	$0.00	20-Dec-23
S22605	1GCUYDED8MZ234160	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11676	TX OPS Indiana Limited	USD	SILVERADO	CHEVROLET	2021	CAD	Sep 09, 2022	Sep 07, 2022	$53,278.37	$53,278.37	$0.00	20-Dec-23
S22607	1G1ZG5ST3NF193071	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11685	TX OPS Indiana Limited	USD	MALIBU	CHEVROLET	2022	CAD	Sep 08, 2022	Sep 07, 2022	$32,038.89	$22,058.52	$9,980.37	20-Dec-23
S22608	3PCAJ5M33LF102241	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11686	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 08, 2022	Sep 07, 2022	$48,420.50	0	$48,420.50	
S22613	JTJSARDZ8L5018401	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	15-09-2022	Inv199 / T11692	TX OPS Indiana Limited	USD	NX300	LEXUS	2020	CAD	Sep 19, 2022	Sep 07, 2022	$50,340.37	0	$50,340.37	
S22621	1C4SDJET5GC446739	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	07-09-2022	Inv185 / T11726	TX OPS Indiana Limited	USD	DURANGO CITADEL	DODGE	2016	CAD	Sep 08, 2022	Sep 09, 2022	$33,052.50	0	$33,052.50	
S22622	1G6DS5RK5L0144003	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	07-09-2022	Inv185 / T11677	TX OPS Indiana Limited	USD	CT5 LUXURY	CADILLAC	2020	CAD	Sep 08, 2022	Sep 09, 2022	$47,299.54	0	$47,299.54	
																$1,723,495.00	$189,093.28	

This is Exhibit “G” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

NOTICE OF MOTION

FTI Consulting Canada Inc. (**"FTI Consulting"**), in its capacity as the Court-appointed receiver and manager (the **"Receiver"**), without security, of substantially all of the assets, undertakings and properties of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX Ops Canada Corporation (collectively, **"Trade X"** or the **"Debtors"**), as set forth in further detail in the Receivership Order (as defined below) will make a motion to a Judge of the Commercial List as soon as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto Ontario.

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

☐ In writing under subrule 37.12.1 (1);

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☒ In person;

☐ By telephone conference;

☐ By video conference.

THE MOTION IS FOR:

(a) A Declaration that the $1,723,495 paid by Mr. Stephen Zhou to 1309767 Ontario Ltd., 2601658 Ontario Ltd. and Mr. Wouter Van Essen (the **"Techlantic Funds"**) are Property (as defined in the Receivership Order) of the Debtors;

(b) An Order directing that 1309767 Ontario Ltd., 2601658 Ontario Ltd. and Mr. Wouter Van Essen transfer $1,723,495 to the Receiver;

(c) Costs of this motion; and

(d) Such further or other order as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

A. The Debtors

1. The Debtors are primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada and other overseas markets. Their operations are carried out by a number of entities, including Techlantic.

2. Techlantic, and certain other Debtors, entered into a senior secured revolving credit agreement dated February 5, 2021 (the **"Global Facility"**). MBL Administrative Agent II LLC (**"MBL"**) is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the **"Lenders"**). MBL is the Applicant in this proceeding.

3. The Global Facility is a sophisticated agreement involving a number of related Debtors. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Global Facility, as it relates to this motion, is summarized at a very high level below:

(a) Techlantic acquired vehicles for sale;

(b) the Lenders provided an advance to pay the purchase price for the vehicles (the "**Advance**");

(c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the "**Borrowing Base**");

(d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the "**Collection Accounts**").

B. Appointment of the Receiver

4. On December 4, 2023, MBL brought an application (the **"Receivership Application"**) to appoint FTI Consulting as and the Receiver of the Property, pursuant to section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the **"*BIA*"**) and section 101 of the *Courts of Justice Act* (Ontario), as amended.

5. MBL alleged that the Debtors had defaulted on their obligations under the Global Facility by, among other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the Collection Accounts.

6. The Receiver has not independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence.

7. On December 11, Penny J. issued an order (the **"Interim Order"**), among other things, adjourning the hearing of the Receivership Application until December 22, 2023 (the

"Postponed Hearing") and appointing FTI Consulting as Information Officer in respect of the Debtors.

8. The adjournment was granted to provide the Debtors additional time to complete a sale transaction involving a party related to the Debtors that is not subject to these proceedings, and the Interim Order sought to otherwise preserve the *status quo* in respect of the Debtors.

9. In order to accomplish this goal, the Interim Order imposed a stay of proceedings that prevented any person from exercising any right or remedy against the Debtors from the date of the Order until the Postponed Hearing (the **"Stay Period"**), except with leave of the Court:

> 4. **THIS COURT ORDERS** **that during the Stay Period**, and subject to, *inter alia*, section 101 of the CJA, **all rights and remedies** of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") **against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court. [emphasis added]**

10. The Receivership Application was heard on December 22, 2023. That same day, Cavanagh J. issued an order (the **"Receivership Order"**) appointing FTI Consulting as the Receiver, without security, of the Property (as defined in the Receivership Order), including (among other things) Techlantic's assets, undertakings and properties acquired for, or used in relation to a business carried on by Techlantic, including all proceeds thereof.

11. Pursuant to the Receivership Order, the Receiver is empowered to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of it.

12. The Receiver is also entitled to receive, preserve and protect the Property, and to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligation.

C. Transfer of Techlantic Funds to 1309767 Ontario Ltd. and/or 2601658 Ontario Ltd.

13. This motion relates to 14 vehicles (the "**Techlantic Vehicles**") that the Van Essen Companies apparently purchased and subsequently sold to Techlantic.

14. Techlantic sold the Techlantic Vehicles to a customer named Stephen Zhou for a total of $1,723,495 (defined above as the "**Techlantic Funds**"). According to Techlantic's invoices, these sales occurred between September 2023 and December 2023, although Techlantic employees have advised the Receiver that these invoices were not provided to Mr. Zhou.

15. Techlantic listed the Techlantic Vehicles on the Borrowing Base, and received Advances under the Global Facility in respect of each Techlantic Vehicle.

16. Between November 28, 2023 and December 22, 2023 Mr. Zhou paid the Techlantic Funds to 1309767 Ontario Ltd. and 2601658 Ontario Ltd. (the **"Van Essen Companies"**).

17. The Van Essen Companies may not deal at arm's length with Techlantic. The Techlantic officer responsible for these transactions is Eric Van Essen ("**Eric**"). The Van Essen Companies are owned and operated by Eric's father, Wouter Van Essen ("**Wouter**").

18. On January 2, 2024, Wouter wrote to Eric and others at Techlantic to advise that the Van Essen Companies had received the Techlantic Funds from Mr. Zhou. Wouter specifically

acknowledged that the Techlantic Funds represented "a payment due to Techlantic Ltd. of $1,723,495".

19. Wouten claimed to have applied the Techlantic Funds against a debt allegedly owed by Techlantic to the Van Essen Companies on December 20, 2023 (the "**Purported Set-Off**").

20. The debt allegedly owed by Techlantic to the Van Essen Companies is not related to the Techlantic Vehicles. The alleged debt relates to transactions between Techlantic and the Van Essen Companies that took place in 2022.

21. As noted above, the Interim Order specifically prohibited any exercise of any right or remedy by any person against Techlantic (and the other Debtors). The Purported Set-Off occurred nine days after the Interim Order was issued and only two days before the Receivership Order was issued.

The Receiver's Attempts to Recover the Techlantic Funds

22. By way of letter dated January 4, 2024, counsel to the Receiver (Goodmans LLP) advised counsel to the Van Essen Companies (Rosemount Law) that Techlantic Funds are Property (as defined in the Receivership Order) of Techlantic and demanded immediate payment of the Techlantic Funds.

23. The Van Essen Companies refused to return the Techlantic Funds. They asserted that the Techlantic Funds are not Property, because the Purported Set-Off Transaction occurred before the Receivership Order. The Receiver does not agree, because (among other reasons) the Purported Set-Off Transaction was prohibited by the Interim Order.

24. The Van Essen Companies also claim that they have a proprietary right to the Techlantic Funds because they sold the Techlantic Vehicles to Techlantic, their invoices to Techlantic state that title did not transfer to Techlantic until Techlantic made payment in full and Techlantic never made payment in full. The Receiver has not yet had an opportunity to fully investigate these claims.

25. In any event, the Receiver does not seek a final determination with respect to the Van Essen Companies' entitlement to the Techlantic Funds. All it seeks, at this stage, is to preserve the Techlantic Funds in accordance with the terms of the Receivership Order so that any competing claims to the Techlantic Funds can be addressed in an orderly manner.

26. Such further and other grounds as counsel may advise and this Honourable Court deems just.

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

(a) The First Report of the Receiver, dated February 1, 2024;

(b) Such further and other evidence as the parties may submit and this Honourable Court may allow.

DATE: February 2, 2024

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Lawyers for Responding Parties,
1309767 Ontario Ltd., 2601658 Ontario Ltd and Wouter Van Essen

MBL ADMINISTRATIVE AGENT II LLC and TRADE X GROUP OF COMPANIES INC. et al. Court File No. CV-23-00710413-00CL

Applicant Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION

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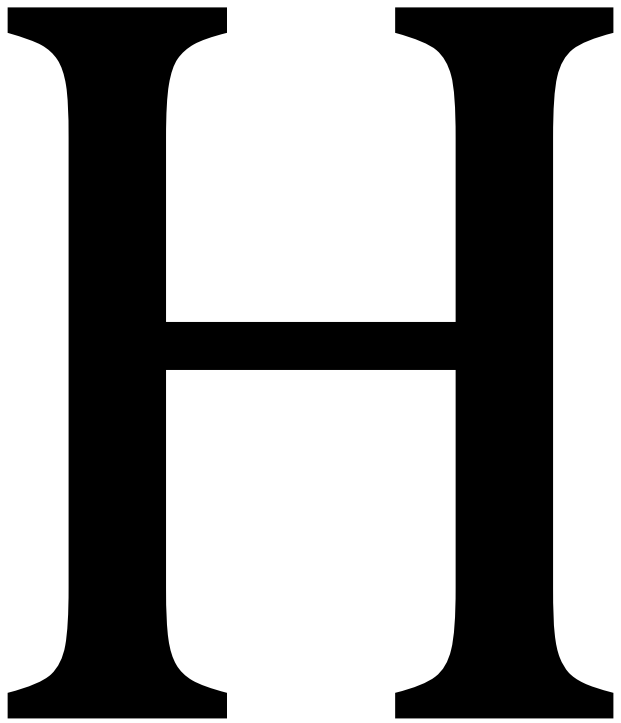

This is Exhibit “H” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

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Commissioner for Taking Affidavits (or as may be)

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

and

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

NOTICE OF CROSS-MOTION

1309767 Ontario Limited and 2601658 Ontario Ltd. (the "**Van Essen Companies**"), the responding parties to the motion brought by FTI Consulting Canada Inc. ("**FTI Consulting**"), in its capacity as the Court-appointed receiver and manager (the "**Receiver**"), without security, of the following property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. ("**Techlantic**") and TX Ops Canada Corporation (collectively, "**Trade X**" or the "**Debtors**") will make a cross-motion to a Judge of the Commercial List as soon as the motion can be heard, at 330 University Avenue, 8th Floor, Toronto Ontario.

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

☐ In writing under subrule 37.12.1 (1);

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☒ In person;

☐ By telephone conference;

☐ By video conference.

THE MOTION IS FOR AN ORDER:

(a) Partially lifting the stay of proceedings provided for in the December 22, 2023, Receivership Order of Cavanagh J., to the extent required, to allow the Van Essen Companies, Responding Parties to the Receiver's Motion, to file the Cross-Motion herein;

(b) Dismissing the Receiver's motion in its entirety;

(c) Declaring that Wouter Van Essen did not conduct the December Transactions in his personal capacity;

(d) Requiring the Receiver to furnish documents relating to the sales of the 2022 Vehicles;

(e) Declaring that the $1,723,495 in the Van Essen Companies' accounts, if paid to Techlantic, would have constituted a 'further advance of money' or 'extension of credit' under section 7 of the Information Officer Order;

(f) Declaring that the Van Essen Companies were entitled to conduct balancing transactions or setoffs before the issuance of the Receivership Order on December 22, 2023;

(g) Costs of this motion; and

(h) Such further or other order as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

A. Overview

1. Since November 2021, Techlantic and the Van Essen Companies have engaged in ongoing and cyclical business dealings related to vehicle purchases, sales and exports. As described in detail below, this relationship was overseen by Techlantic's parent company, Trade X, and involved injections of liquidity from the Van Essen Companies, numerous transactions, debits and credits in both directions and periodic balancing transactions where one party would receive a cash payment from the other.

2. The Receiver's motion seeks recovery of $1,723,495 that was subject to a series of balancing transactions carried out in December 2023, where the Van Essen Companies applied the funds to reduce Techlantic's outstanding indebtedness. These funds are not the Property of the Receiver.

3. When the Van Essen Companies first decided to apply the funds to the outstanding indebtedness of the Techlantic in early December, the Information Officer Order dated December 12, 2023, was not even in place. The Receivership Order was not issued until more than two weeks later.

4. The Van Essen Companies were entitled to undertake the balancing transactions when and how they did.

5. The Information Officer Order, issued on December 11, 2023, introduced a general stay. The stay was subject to an open-ended list of qualifiers and contained no setoff restriction.

6. The Information Officer Order otherwise maintained creditor rights, like the right to cease 'further payments' and 'advances' and the right to set off under section 97(3) of the *Bankruptcy and Insolvency Act* and other laws.

7. This cross-motion predominantly seeks to establish that the Van Essen Companies acted fully within their rights under the Information Officer Order (to the extent applicable) when the December Transactions occurred.

B. The December Transactions

8. The Receiver brings a motion concerning bank drafts received by the Van Essen Companies between December 7 and December 19, 2023, as applied outstanding amounts owed to them by Techlantic (the "**Bank Drafts**" and the "**December Transactions**").

9. The critical dates concerning these transactions are as follows:

Dec 7, 2023	Van Essen Companies receive $350,000 (Bank Draft No. 389621)
	Van Essen Companies receive $350,000 (Bank Draft No. 389620)
Dec 11, 2023	**Justice Penny issues the Information Officer Order, imposing a general stay subject to a non-exhaustive list of qualifiers and maintaining other creditor rights.**
Dec 13, 2023	Van Essen Companies receive $300,000 (Bank Draft No. 389656)
	Van Essen Companies receive $300,000 (Bank Draft No. 389657)
Dec 19, 2023	Van Essen Companies receive $300,000 (Bank Draft No. 389685)
	Van Essen Companies receive $300,000 (Bank Draft No. 389686) [1]
Dec 22, 2023	**Justice Cavanagh issues the Receivership Order, including a stay provision expressly barring setoff rights.**
Dec 28, 2023	Counsel for the Van Essen Companies begins engaging with the Receiver, offering transparency and assistance **and advising that no further setoffs**

[1] Copies of these bank drafts have been provided to the Receiver.

	would be conducted from the date of the Receivership Order onwards As of the Receivership Order date, the Van Essen Companies are owed **$189,093.28.**

10. Setoffs or balancing exercises between Techlantic and the Van Essen Companies were common. The companies arranged their business dealings by mutual debits and credits, periodically settling outstanding amounts by balancing the accounts between them.

11. The Van Essen Companies procured vehicles for Techlantic. Techlantic then facilitated the export of vehicles. The Van Essen Companies would typically reinvest the funds collected upon the sale of the vehicles to procure more vehicles for Techlantic.

12. The December Transactions relate to amounts owing to the Van Essen Companies for 38 vehicles transferred to Techlantic in August 2022 and amounting to $1,912,588.28 (the "**2022 Vehicles**")—a debt expressly acknowledged by Techlantic and its parent company, Trade X. There is no dispute about the amount of the debt.

13. The Van Essen Companies assert a constructive trust over the proceeds from the sale of the 2022 Vehicles, relying on invoice terms that state that the title of the vehicles transfers upon payment in full and that Techlantic's actions—of reselling the vehicles without proper title—constitutes misappropriation, but do not seek a determination of that issue at this interim motion, except insofar as it is required for the court to decide on the equities of the transactions at issue.

C. The Van Essen Companies

14. The Van Essen Companies are incorporated under the laws of the Province of Ontario, with their registered head offices located at 1467 Otis Ave., Mississauga, Ont. for 1309767 Ontario Limited and 700 Third Line, Oakville, Ont. for 2601658 Ontario Ltd.

Wouter Van Essen is a director of both companies. Mr. Van Essen oversees their operations and is responsible for all business dealings.

15. The Van Essen Companies are engaged in the wholesale of vehicles. Until recently, they exclusively supplied Techlantic.

16. Mr. Van Essen does not conduct any business in his personal capacity. The Van Essen Companies completed the December Transactions, not Mr. Van Essen.

D. The Van Essen Companies Owe no Obligations to MBL, the Applicant

17. On February 5, 2021, Trade X entered a senior secured revolving credit agreement (the "**Trade X Senior Credit Agreement**") with MBL Administrative Agent II LLC ("**MBL**" or the "**Applicant**").

18. Trade X acquired Techlantic in August 2021.

19. Neither the Van Essen Companies nor Wouter Van Essen are subject to any agreement or obligations with MBL, and the Receivership does not change that.

E. The Van Essen Companies' History of Financial Support and Credit Arrangements

20. Shortly after the sale of Techlantic closed in October 2021, RBC withdrew a line of credit that had been heavily relied upon for interim liquidity purposes—supporting the buying and selling of vehicles.

21. The withdrawal of the RBC credit line presented challenges for Techlantic, particularly in light of the company's business model and operational needs.

22. The RBC credit line had been a cornerstone of Techlantic's financial structure, providing

the liquidity necessary for its core operations, which involve exporting vehicles and handling HST remittance services.

23. The company's dealings, which relied on the fluidity and flexibility of funds to purchase vehicles for export and manage HST remittance effectively, found little accommodation in the structure of the Trade X Senior Credit Agreement. This misalignment meant that Techlantic was often left to navigate its financial obligations and operational needs without the necessary support, jeopardizing its ability to maintain the level of service reliability that its customers had expected.

24. Furthermore, the nature of Techlantic's transactions—where payments from the largest clients often came in the form of setoffs against new supply arranged from third parties—exacerbated the liquidity crunch. This deferred payment structure, while facilitating ongoing business relations and enabling a cycle of repeat business, required a level of financial agility and immediate liquidity that the PRG agreement could not provide. The company's strategy to use liquidity, previously supported by the RBC line, became difficult to sustain under the new financial arrangements.

25. At the same time, it became evident that Techlantic's new parent company, Trade X, was experiencing significant liquidity issues. These financial difficulties led Trade X to rely increasingly on Techlantic for liquidity support, draining Techlantic's financial resources. This situation posed a substantial risk to Techlantic's operational stability and financial health.

26. The Van Essen Companies offered to assist in acquiring vehicles in Canada (the "**Liquidity Support Plan**").

27. On November 15, 2021, Edmund Chiu, Chief Financial Officer of Trade X, sent an email agreeing to proceed with the Liquidity Support Plan from the Van Essen Companies to safeguard Techlantic's business interests and customer relationships.

28. In broad terms, the Liquidity Support Plan was structured to reduce the working capital required by Techlantic, enabling it to repay loans. To this end, the Van Essen Companies were engaged to purchase vehicles on Techlantic's behalf and sell them to Techlantic at cost. Techlantic collected the associated profits upon resale of the vehicles.

29. The terms of this arrangement included a daily interest charge on the outstanding balance, billed monthly to Techlantic, to be recognized as an expense to Techlantic. Additionally, the Van Essen Companies initially implemented a per-vehicle charge to cover the operating costs associated. However, the Van Essen Companies later waived this operational charge.

30. The Liquidity Support Plan involved ongoing business transactions that resulted in mutual indebtedness. At any one point in time, Techlantic and the Van Essen Companies owed each other amounts for different transactions.

31. Techlantic and the Van Essen Companies agreed that instead of settling every single transaction individually, they would periodically settle the net amount owed by one to the other.

32. The ongoing transactions were critical to maintaining business relationships during a period of internal volatility at Techlantic. During the period of November 15, 2021, to approximately October 15, 2023, Techlantic profited from these dealings in the amount of an estimated $3.2 million.

33. The timing of each settlement was dependent on cashflow, and the Van Essen Companies were sensitive to Techlantic's liquidity to the extent possible.

34. With these considerations in mind, the Van Essen Companies, at their discretion, deferred the settlement of the outstanding amounts for the 2022 vehicles until applying funds to partially settle the outstanding amounts in December 2023.

35. In an email dated January 2, 2024, from Mr. Van Essen to Techlantic, Mr. Van Essen advised, "[the Van Essen Companies] deposited six cheques from Mr. Stephen Zhou, dated from November 28th to December 19th. These funds include a payment due to Techlantic Ltd. of $1,723,495 CAD for vehicle orders from August 2023". The Bank Drafts were applied against Techlantic's indebtedness associated with the 2022 Vehicles on the dates they were received.

F. The Stephen Zhou Transactions

36. The Bank Drafts were received from 2424081 Ontario Inc., a company understood to be owned and controlled by Mr. Stephen Zhou ("**Zhou Ontario**"). Expanding the description of typical business dealings in paragraph 24 above, the transactions with Mr. Zhou were as follows:

1) The Van Essen Companies would purchase vehicles from Zhou Ontario and sell them to Techlantic at cost.

2) Techlantic would facilitate the export, shipping and HST remittance services concerning those vehicles, selling them to companies affiliated with Mr. Zhou in China.

3) Zhou Ontario, after selling vehicles to the Van Essen Companies, assisted the Van Essen Companies with collecting payments from end customers in China. Rather than remitting the collected amounts to the Van Essen Companies, Zhou Ontario applied these funds to the acquisition of new vehicles in Ontario.

4) Subsequently, these newly purchased vehicles were sold to the Van Essen Companies, effectively compensating for those previously dispatched to China. This arrangement settled the payments for vehicles delivered to China by providing new vehicles to the Van Essen Companies, streamlining the payment process. Any outstanding balances were addressed in subsequent transactions between the parties.

5) From August 2023 onward, Mr. Zhou was asked to pay for all vehicles by bank draft or wire, to simplify the HST claim process. Bank drafts were predominantly directed to the Van Essen Companies, save for limited exceptions.

6) The Van Essen Companies, at their discretion, set these payments off against debts owed to the Van Essen Companies by Techlantic or remitted them to Techlantic.

G. The Van Essen Companies and Techlantic Dealt at Arms-Length

37. Following the sale, from September 13, 2021 to November 1, 2023, Mr. Van Essen served Techlantic in a consulting capacity through Techlantic Consulting Ltd.

38. Mr. Van Essen's son, Eric Van Essen, remained at Techlantic.

39. All dealings between Techlantic and the Van Essen Companies were overseen by Techlantic's parent company, Trade X.

40. All dealings between Techlantic and the Van Essen Companies, including the Liquidity Support Plan referred to in paragraph 27, were endorsed by Trade X and at arm's length.

H. The Information Officer Order

41. On December 11, Penny J. issued an order (the "**Information Officer Order**"), among other things, adjourning the hearing of the Receivership Application until December 22, 2023, and appointing FTI Consulting as Information Officer in respect of the Debtors.

42. The Information Officer Order stated that no Person was under any obligation to make further advances of money or otherwise extend credit to the Debtors:

> 7. THIS COURT ORDERS that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Debtors on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order **to make further advance of money or otherwise extend any credit to the Debtors.** [emphasis added]

43. The Information Officer Order contained a standard stay provision **subject to a non-exhaustive list of qualifications** and **did not expressly limit setoffs.**

> 4. THIS COURT ORDERS that during the Stay Period, **and subject to, inter alia, section 101 of the CJA**, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court. [emphasis added]

44. In contrast to the Information Officer Order, the Receivership Order issued on December 22, 2023, by Cavanagh J. (the "**Receivership Order**") contained a stay provision limiting the setoff right.

> 10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, **including, without limitation, setoff rights,** are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court[…][emphasis added]

I. The Van Essen Companies' Good Faith Efforts

45. Within two business days of the Receiver's appointment, on December 28, 2023, counsel for the Van Essen Companies engaged with the Receiver's counsel to inform it of the December Transactions. Thereafter, the Van Essen Companies, through their counsel, continually responded to specific information requests, demonstrating a commitment to good faith engagement.

46. The Receiver's response, however, was to demand the return of the funds, bypassing substantive engagement on the issues presented by the Van Essen Companies.

47. These efforts include engaging the Receiver on the issue of the 2022 Vehicles and seeking its assistance to trace the proceeds of their sale. The Receiver has not responded to this request.

48. The Van Essen Companies, as part of this cross-motion, seek documents and information to enable them to trace the sale of the vehicles and the proceeds therefrom.

J. Additional Grounds

49. Section 111 of the *Courts of Justice Act*.

50. Section 97(3) of the *Bankruptcy and Insolvency Act.*

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

a. The Affidavit of Wouter Van Essen, to be sworn;

b. Such further and other evidence as the parties may submit and this Honourable Court may allow.

February 7, 2024

ROSEMOUNT LAW PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Alexis Beale (LSO No. 65902W)
abeale@rosemountlaw.com

Tel: 647.692.0222

Lawyers for the Responding Parties and Moving Parties on the Cross-Motion, the Van Essen Companies and Wouter Van Essen

TO: **GOODMANS LLP**
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Mark Dunn (LSO No. 55510L)
mdunn@goodmans.ca

Caroline Descours (LSO No. 58251A)
cdescours@goodmans.ca

Brittni Tee (LSO No. 85001P)
btee@goodmans.ca

Tel: 416.849.6895

Lawyers for the Receiver,
FTI Consulting Canada Inc.

MBL ADMINISTRATIVE AGENT II LLC	and TRADE X GROUP OF COMPANIES INC. et al.	Court File No. CV-23-00710413-00CL
Applicant	Respondents	

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

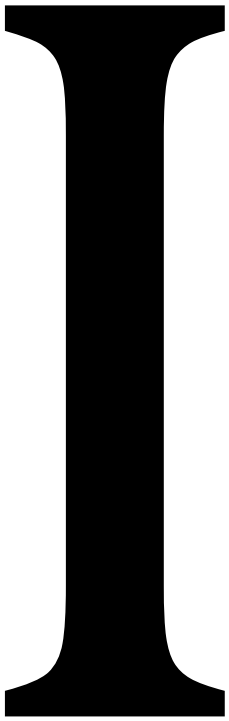
Proceeding commenced at Toronto

NOTICE OF CROSS-MOTION

ROSEMOUNT LAW PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Alexis Beale (LSO No. 65902W)
Tel:647-692-0222
abeale@rosemountlaw.com

Lawyers for the Responding Parties and Moving Parties on the Cross-Motion, the Van Essen Companies and Wouter Van Essen



This is Exhibit “I” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

Cc: Harmes, Andrew <aharmes@goodmans.ca>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Alexis,

That is correct. FTI was appointed receiver today.

We will add you to the service list going forward and caselines.

Thank you.

Caroline Descours
(she/her)
Goodmans LLP
416.597.6275

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, December 22, 2023 1:59 PM
To: Kamran.Hamidi@fticonsulting.com; Descours, Caroline <cdescours@goodmans.ca>
Subject: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Good afternoon,

My name is Alexis Beale and I am counsel to (1309767 Ontario Ltd. and 2601658 Ontario Ltd., collectively the "Van Essen Numbered Companies"). I have just been retained and I am in the process of getting up to speed, but I understand that FTI was appointed as Receiver earlier today. My clients have an interest in this Receivership I request that you add me to the service list, on my clients' behalf.

I would also like to be invited to the Caselines site for this matter, so that my clients have access to all materials filed/ orders granted to date.

Kind regards,

Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

J

This is Exhibit “J” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Wednesday, January 3, 2024 2:45 PM
To: Harmes, Andrew
Cc: Descours, Caroline; Kamran.Hamidi@fticonsulting.com
Subject: Re: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)
Attachments: Documents on Behalf of 1309767 Ontario Ltd. and 2601658 Ontario Ltd., Jan 3, 2024.pdf

Andrew,

Thank you for the discussion yesterday about the status of the Trade X Receivership and my clients', 1309767 Ontario Ltd. and 2601658 Ontario Ltd., proprietary right in 36 vehicles and/or the proceeds of the sales therefrom.

Further to your request, I attach here a PDF bundle of documents containing the following:

- Tab A (1-36): The relevant invoices pertaining to the vehicles in question. These documents serve as one of the bases upon which my clients' proprietary right is derived, on the stipulated terms that title to the goods shall not pass to the purchaser until full payment is received.

- Tab B: The Irrevocable Letter of Direction dated January 30, 2023. This document was an attempt by the parties to satisfy the obligations to my client. It signifies the good faith attempts for resolution but does not override the existing proprietary rights as established by the invoices.

- Tab C: An email from Wouter van Essen to Techlantic staff dated January 2, 2024. This email details the setoff being applied to satisfy a portion of the amount outstanding to the numbered companies. It's indicative of ongoing efforts to resolve the financial obligations and the interactions between parties involved.

In relation to Tab C and the asserted set off, I would like to provide the following context:

- Collection and Further Procurement: Historically, my clients have procured vehicles for Techlantic. These vehicles are then sold by Techlantic. In that vein, my clients have been collecting certain funds on behalf of Techlantic. These funds were typically reinvested in the procurement of vehicles for Techlantic.
    - In the case of the 14 vehicles currently in question, the end purchaser followed this custom as part of a broader arrangement, which also included purchases from a Canadian entity related to the purchaser.

- Change Due to Receivership: In or around mid-October 2023, in part considering the events leading up to the Receivership, the regular course of business, including the further purchases with the collected funds, has ceased.

- Basis for Set-Off: My clients currently holds funds on account of vehicles purchased on Techlantic's behalf. These funds are now asserted to be set off against the pre-existing debt owed to my clients by Techlantic (details are in Tab C and the attachment thereto).

Considering that there is an outstanding amount of $189,093.28, we request that the Receiver provide us with information to enable us to trace the vehicles and the proceeds from their sale, with reference to the VINs provided in the attached documents. My clients assert a constructive trust claim over these proceeds.

We look forward to your response and further information regarding the claims process.

Kind Regards,
Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

From: Harmes, Andrew <aharmes@goodmans.ca>
Sent: December 28, 2023 7:54 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Kamran.Hamidi@fticonsulting.com <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Great, thanks – I will send an invite.

Andrew Harmes
Goodmans LLP

416.849.6923
aharmes@goodmans.ca
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, December 28, 2023 7:41 PM
To: Harmes, Andrew <aharmes@goodmans.ca>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Kamran.Hamidi@fticonsulting.com
Subject: Re: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Andrew,

Thank you. Yes, 11:30 is good for me.

Best,

Alexis

On Dec 28, 2023, at 4:35 PM, Harmes, Andrew <aharmes@goodmans.ca> wrote:

Hi Alexis – I am tied up tomorrow but can speak early next week. Would Tuesday after 11am work? Let me know.

Thank you,

Andrew Harmes
Goodmans LLP

416.849.6923
aharmes@goodmans.ca
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, December 28, 2023 2:47 PM
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Cc: Harmes, Andrew <aharmes@goodmans.ca>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Caroline,

I am in the process of preparing a letter regarding my clients' interests in the receivership, but I think it may be helpful to have a call to discuss. Do you have any availability tomorrow or early next week?

Kinds regards,

Alexis

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

From: Descours, Caroline <cdescours@goodmans.ca>
Sent: Friday, December 22, 2023 3:08 PM
To: Alexis Beale <abeale@rosemountlaw.com>; Kamran.Hamidi@fticonsulting.com

Cc: Harmes, Andrew <aharmes@goodmans.ca>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Alexis,

That is correct. FTI was appointed receiver today.

We will add you to the service list going forward and caselines.

Thank you.

Caroline Descours
(she/her)
Goodmans LLP
416.597.6275

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Sent: Friday, December 22, 2023 1:59 PM
To: Kamran.Hamidi@fticonsulting.com; Descours, Caroline <cdescours@goodmans.ca>
Subject: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Good afternoon,

My name is Alexis Beale and I am counsel to (1309767 Ontario Ltd. and 2601658 Ontario Ltd., collectively the "Van Essen Numbered Companies"). I have just been retained and I am in the process of getting up to speed, but I understand that FTI was appointed as Receiver earlier today. My clients have an interest in this Receivership I request that you add me to the service list, on my clients' behalf.

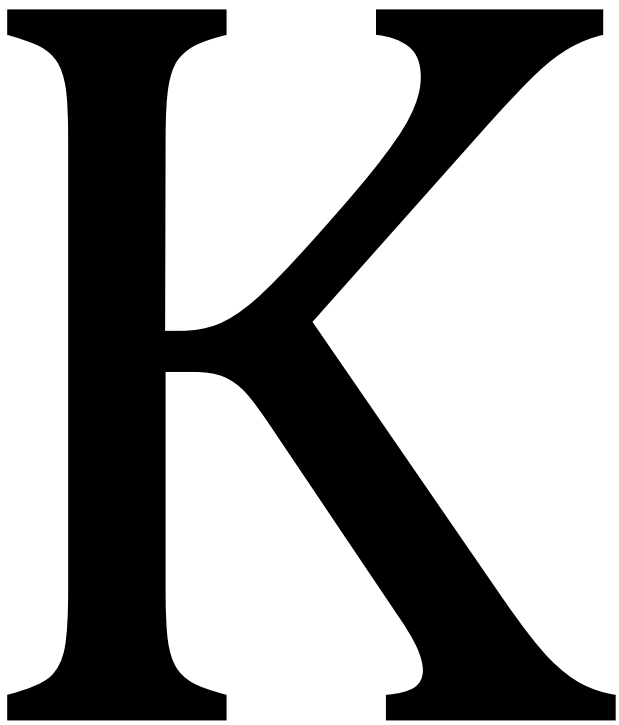
I would also like to be invited to the Caselines site for this matter, so that my clients have access to all materials filed/ orders granted to date.

Kind regards,

Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, www.goodmans.ca. You may unsubscribe to certain communications by clicking here.



This is Exhibit “K” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

From: Harmes, Andrew
Sent: Thursday, January 4, 2024 5:12 PM
To: Alexis Beale
Cc: Descours, Caroline; Bishop, Paul; Hamidi, Kamran
Subject: Trade X Group of Companies Inc. et al - Court File No. CV-23-00710413-00CL
Attachments: Letter to A. Beale - 4-JAN-2024.pdf

Alexis,

Please see the attached correspondence.

Regards,

Andrew Harmes
Goodmans LLP

416.849.6923
aharmes@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

Goodmans LLP

Barristers & Solicitors

Bay Adelaide Centre, West Tower
333 Bay Street, Suite 3400
Toronto, Ontario M5H 2S7

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: +1 (416) 849-6923
aharmes@goodmans.ca

January 4, 2024

Via Email (abeale@rosemountlaw.com)

Rosemount Law Professional Corporation

Attention: Alexis Beale

Dear Alexis:

Re: Receivership Proceedings of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. and TX OPS Canada Corporation (Court File No. CV-23-00710413-00CL)

As you know, we are counsel to FTI Consulting Canada Inc. in its capacity as the receiver and manager (in such capacity, the "**Receiver**") of substantially all of the assets, undertakings and properties of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. ("**Techlantic**") and TX OPS Canada Corporation (collectively, the "**Debtors**") pursuant to the Order granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on December 22, 2023 (the "**Receivership Order**") in the above-referenced proceedings. A copy of the Receivership Order and other court materials filed in respect of the receivership proceedings can be found on the Receiver's website at: http://cfcanada.fticonsulting.com/TradeX/.

The Receiver is in receipt of your email correspondence to Goodmans LLP and the Receiver dated January 3, 2024 (the "**Beale Email**"), which, among other things, encloses a copy of the email correspondence from Mr. Wouter Van Essen to Techlantic dated January 2, 2024 (the "**Van Essen Email**"). Copies of the Beale Email and the Van Essen Email are enclosed for reference at Schedule "B" and Schedule "C", respectively.

Based on the foregoing correspondence, the Receiver understands that 1309767 Ontario Ltd. and/or 2601658 Ontario Ltd. (collectively, the "**Van Essen Companies**") are asserting certain claims against Techlantic in the aggregate amount of CA$1,912,588.28 relating to vehicles that the Van Essen Companies have advised that they transferred to Techlantic (the "**Van Essen Claimed Amounts**").

The Receiver is in the process of reviewing the available information regarding the Van Essen Claimed Amounts and the other information provided in the Van Essen Email and the Beale Email.

In the Van Essen Email, Mr. Van Essen advises, among other things, that he is (a) in receipt of CA$1,723,495 of payments due to Techlantic in connection with the sale of various vehicles by Techlantic to Mr. Steven Zhou (the "**Techlantic Funds**"),[1] and (b) taking unilateral steps to apply the Techlantic Funds against the Van Essen Claimed Amounts (the "**Set-Off Steps**"). Such Set-Off Steps are also noted in the Beale Email.

The Techlantic Funds constitute Property (as defined in the Receivership Order) of Techlantic. We note that, (a) pursuant to paragraph 4 of the Receivership Order, all persons are required to deliver all Property in such person's possession or control to the Receiver upon the Receiver's request, and (b) pursuant to paragraph 3 of the Receivership Order, the Receiver is empowered and authorized to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies.

Accordingly, the Receiver hereby requests that the Techlantic Funds, and any and all additional Property of Techlantic, or any of the other Debtors, that is currently in, or may in the future come into, the possession or control of the Van Essen Companies, be immediately paid to the Receiver on behalf of Techlantic or such other applicable Debtor(s) at the accounts set out at Schedule "A" hereto.

In addition, we note that pursuant to paragraph 10 of the Receivership Order, all rights and remedies against the Debtors, the Receiver, or affecting the Property, **including, without limitation, set-off rights**, are stayed and suspended except with the written consent of the Receiver or leave of the Court.

Accordingly, any actions or steps taken by the Van Essen Companies to exercise set-off rights against any of the Debtors (including Techlantic) without the written consent of the Receiver or leave of the Court are prohibited by the Receivership Order and would place the Van Essen Companies in direct contravention of same. We trust this clarifies matters and that the Van Essen Companies will **immediately** cease the Set-Off Steps and the exercise of any other rights or remedies against the Debtors and the Property in contravention of the Receivership Order.

The Receiver continues to review the Van Essen Email and the Beale Email, including the assertions and legal positions stated therein, and, for clarity, this letter does not serve as a complete response to all matters asserted, alleged or raised by or on behalf of the Van Essen Companies at this time as the Receiver continues to review such matters and seek additional information.

The Receiver reserves all of the rights and remedies of the Debtors and the Receiver in respect of any and all Property of the Debtors.

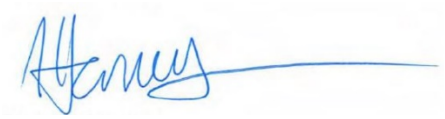
[1] The Receiver notes that the CA$1,723,495 of payments is less than the amount of CA$1,770,689 that the Receiver understands is due to Techlantic in connection with the foregoing transaction.

Goodmans LLP

Should you have any questions or concerns please do not hesitate to contact the undersigned.

Yours truly,

Goodmans LLP



Andrew Harmes
Encl.

cc: Caroline Descours, Goodmans LLP
Paul Bishop and Kamran Hamidi, FTI Consulting Canada Inc.

1400-7404-8777

Schedule "A"

Receiver Account Information

Canadian Dollar Account:

Bank of Nova Scotia
Toronto Business Service Centre
4715 Tahoe Blvd
Mississauga, Ontario L4W 0B4

For EFT Debits or Credits:
Canadian Dollar Currency Account #: 476962047012
Transit number: 47696
Institution code: 002

For Wire Payments:
Bank of Nova Scotia
44 King Street West
Toronto, ON Canada M5H 1H1
Swift Code: NOSCCATT
Canadian Clearing Code or Routing Code: //CC000247696
Canadian Dollar Currency Account # 476962047012

US Dollar Account:

Bank of Nova Scotia
Toronto Business Service Centre
4715 Tahoe Blvd
Mississauga, Ontario L4W 0B4

For EFT Debits or Credits:
USD Dollar Currency Account #: 476961607111
Transit number: 47696
Institution code: 002

For Wire Payments:
Bank of Nova Scotia
44 King Street West
Toronto, ON Canada M5H 1H1
Swift Code: NOSCCATT
USD Clearing Code or Routing Code: //CC000247696
USD Currency Account # 476961607111

Schedule “B”

The Beale Email

[See attached]

From:	Alexis Beale
To:	Harmes, Andrew
Cc:	Descours, Caroline; Kamran.Hamidi@fticonsulting.com
Subject:	Re: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)
Date:	Wednesday, January 3, 2024 2:45:21 PM
Attachments:	Documents on Behalf of 1309767 Ontario Ltd. and 2601658 Ontario Ltd., Jan 3, 2024.pdf

Andrew,

Thank you for the discussion yesterday about the status of the Trade X Receivership and my clients', 1309767 Ontario Ltd. and 2601658 Ontario Ltd., proprietary right in 36 vehicles and/or the proceeds of the sales therefrom.

Further to your request, I attach here a PDF bundle of documents containing the following:

- Tab A (1-36): The relevant invoices pertaining to the vehicles in question. These documents serve as one of the bases upon which my clients' proprietary right is derived, on the stipulated terms that title to the goods shall not pass to the purchaser until full payment is received.

- Tab B: The Irrevocable Letter of Direction dated January 30, 2023. This document was an attempt by the parties to satisfy the obligations to my client. It signifies the good faith attempts for resolution but does not override the existing proprietary rights as established by the invoices.

- Tab C: An email from Wouter van Essen to Techlantic staff dated January 2, 2024. This email details the setoff being applied to satisfy a portion of the amount outstanding to the numbered companies. It's indicative of ongoing efforts to resolve the financial obligations and the interactions between parties involved.

In relation to Tab C and the asserted set off, I would like to provide the following context:

- Collection and Further Procurement: Historically, my clients have procured vehicles for Techlantic. These vehicles are then sold by Techlantic. In that vein, my clients have been collecting certain funds on behalf of Techlantic. These funds were typically reinvested in the procurement of vehicles for Techlantic.
    - In the case of the 14 vehicles currently in question, the end purchaser followed this custom as part of a broader arrangement, which also included purchases from a Canadian entity related to the purchaser.

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events leading up to the Receivership, the regular course of business, including the further purchases with the collected funds, has ceased.

- Basis for Set-Off: My clients currently holds funds on account of vehicles purchased on Techlantic's behalf. These funds are now asserted to be set off against the pre-existing debt owed to my clients by Techlantic (details are in Tab C and the attachment thereto).

Considering that there is an outstanding amount of $189,093.28, we request that the Receiver provide us with information to enable us to trace the vehicles and the proceeds from their sale, with reference to the VINs provided in the attached documents. My clients assert a constructive trust claim over these proceeds.

We look forward to your response and further information regarding the claims process.

Kind Regards,
Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

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Sent: December 28, 2023 7:54 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Kamran.Hamidi@fticonsulting.com <Kamran.Hamidi@fticonsulting.com>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Great, thanks – I will send an invite.

Andrew Harmes
Goodmans LLP

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From: Alexis Beale <abeale@rosemountlaw.com>
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Subject: Re: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Andrew,

Thank you. Yes, 11:30 is good for me.

Best,

Alexis

On Dec 28, 2023, at 4:35 PM, Harmes, Andrew <aharmes@goodmans.ca> wrote:

Hi Alexis – I am tied up tomorrow but can speak early next week. Would Tuesday after 11am work? Let me know.

Thank you,

Andrew Harmes
Goodmans LLP

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Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Caroline,

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Kinds regards,

Alexis

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

From: Descours, Caroline <cdescours@goodmans.ca>
Sent: Friday, December 22, 2023 3:08 PM
To: Alexis Beale <abeale@rosemountlaw.com>; Kamran.Hamidi@fticonsulting.com
Cc: Harmes, Andrew <aharmes@goodmans.ca>
Subject: RE: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Hi Alexis,

That is correct. FTI was appointed receiver today.

We will add you to the service list going forward and caselines.

Thank you.

Caroline Descours
(she/her)
Goodmans LLP
416.597.6275

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, December 22, 2023 1:59 PM
To: Kamran.Hamidi@fticonsulting.com; Descours, Caroline <cdescours@goodmans.ca>
Subject: Receivership Application of MBL Administrative Agent (Court File No. CV-23-00710413-00CL)

Good afternoon,

My name is Alexis Beale and I am counsel to (1309767 Ontario Ltd. and 2601658 Ontario Ltd., collectively the "Van Essen Numbered Companies"). I have just been retained and I am in the process of getting up to speed, but I understand that FTI was appointed as Receiver earlier today. My clients have an interest in this Receivership I request that you add me to the service list, on my clients' behalf.

I would also like to be invited to the Caselines site for this matter, so that my clients have access to all materials filed/ orders granted to date.

Kind regards,

Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation
(647) 692-0222 abeale@rosemountlaw.com

Schedule “C”

The Van Essen Email

[See attached]

FW: Payment received from Stephen applied to outstanding invoices

Wouter Van Essen <wouter@techlanticconsulting.com>

Tue 2024-01-02 7:55 PM

To:eric@techlantic.com <eric@techlantic.com>;june@techlantic.com <june@techlantic.com>;Michelle Ralph (michelle@techlantic.com) <michelle@techlantic.com>

1 attachments (17 KB)

Balance_Due_to_Purchasing_Company and Dec Payment Application - B.xlsx;

Hi June, Michelle, and Eric,

I am writing to inform you of recent transactions between 1309767 Ontario Limited and Techlantic Ltd. Our company deposited six cheques from Mr. Stephen Zhou, dated from November 28th to December 19th. These funds include a payment due to Techlantic Ltd. of $1,723,495 CAD for vehicle orders from August 2023 (S23835, S23863, S23864, S23865, S23877, S23878, S23879, S23849, S23850, S23862, S23897, S23898, S23942, and S23943). These details are in the first tab of the attached spreadsheet.

There is also an outstanding balance for vehicles purchased by my companies last year, which has not been settled by Techlantic Ltd., detailed on the second tab. Our invoice terms state that title to the vehicles only transfers when payment is received in full. We never received this payment, so when Techlantic proceeded to transfer these cars, it did so without title.

In resolution, I have applied the payments from Mr. Zhou against the overdue amounts for these vehicles, a process detailed in column Q of the second tab, with the date of the transaction recorded as December 20th.

After this application, the remaining balance due to my purchasing companies is $189,093.28 CAD. I request that you confirm this balance and update the records of Techlantic Ltd. accordingly.

I await your confirmation of the adjusted balance.

Kind regards,
Wouter

Wouter van Essen
Techlantic Consulting Ltd. |700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Mobile: +1-416-414-1967

Order Number	Model	VIN	Payment Due	
S23835	GLS450	4JGFF5KE1PA973760	$	143,100.00
S23863	GLE450	4JGFB5KB9RB007915	$	105,175.00
S23864	GLE450	4JGFB5KB3RB017808	$	105,360.00
S23865	GLE450	4JGFB5KB8RB017822	$	102,400.00
S23877	GLE450	4JGFB5KB3RB017792	$	106,100.00
S23878	GLS450	4JGFF5KE5PB010225	$	139,400.00
S23879	GLS450	4JGFF5KE3PB023524	$	143,100.00
S23849	GLS450	4JGFF5KE1PB021786	$	139,400.00
S23850	GLS450	4JGFF5KE4PB023497	$	139,400.00
S23862	GLE450	4JGFB5KB7RB032375	$	104,435.00
S23897	GLS450	4JGFF5KE3PB023538	$	140,325.00
S23898	GLS450	4JGFF5KE7PA982429	$	143,100.00
S23942	GLE450	4JGFB5KB6RB025787	$	106,100.00
S23943	GLE450	4JGFB5KBXRB025775	$	106,100.00
			$	1,723,495.00

Order Number	Vehicle Name	Purchasing Dealer Name	Source Dealer Name	Control Location	Date of Control Date	Reference Num	Account Name	Sales Currency	Model	Manufacturer	Model Year	Purchasing Currency	TX Shipping Dat	Date Purchasing Comp Pa	Balance Due to Purchasing Comp	Payment Applied	New Balance Outstanding	Payment Application Date
S22395	KMHLM4AG2NU355774	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	09-08-2022	Inv919 / T11109	TX OPS Indiana Limited	USD	ELANTRA PREFERRED S	HYUNDAI	2022	CAD	Aug 10, 2022	Aug 09, 2022	$33,617.50	$33,617.50	$0.00	20-Dec-23
S22400	1GYS4GKT3NR276649	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	10-08-2022	Inv920 / T11099	TX OPS Indiana Limited	USD	ESCALADE	CADILLAC	2022	CAD	Aug 10, 2022	Aug 11, 2022	$145,084.09	$145,084.09	$0.00	20-Dec-23
S22428	KMHLM4AG8NU308680	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	15-08-2022	Inv940 / T10769	TX OPS Indiana Limited	USD	ELANTRA	HYUNDAI	2022	CAD	Aug 16, 2022	Aug 15, 2022	$31,600.45	$31,600.45	$0.00	20-Dec-23
S22429	KMHLM4AG4NU247344	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	15-08-2022	Inv940 / T11100	TX OPS Indiana Limited	USD	ELANTRA	HYUNDAI	2022	CAD	Aug 16, 2022	Aug 15, 2022	$32,042.28	$32,042.28	$0.00	20-Dec-23
S22430	KMHLM4AG2NU319642	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	15-08-2022	Inv940 / T11069	TX OPS Indiana Limited	USD	ELANTRA	HYUNDAI	2022	CAD	Aug 15, 2022	Aug 15, 2022	$33,515.80	$33,515.80	$0.00	20-Dec-23
S22531	3GKALVEX1LL163525	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	31-08-2022	Inv949 / T11633	TX OPS Indiana Limited	USD	TERRAIN 4X4 SLT 4DR SL	GMC	2020	CAD	Aug 31, 2022	Aug 26, 2022	$35,649.24	$35,649.24	$0.00	20-Dec-23
S22534	1FTEW1EP2KKE01041	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	16-06-2022	Inv954 / T11216	TX OPS Indiana Limited	USD	F150 XLT 301A SPORT	FORD	2019	CAD	Jun 16. 2022	Aug 26. 2022	$45,200.00	$45,200.00	$0.00	20-Dec-23
S22547	KNDPNCAC8N7020229	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	26-08-2022	Inv945 / T9469	TX OPS Indiana Limited	USD	SPORTAGE EX PREMIUM	KIA	2022	CAD	Aug 29, 2022	Aug 29, 2022	$44,578.50	$44,578.50	$0.00	20-Dec-23
S22552	KMBK12AB7PU938030	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	29-08-2022	Inv948 / T11654	TX OPS Indiana Limited	USD	KONA	HYUNDAI	2023	CAD	Aug 30, 2022	Aug 31, 2022	$33,165.50	$33,165.50	$0.00	20-Dec-23
S22556	3PCAJ5M35LF100622	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	31-08-2022	Inv959 / T11648	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Aug 31, 2022	Sep 01, 2022	$48,081.50	$48,081.50	$0.00	20-Dec-23
S22561	4T1G11AK4PU719994	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	30-08-2022	Inv948 / T11652	TX OPS Indiana Limited	USD	CAMRY SE	TOYOTA	2023	CAD	Aug 31. 2022	Aug 31. 2022	$43,221.37	$43,221.37	$0.00	20-Dec-23
S22580	3PCAJ5M31LF101282	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11645	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 02, 2022	Sep 06, 2022	$46,154.85	$46,154.85	$0.00	20-Dec-23
S22581	4T1K61AK9LU318091	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11661	TX OPS Indiana Limited	USD	CAMRY XSE	TOYOTA	2020	CAD	Sep 02, 2022	Sep 06, 2022	$39,945.50	$39,945.50	$0.00	20-Dec-23
S22582	JN1FV7DR9MM880629	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11678	TX OPS Indiana Limited	USD	Q50	INFINITI	2021	CAD	Sep 01, 2022	Sep 01, 2022	$61,980.50	$61,980.50	$0.00	20-Dec-23
S22583	4T1G11AK0PU077239	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11679	TX OPS Indiana Limited	USD	CAMRY SE	TOYOTA	2023	CAD	Seo 01. 2022	Seo 01. 2022	$43,221.37	$43,221.37	$0.00	20-Dec-23
S22584	3PCAJ5M39LF105600	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv962 / T11684	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 01, 2022	Sep 06, 2022	$43,335.50	$43,335.50	$0.00	20-Dec-23
S22585	JM3TCBDY2M0454442	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11611	TX OPS Indiana Limited	USD	CX-9 KURO EDITION	MAZDA	2021	CAD	Sep 01, 2022	Sep 01, 2022	$51,628.57	$51,628.57	$0.00	20-Dec-23
S22587	1C6SRFLTXMN627361	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11642	TX OPS Indiana Limited	USD	1500 REBEL CREWCAB	RAM	2021	CAD	Sep 01, 2022	Sep 01, 2022	$68,986.50	$68,986.50	$0.00	20-Dec-23
S22588	1C6SRFLT2MN692771	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv961 / T11650	TX OPS Indiana Limited	USD	1500 REBEL CREWCAB	RAM	2021	CAD	Seo 01. 2022	Seo 01. 2022	$68,986.50	$68,986.50	$0.00	20-Dec-23
S22589	1GYS4GKLXPR115749	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11695	TX OPS Indiana Limited	USD	ESCALADE SPORT PLATI	CADILLAC	2023	CAD	Sep 02, 2022	Sep 06, 2022	$168,765.50	$168,765.50	$0.00	20-Dec-23
S22593	1C6SRFLT4MN681657	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	01-09-2022	Inv962 / T11657	TX OPS Indiana Limited	USD	1500 REBEL CREWCAB	RAM	2021	CAD	Sep 01, 2022	Sep 06, 2022	$66,500.50	$66,500.50	$0.00	20-Dec-23
S22609	1C4HJXDG9MW634071	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11687	TX OPS Indiana Limited	USD	WRANGLER	JEEP	2021	CAD	Sep 02, 2022	Sep 06, 2022	$48,985.50	$48,985.50	$0.00	20-Dec-23
S22610	KNDNB5H34P6220616	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11688	TX OPS Indiana Limited	USD	CARNIVAL	KIA	2023	CAD	Sep 02, 2022	Sep 06, 2022	$48,897.36	$48,897.36	$0.00	20-Dec-23
S22611	5XYRKDLF0NG139569	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11689	TX OPS Indiana Limited	USD	SORENTO	KIA	2022	CAD	Sep 02, 2022	Sep 06, 2022	$58,025.50	$58,025.50	$0.00	20-Dec-23
S22612	5XYP5DHC7NG305423	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11690	TX OPS Indiana Limited	USD	TELLURIDE	KIA	2022	CAD	Sep 02, 2022	Sep 06, 2022	$63,248.36	$63,248.36	$0.00	20-Dec-23
S22614	5XYRKDLF6NG139656	1309767 Ontario Limited (SBFS Translantic)	Xpress Financial Inc.	Mississauga - TradeX	02-09-2022	Inv962 / T11694	TX OPS Indiana Limited	USD	SORENTO	KIA	2022	CAD	Sep 02, 2022	Sep 06, 2022	$58,025.50	$58,025.50	$0.00	20-Dec-23
S22586	3PCAJ5M3XLF103404	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	07-09-2022	Inv186 / T11665	TX OPS Indiana Limited	USD	QX50 ESSENTIAL	INFINITI	2020	CAD	Sep 07, 2022	Sep 07, 2022	$47,573.00	$47,573.00	$0.00	20-Dec-23
S22599	3GKALMEV1NL304427	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	21-09-2022	Inv191 / T11659	TX OPS Indiana Limited	USD	TERRAIN	GMC	2022	CAD	Sep 21, 2022	Sep 07, 2022	$41,300.37	$41,300.37	$0.00	20-Dec-23
S22602	3PCAJ5M39LF115236	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11672	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 08, 2022	Sep 07, 2022	$48,420.50	$48,420.50	$0.00	20-Dec-23
S22604	JTJJARDZ0L2220212	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11675	TX OPS Indiana Limited	USD	NX300	LEXUS	2020	CAD	Sep 08, 2022	Sep 07, 2022	$48,420.50	$48,420.50	$0.00	20-Dec-23
S22605	1GCUYDED8MZ234160	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11676	TX OPS Indiana Limited	USD	SILVERADO	CHEVROLET	2021	CAD	Sep 09, 2022	Sep 07, 2022	$53,278.37	$53,278.37	$0.00	20-Dec-23
S22607	1G1ZG5ST3NF193071	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11685	TX OPS Indiana Limited	USD	MALIBU	CHEVROLET	2022	CAD	Sep 08, 2022	Sep 07, 2022	$32,038.89	$22,058.52	$9,980.37	20-Dec-23
S22608	3PCAJ5M33LF102241	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	08-09-2022	Inv186 / T11686	TX OPS Indiana Limited	USD	QX50	INFINITI	2020	CAD	Sep 08, 2022	Sep 07, 2022	$48,420.50	0	$48,420.50	
S22613	JTJSARDZ8L5018401	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	15-09-2022	Inv199 / T11692	TX OPS Indiana Limited	USD	NX300	LEXUS	2020	CAD	Sep 19, 2022	Sep 07, 2022	$50,340.37	0	$50,340.37	
S22621	1C4SDJET5GC446739	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	07-09-2022	Inv185 / T11726	TX OPS Indiana Limited	USD	DURANGO CITADEL	DODGE	2016	CAD	Sep 08, 2022	Sep 09, 2022	$33,052.50	0	$33,052.50	
S22622	1G6DS5RK5L0144003	Transcan Technical Services	Xpress Financial Inc.	Mississauga - TradeX	07-09-2022	Inv185 / T11677	TX OPS Indiana Limited	USD	CT5 LUXURY	CADILLAC	2020	CAD	Sep 08, 2022	Sep 09, 2022	$47,299.54	0	$47,299.54	
																$1,723,495.00	$189,093.28	

L

This is Exhibit “L” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

From:	Alexis Beale
To:	Dunn, Mark
Cc:	Descours, Caroline; Tee, Brittni
Subject:	RE: Trade-X and 1309767 Ontario Ltd. et al.
Date:	Tuesday, January 30, 2024 11:31:13 AM
Attachments:	image001.png

Mark,

It is disappointing that despite my clients' repeated attempts to communicate with the Receiver, they continue to misunderstand each other. I am writing to clarify any misunderstandings on behalf of my clients.

Firstly, the December 11, 2023, Order did not prohibit set-offs. If the court had intended to restrict these transactions, it would have been clearly stated, as it was in the Receivership Order. The Information Officer Order aimed to maintain the status quo, which for my clients involved ongoing transactions through mutual debits and credits. These transactions between Techlantic and the Van Essen Numbered Companies were an essential business practice and were approved by Trade-X. This longstanding relationship was critical to sustaining Techlantic's profitability while Trade-X deprived it of liquidity.

Secondly, regarding Section 95 of the BIA, it is unclear how it applies in the current receivership context. Even if it were applicable, it would not impact the transactions in question. The transactions from Dec 7 to 19, 2023, were legal set-offs between companies operating at arm's length. Misunderstandings, especially those held by Mr. Westin Lovy of PRG about the relationship between my clients and Trade-X, have unfortunately influenced the Receiver's initial portrayal. My clients have repeatedly attempted to clarify these relationships and expect an accurate reflection of this in the Receiver's assessment.

My clients find the Receiver's position of being unable to assess their claims while preparing to advance a motion based on broadly stated and unwarranted concerns both inconsistent and prejudicial. Your client seems to be using its status as a Receiver to significantly overreach and ask my clients, who are third parties to a receivership, to relinquish property that is lawfully in their possession on an interim basis, pending resolution of a possible dispute. As much as they would like to work with the Receiver, they cannot agree to take such a detrimental step.

Kind Regards,
Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation

(647) 692-0222 abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Thursday, January 25, 2024 2:51 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>; Tee, Brittni <btee@goodmans.ca>
Subject: RE: Trade-X and 1309767 Ontario Ltd. et al.

Alexis,

It seems clear that the Receiver and the Van Essen companies have different perspectives on this issue, and based on our correspondence to date, those differences are unlikely to be resolved by exchanging further e-mails. The Receiver is fully aware of – and has abided by – its obligations. In the current situation, the Receiver's priority is to preserve funds that appear to be Property within the meaning of the Receivership Order. If your clients ultimately prove that they are entitled to the funds then they will be paid and they will suffer no harm. But the Receiver cannot simply accept your client's position without an appropriate process, and the Receiver needs to preserve the funds while the process is properly advanced pursuant to the receivership proceedings. It seems a motion will be required to resolve these issues.

In light of your specific request, however, I have provided a fairly detailed response to your e-mail below. I do not, however, believe that continuing to debate these issues by e-mail is a good use of stakeholder resources. Please note, as well, that the Receiver's investigation and understanding of these issues remains at a preliminary stage and it has not reached any final conclusions. The Receiver expressly reserves the right to supplement or change its positions as these proceedings move forward.

First, we do not (and have not) claimed that the December 11, 2023 order of Justice Penny makes the funds "Property". In our view, the December 11 Order prohibits the set-off transaction that your client purported to complete on December 20, 2023. We therefore believe that the funds were (and are) Property within the meaning of the Receivership Order.

Second, we fully appreciate the claims asserted by your clients. We are not rejecting those claims. But the Receiver is not in a position to make a final determination on those claims at this point. The relationships between the parties are complex, and there are several factors that we need to understand before accepting your client's position. These include, but are not limited to:

- The effect of your client's position would be to allow the Van Essen Companies to recover on their unsecured claims ahead of secured creditors. This may give rise to concerns relating to s. 95 of the *BIA*, or otherwise;
- The proprietary claims asserted by your client are complicated by the fact that the debts that your clients assert relate to vehicles apparently sold to Techlantic in 2022, whereas the funds

that it is holding relate to vehicles paid between September and December 2023. It is not clear how a constructive trust or other tracing remedy would apply on these facts;
- Determining whether vehicles were actually misappropriated, and tracing the funds allegedly earned from that misappropriation will take time and more evidence than has been provided to date;
- It appears that the Van Essen Companies may not deal at arm's length with the Debtors. We understand that the Techlantic employee responsible for these transactions was Eric Van Essen and that he is Wouter Van Essen's son. We need to understand how (if at all) this is relevant to how your clients' claims should be assessed.

The claims being asserted need to be fully vetted before the Receiver reaches a final determination. The Receiver needs to preserve the funds in the interim.

Regards,
Mark

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Wednesday, January 24, 2024 10:57 AM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade-X and 1309767 Ontario Ltd. et al.

Mark,

Thank you for your email dated January 21, 2024, in which you responded to the request from my clients, the Van Essen Companies, for the Receiver of the Trade X Group of Companies to provide its position on the Van Essen Companies' proprietary and set-off rights.

As is clear from the Van Essen Companies' efforts to engage with the Receiver, they are of the view that this is a matter that can be resolved through good faith discussions, and need not result in litigation. While I understand your position on the futility of email debates, my clients are focused on transparency, not debate. Furthermore, considering the Receiver's mandate "to act honestly and in the best interests of all interested parties," my clients' request for their full position to be considered is appropriate.

Prior to the Receiver's appointment, at the time when my clients applied the set-off, they immediately notified of the same. They continue, post-Receivership, to provide requested documentation and maintain open communications.

Your client's demand for immediate payment is not justified. The demand overlooks my clients' set-off and proprietary rights. Without such transparency, the basis on which the Receiver legitimizes its demand, significantly prejudicing one interested party, remains unclear.

Your position is that the funds are Property under the Information Officer Order of Justice Penny dated December 11, 2023. My client disagrees, but more importantly, there is nothing in the Information Officer Order that changed the ownership or control of Trade-X.

Even if a Receiver had been appointed and charged with the estate on December 11, 2023, which they were not, there was nothing in the Information Officer Order that served to oust my clients' right to set-off under section 97(3) of the *Bankruptcy and Insolvency Act* or otherwise. In the absence of an express provision to the contrary, section 97(3) of the *BIA* provides that the law of set-off applies to all claims made against the estate of the bankrupt and also to all actions instituted by the trustee for the recovery of debts due to the bankrupt in the same manner and to the same extent as if the bankrupt were plaintiff or defendant, as the case may be.

Furthermore, the Funds are not "Property" under the *BIA* or any order issued thereunder. The *BIA* expressly excludes from the definition of "Property", "property held by the bankrupt in trust for any other person".

As you are aware, my clients take the position that they have a proprietary right to the proceeds from the sales of 36 vehicles, which Techlantic misappropriated from them (the "Misappropriated Vehicles"). During my call with Andrew Harmes, I made the request that the Receiver assist with the exercise of tracing the flow of funds associated with the sale of the Misappropriated Vehicles. To date that request has gone unacknowledged.

The Misappropriated Vehicles were transferred to Techlantic and while payment remained outstanding, the vehicles were resold to Trade X Indiana, where my clients presume that the Misappropriated Vehicles were again resold to unknowing third parties. My clients maintain the title for the Misappropriated Vehicles transferred to Techlantic due to the express invoice terms that state that title to the vehicles remains with the Van Essen Companies until the complete settlement of payment is received. The relevant terms are included below:

- Ownership of the goods shall continue to belong to the Vendor and shall not transfer to the Purchaser until the Vendor receives full payment for the purchase price and all associated bank charges related to the sale.
- The Purchaser is prohibited from allowing any charge, lien, or encumbrance, whether possessory or otherwise, to be placed on the goods until the purchase price is entirely settled.

My clients have consistently asserted their right to the proceeds from the sale of the Misappropriated Vehicles (the "Trust Funds") and would have taken formal action regarding the same, but for their desire to act in good faith to not impede the (at that time) pending the sale of 13517985 Canada Inc. ("Wholesale Express"). Correspondingly, their rights to the Trust Funds have been acknowledged by the Trade-X Group throughout, including in an Irrevocable Letter of

Direction, which lists each of the Misappropriated Vehicles by VIN in an attached schedule.

My clients' expectation is that the Receiver take steps in accordance with its fiduciary duty to act in the best interests of all interested parties. In that vein, there is no basis for the Receiver to demand my clients relinquish their own property.

And while my clients firmly believe that this issue can and should be resolved out of court, if your client proceeds to file a motion, my clients will have no choice but to file a cross-motion to assert their rights to the set-off funds, the balance of the Trust Funds outstanding as well as pre and post judgment interest.

My clients request a detailed response to these positions and the opportunity to engage fully prior to the filing of any motion.

Kind Regards,
Alexis Beale

Alexis Beale | Rosemount Law Professional Corporation

(647) 692-0222 abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Sunday, January 21, 2024 4:44 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Descours, Caroline <cdescours@goodmans.ca>
Subject: Trade-X and 1309767 Ontario Ltd. et al.

Alexis,

Further to our discussion, and your request, I am writing to briefly set out the Receiver's position and the basis for it. Briefly stated, the Receiver believes that the funds held by your clients are "Property" within the meaning of the Receivership Order. The Receiver requires that the funds be paid immediately to it. It is prepared to accept the funds without prejudice to any argument that your clients wish to make about their entitlement to the funds. But if we cannot reach an agreement then we have instructions to bring a motion for an order requiring that the funds be paid to my client.

As I said on our call, I do not believe that a lengthy debate by e-mail will be productive. That said, if a brief outline of our position will help your client understand our position and potentially reach a resolution then we are happy to provide it.

According to the e-mail from Wouter Van Essen, the $1,723,495 at issue (the "Funds") were payment for sales made by Techlantic to Stephen Zhou. As my colleague Mr. Harmes explained in the January 5, 2024 letter, the Funds are Property.

Your clients, 1309767 Ontario Ltd. and 2601658 Ontario Ltd. (the "Van Essen Companies") have claimed that the Funds are not Property, because they applied the Funds to pay debts allegedly owed by Techlantic to the Van Essen Companies (the "Set-Off Transaction"). Mr. Van Essen claims that the Set-Off Transaction occurred on December 20, 2023.

The Set-Off Transaction breached the Order of Justice Penny dated December 11, 2023. That order postponed the Receivership application, allowing additional time for the potential completion of a sale transaction involving Wholesale Express in separate CCAA proceedings, but sought to otherwise preserve the status quo in respect of the Trade X and Techlantic companies. As a condition of the postponement, the Court imposed a stay of proceeding that prevented any person from exercising any right or remedy:

> 4. **THIS COURT ORDERS** that during the Stay Period, and subject to, *inter alia*, section 101 of the CJA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability corporation, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Debtors, or affecting the Business, the Property or any part thereof, are hereby stayed and suspended except with leave of this Court.

Thus, the Set-Off Transaction was prohibited by the Order of Justice Penny and remains stayed by the Receivership Order.

We understand that the Van Essen Companies also assert certain proprietary remedies relating to the Funds. The Receiver has not yet had an opportunity to fully investigate these claims and determine the validity and effect of them. That claim can be addressed in an orderly manner, once the Funds are paid to the Receiver.

In the circumstances, the Receiver must carry out its mandate and collect the Property. That includes the Funds. We therefore require that your client pay the Funds to the Receiver, failing which we have instructions to bring a motion on the earliest available date.

I look forward to hearing from you.

Regards,
Mark

Mark Dunn
He/Him
Goodmans LLP

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mdunn@goodmans.ca

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This is Exhibit “M” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

Court File No. CV-23-00710413-00CL

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

SECOND REPORT OF FTI CONSULTING CANADA INC., AS COURT-APPOINTED RECEIVER

March 27, 2024

Court File No. CV-23-00710413-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

B E T W E E N

MBL ADMINISTRATIVE AGENT II LLC, as agent for POST ROAD SPECIALTY LENDING FUND II LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND II (US) LP), and POST ROAD SPECIALTY LENDING FUND (UMINN) LP (f/k/a MAN BRIDGE LANE SPECIALTY LENDING FUND (UMINN) LP)

Applicant

v.

TRADE X GROUP OF COMPANIES INC., 12771888 CANADA INC., TVAS INC., TRADEXPRESS AUTO CANADA INC., TRADE X FUND GP INC., TRADE X LP FUND I, TRADE X CONTINENTAL INC., TX CAPITAL CORP., TECHLANTIC LTD. AND TX OPS CANADA CORPORATION

Respondents

TABLE OF CONTENTS

A. PURPOSE

1. This is the Second Report of FTI Consulting Canada Inc. ("**FTI Consulting**") in its capacity as receiver and manager (the "**Receiver**"), without security, of the following property (collectively the "**Property**") of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic Ltd. ("**Techlantic**") and TX Ops Canada Corporation (collectively, "**Trade X**" or the "**Debtors**"):

(a) the assets, undertakings and properties of the Debtors (other than Trade X Group of Companies Inc. ("**Trade X Parent**") and TX OPS Canada Corporation ("**TX Canada**")) acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof;

(b) the assets, undertakings and properties of Trade X Parent (other than the shares of 13517985 Canada Inc.) acquired for, or used in relation to a business carried on by Trade X Parent, including all proceeds thereof; and

(c) certain assets, undertakings and properties of TX Canada defined as the "TX Canada Collateral" in the Affidavit of Westin Lovy sworn December 4, 2023 (the "**Lovy Affidavit**").

2. The Debtors were primarily involved in operating a business-to-business vehicle trading platform for car dealerships to purchase inventory from or sell inventory to Canada, the United States and other overseas markets. Their operations were carried out by a number of entities.

3. By Order dated December 22, 2023 (the "**Receivership Order**"), the Receiver was appointed and authorized to, among other things, receive and preserve the Property and any proceeds thereof, operate and carry on the business of the Debtors, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

4. Since its appointment, the Receiver has, among other things, worked to liquidate the Debtors' remaining vehicle assets and collect amounts owed to the Debtors. That process is substantially complete.

5. To date, the Receiver has recovered approximately $1.8 million from the sales of remaining vehicles and collection of amounts owed to the Debtors.

6. The Receiver's attempt to collect on amounts owing to the Debtors has been complicated by the state of the Debtors' accounting records. Among other things, the Receiver has encountered the following challenges:

(a) the Receiver has received conflicting information from the Debtors and other parties about significant transactions involving the Debtors;

(b) the Debtors' books and records are complicated and involve a large number of accounting entries reflecting the transfer of vehicles (and potentially funds) between various Debtors and other parties for purposes that are unclear to the Receiver at this time;

(c) the Debtors engaged in a large number of transactions with companies owned or controlled by the Debtors' directors, officer and/or members of their immediate

families. The details of these transactions were not fully disclosed to the Receiver, and the Receiver learned important details about the transactions from its review of the Debtors' e-mails; and

(d) the Receiver has been contacted by individuals who claim to have invested in the Debtors, but who appear to have paid funds to entities controlled by the Debtors' founder and CEO, Ryan Davidson. The Receiver has been unable to determine whether (and how) these funds were actually provided to the Debtors or used in the Debtors' business.

7. The Receiver has tried to engage with certain of the Debtors' current and former directors, officers, employees and consultants to understand the foregoing transactions. Several such individuals have refused to meet with the Receiver, or refused to meet with the Receiver unless the Receiver paid for them to hire counsel.

8. The Receiver has also tried to obtain information from third parties (including potential related parties) that have engaged in transactions with the Debtors in order to understand those transactions. The Receiver has received incomplete responses and, in some cases, no response at all.

9. In light of the foregoing, the Receiver has determined that it requires expanded investigative powers in order to understand the Debtors' business and assets (including claims against other parties) that might provide additional recovery for the benefit of the Debtors' creditors. The Receiver served a Notice of Motion dated March 21, 2024 seeking, among other things, enhanced investigative powers, including the right to examine persons with relevant information under oath and compel the production of relevant documents.

10. In addition, the Receiver seeks the authority (but not the requirement) to assign one or more of the Debtors into bankruptcy in the event that such assignments are necessary or appropriate. The Debtors are insolvent and, based on the current facts and circumstances and information available to the Receiver, the Receiver does not believe that there is a realistic prospect of a going concern sale.

11. The Receiver believes that the powers of a trustee in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (the "**BIA**") may assist the investigation and ultimate recovery available to the Debtors. It is cognizant, however, of the additional potential administrative expenses associated with a bankruptcy and so it does not seek to make any bankruptcy assignments immediately. Instead, it seeks authority to assign some or all of the Debtors into bankruptcy at a later date if it determines that the assignment is likely to enhance stakeholder recovery.

B. BACKGROUND

12. A number of the Debtors entered into a senior secured revolving credit agreement dated September 27, 2021 (the "**Global Facility**"). MBL Administrative Agent II LLC ("**MBL**") is the Administrative Agent for the Global Facility on behalf of a syndicate of lenders (the "**Lenders**"). A copy of the Global Facility is attached hereto as Appendix "1".

13. In addition, a number of Debtors entered into a separate senior secured revolving credit agreement dated February 5, 2021 (the "**Domestic Facility**" and, together with the Global Facility, the "**Facilities**"). MBL is also the administrative agent for a syndicate of Lenders that advanced funds under the Domestic Facility. A copy of the Domestic Facility is attached hereto as Appendix "2".

14. The Receiver understands that the Lenders are the Debtors' senior secured creditors, with a first ranking security interest over substantially all of the Debtors' assets.[1] Based on the recoveries to date, and the Receiver's assessment of the Debtors' remaining assets, the Lenders are unlikely to recover the full amounts owed to them unless the Receiver is able to successfully investigate and prosecute potential claims available to the Debtors (and subject to the proceeds of such claims being sufficient to satisfy the Lenders' claims). If the Lenders do not recover all amounts owed to them, then the Debtors unsecured creditors and equity claimants are not expected to recover any amounts.

15. In light of the foregoing, the Receiver has, in consultation with MBL on behalf of the Lenders, determined that it is important to conduct a further investigation into the Debtors' affairs to determine what (if any) claims should be pursued.

C. THE FACILITIES

16. In general terms, the Global Facility was intended to fund vehicles sold outside of the United States and the Domestic Facility was intended to fund vehicles sold inside the United States.

17. The Facilities are sophisticated agreements involving a number of related Debtors. In very simple terms, the Lenders advanced funds to purchase specific vehicles and took security over those vehicles or the proceeds earned by selling them. The Facilities are summarized at a very high level below:

(a) the Debtors acquired vehicles for sale;

[1] Although the Receiver has not yet completed a formal security review, no party has disputed the validity of the Lenders' security.

(b) the Lenders provided an advance to pay the purchase price for the vehicles (the "**Advance**");

(c) the amount available to the Debtors under the Global Facility was based on the collateral owned by the Debtors and listed on a borrowing base from time to time (the "**Borrowing Base**");

(d) when the vehicle was sold to an end user, the purchase price was (or should have been) deposited into a dedicated account over which the Lenders have security (the "**Collection Accounts**").

18. One of the Debtors that is important to the Receiver's investigation is Techlantic. Techlantic became a "Borrower" within the meaning of the Global Facility by an Amendment No. 1 and Joinder to Senior Secured Revolving Credit Agreement dated December 30, 2021, a copy of which is attached hereto as Appendix "3".

D. APPOINTMENT OF THE RECEIVER

19. On December 4, 2023, MBL brought an application to appoint FTI Consulting as the Receiver of the Property, pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (Ontario), as amended.

20. MBL alleged that the Debtors had defaulted on their obligations under the Global Facility by, among other things, diverting vehicle sale proceeds totalling approximately $7 million that should have been deposited into the Collection Accounts. The Lovy Affidavit describing the alleged diversion of funds from the Collection Accounts is attached hereto (without exhibits) as Appendix "4".

21. The Receiver has not yet independently verified MBL's allegations. It notes, however, that the Debtors did not challenge MBL's evidence.

22. On December 22, 2023, Cavanagh J. issued the Receivership Order appointing FTI Consulting as the Receiver, without security, of the Property.

23. Pursuant to the Receivership Order, the Receiver is empowered to, among other things, receive and preserve the Property and any proceeds thereof, receive and collect all monies and accounts owing to the Debtors and to exercise all remedies of the Debtors in respect thereof, and to initiate and prosecute any proceedings with respect to the Debtors and the Property.

E. DIFFICULTY UNDERSTANDING THE DEBTORS' RECORDS

24. Since the Receiver's appointment on December 22, 2023, the Receiver has worked diligently to receive, preserve, protect and otherwise manage the Debtor's Property in accordance with the Receivership Order. However, it has become clear to the Receiver through these efforts that the Debtors' books and records are, in some instances, not reliable and in other instances very difficult to understand.

25. The Receiver has made inquiries in respect of these issues to representatives of the Debtors, but it has not received satisfactory answers. The Receiver continues to investigate issues involving the Debtors, and is currently aware of a number of issues that it still investigating and in respect of which it requires additional information, including as summarized below.

(i) *Groupe Grégor Claim*

26. The Debtors may have a claim for approximately $8 million (the "**Groupe Grégor Claim**") against Groupe Grégor Inc. ("**Groupe Grégor**") in connection with the Debtors' purchase

of 13517985 Canada Inc., operating as Wholesale Express ("**Wholesale Express**") from Groupe Grégor.

27. The Receiver has reviewed the Debtors' records related to the Groupe Grégor Claim. Its understanding, based on that review, include the following:

(a) after the Debtors bought Wholesale Express, they were unable to take an immediate assignment of certain permits required to operate its business. To address this issue, Groupe Grégor continued to operate Wholesale Express on behalf of the Debtors and deposit funds generated by Wholesale Express into Groupe Grégor's bank account;

(b) the Debtors subsequently alleged that Groupe Grégor did not remit all of the funds generated by Wholesale Express to Wholesale Express;

(c) separately, Groupe Grégor advanced a claim against the Debtors for approximately $2.7 million allegedly owed for a working capital adjustment in connection with the Wholesale Express sale (which claim the Receiver understands was being disputed by the Debtors);

(d) financial statements for both the Debtors and Groupe Grégor indicated that Groupe Grégor owed approximately $8 million to the Debtors; and

(e) on October 24, 2023, Wholesale Express assigned the Groupe Grégor Claim to Trade X Parent pursuant to an Assignment of Credit dated October 24, 2023 (the "**Assignment**").

28. Wholesale Express is currently the subject of separate proceedings pursuant to the *Companies' Creditors Arrangement Act* (the "**Wholesale Express CCAA Proceedings**"), and its Monitor in the Wholesale Express CCAA Proceedings has filed a motion seeking to set-aside the Assignment of the Groupe Grégor Claim as a transfer at undervalue. Such motion is currently scheduled to be heard before the Quebec Superior Court of Justice in the Wholesale Express CCAA Proceedings on June 13, 2024. A copy of the Monitor's Notice of Motion in respect thereof is attached hereto as Appendix "5".

29. The Receiver requires further information about both the Groupe Grégor Claim and the Assignment in order to determine whether, and how, to respond to the Monitor's motion and advance the Groupe Grégor Claim on behalf of the Debtors.

(ii) ***Transactions and transfers involving the Debtors' founder and CEO***

30. The Receiver has also been contacted by certain individuals who claim to have invested funds in the Debtors; however, these individuals advised that they paid funds to a company owned and controlled by Mr. Davidson. The Receiver has been unable to determine why these funds were paid to Mr. Davidson's company and whether they were ever transferred to the Debtors. Correspondence relating to these issues is attached hereto as Appendix "6".

31. The Receiver requires additional and accurate information about the transactions between the Debtors, Mr. Davidson and the companies that Mr. Davidson controlled.

(iii) ***The Debtors' records show potential significant overpayments to Auto Credit Canada, a company controlled by one of the Debtors' former executives***

32. The Receiver understands that Auto Credit Canada is operated by Luciano Butera, a former officer of the Debtors, and owned by Mr. Butera or members of his family.

33. Trade X's records indicate that Trade X made overpayments totalling $1,535,016 to 1254382 Ontario Ltd o/a Auto Credit Canada ("**ACC**"). On January 18, 2024, the Receiver wrote to ACC and demanded, pursuant to the Receivership Order, that ACC transfer the amount of the overpayment to the Receiver immediately. This correspondence is attached hereto as Appendix "7".

34. By way of email dated January 26, 2024, and attached as Appendix "8", ACC responded stating that it had not received any overpayments from Trade X, but rather that ACC had provided "floorplan funding" to Trade X, through which Trade X purchased vehicles in the name of ACC. The Receiver has requested documentation of this purported floorplan funding agreement, which documentation has not been provided. This correspondence is attached as hereto Appendix "9".

F. TRANSACTIONS WITH TECHLANTIC AND THE VAN ESSEN COMPANIES

35. The Receiver has served a motion seeking to recover approximately $1.7 million received by the Van Essen Companies (as defined below), which amounts the Receiver believes were improperly taken by the Van Essen Companies (as discussed below and in the First Report of the Receiver dated February 1, 2024). The Receiver is also currently investigating other transactions involving the same individuals and entities; however, Techlantic's officers, employees and consultants have refused to meet with the Receiver to explain the transactions at issue.

(i) *Techlantic*

36. According to its website, Techlantic was founded in 1983 by Wouter Van Essen ("**Wouter**"). Wouter's twin brother, Tom Van Essen ("**Tom**"), joined Techlantic in 1986. A long-time employee, Robin Jones, became a Techlantic shareholder in 2001.

37. Techlantic's core business, based on a review of its website and its records, was the export of vehicles to foreign markets.

38. In August 2019, Wouter's son Eric Van Essen ("**Eric**") became a major Techlantic shareholder. When Techlantic announced Eric's new status as a "major shareholder" of Techlantic, it confirmed that "Tom and Wouter are still actively involved and likely will be for many years".

39. Relevant excerpts from Techlantic's website are attached hereto as Appendix "10".[2]

40. Trade X purchased Techlantic in August 2021. After that time, Eric was Techlantic's Managing Director and had overall responsibility for Techlantic's business operations. Eric was also a director of Techlantic. Trade X does not appear to have exercised control over Techlantic's day to day operations. Those operations were overseen by Eric with significant assistance from Wouter.

41. As described below, the Receiver's review of Techlantic's records showed that Wouter remained very heavily involved in Techlantic's business after Trade X bought Techlantic. He continued to be listed as a member of Techlantic's finance team, and its founder, on the Techlantic website, until the website ceased to operate.

(ii) ***The Van Essen Companies***

42. Techlantic engaged in a large number of complicated transactions with two companies 1309767 Ontario Ltd. ("**130 Ontario**") and 2601658 Ontario Ltd. ("**260 Ontario**", and together

[2] Techlantic's website appears to no longer be operational, but the attached screenshots were access through the internet archive at https://web.archive.org/

with 130 Ontario, the "**Van Essen Companies**") and certain other parties that have long-term business relationships with the Van Essens.

43. The Van Essen Companies had the same staff as Techlantic, and Eric was also an officer and director of Techlantic, however, the Eric and certain of Techlantic's remaining staff have refused to meet with the Receiver to help it understand the relevant transactions unless the Receiver funded legal counsel for them. Correspondence communicating this position is attached hereto as Appendix "11".

44. Wouter, through counsel, also declined to meet with the Receiver. Correspondence from Wouter's counsel is attached hereto as Appendix "12". Wouter's counsel has stated in subsequent correspondence that Wouter did not refuse to meet with the Receiver, since he intended to attend his scheduled cross-examination on the Receiver's motion.

(iii) ***Dispute between the Receiver and the Van Essen Companies***

45. Issues between the Receiver and the Van Essens began when the Van Essen Companies received approximately $1.7 million worth of proceeds from the sale of vehicles owned by Techlantic (the "**Techlantic Funds**"). Instead of paying these funds to Techlantic, the Van Essen Companies kept the funds.

46. Wouter claimed in an e-mail that the Van Essen Companies had set off the Techlantic Funds against a debt allegedly owed by Techlantic as a result of different vehicles sold by the Van Essen Companies to Techlantic in 2022 (the "**Purported Set Off**").

47. Wouter claims to have executed the Purported Set Off on December 20, 2023, two days before the Receiver was appointed, and nine days after Justice Penny issued an Order dated

December 11, 2023 (the "**Interim Order**") prohibiting any exercise of rights and remedies against the Debtors.

48. The Receiver has filed a motion, as amended, to recover the Techlantic Funds on the basis that the Purported Set Off was prohibited by the Interim Order and effected a preference contrary to s. 95 of the BIA. The Receiver's Notice of Motion is attached hereto as Appendix "13".

49. The Van Essen Companies served a cross-motion claiming that they were entitled to execute the Purported Set Off because they were owed approximately $1.9 million in connection with vehicles they sold to Techlantic in 2022 (the "**2022 Vehicles**"). The Van Essen Companies' cross-motion is attached hereto as Appendix "14".

50. In the course of advancing its motion, the Receiver has discovered a number of important facts relevant to its motion in respect of the Van Essen Companies, including:

(a) the Van Essen Companies and Techlantic routinely transferred vehicles and funds between them, and generated an enormous (and unusual) amount of accounting entries for individual vehicles in Techlantic's records;

(b) the Van Essen Companies and Techlantic shared the same employees and office;

(c) Eric, who was an officer and director at Techlantic, was also the President of the Van Essen Companies' parent company and personally advanced some of the funds that the Van Essen Companies used in their dealings with Techlantic;

(d) Wouter, who Techlantic claims to have engaged as a consultant, appears to have been involved in many aspects of Techlantic's business and decided when and how

much Techlantic should pay the Van Essen Companies. Wouter also determined when and how much Techlantic should pay its other creditors, including MBL; and

(e) based on the records reviewed by the Receiver, the Van Essen Companies may have acquired certain of the 2022 Vehicles from certain of the Debtors. The Van Essen Companies then transferred the 2022 Vehicles to Techlantic. Techlantic, in turn, transferred the 2022 Vehicles back to the Debtors that may have previously owned them. The purpose of these circular transactions is unclear.

51. Techlantic's relationship with the Van Essen Companies, and with Techlantic's major customers, is difficult to understand based solely on Techlantic's records and the information provided by Techlantic in writing.

52. The Van Essen Companies, Techlantic, the other Debtors and various customers entered into a large number of transactions with very complex accounting and unclear record keeping. By way of example, two vehicles reviewed by the Receiver were involved in a high number of internal accounting entries, each involving transactions between the Van Essen Companies, Techlantic and other Debtors. The purpose of these transactions, and whether any of them involved the movement of funds, is unclear. A copy of a spreadsheet detailing these transactions is attached hereto as Appendix "15".

53. Among other arguments, the Van Essen Companies have claimed that they provided money to Techlantic as part of a "Liquidity Support Plan". The Receiver notes that section 5.16(g) of Global Facility prohibited the Debtors, including Techlantic, from incurring any debt other than the amounts owing to MBL. Additionally, section 5.16(j) prohibited Techlantic from entering into

any agreement with an affiliate, shareholder or principal, except in certain circumstances, without the consent of MBL.

G. THE RECEIVER'S ATTEMPTS TO GAIN CLARITY IN RESPECT OF THESE TRANSACTIONS

54. The Receiver has reached out to representatives of the Debtors, such as Eric, to clarify the circumstances leading to the above-noted questions and discrepancies. The answers it has received in respect of these inquiries have not been satisfactory and often do not align with other information available to the Receiver.

55. As noted above, in an attempt to further clarify these issues, the Receiver asked to meet with Eric and two additional long-time Techlantic employees. Those meetings were scheduled to take place on March 6, 2024, and initially accepted by Eric and the two employees. However, they were subsequently declined by all three of them on the morning of March 6, 2024.

56. As also noted above, the Receiver has also asked, through counsel, to meet with Wouter to discuss certain issues relating to the Van Essen Companies. Wouter declined, through counsel, to meet with the Receiver. As described above, Wouter's counsel has stated that he intends to attend his scheduled cross-examination.

H. AUTHORITY TO ASSIGN INTO BANKRUPTCY

57. Based on the current facts and circumstances and information available to the Receiver, the Receiver does not at this time believe that there is a realistic prospect of a going concern sale in respect of the Debtors' business. Among other things, the Receiver placed a notice in the Financial Post on February 1 and February 6, 2024 and in the Globe and Mail newspaper on February 7, 2024 soliciting interest in the assets and business of Trade X and Techlantic, a copy

of which is attached hereto as Appendix "16". The Receiver received limited interest or inquiries to such notices, none of which resulted in any offers for any assets of the Debtors. The Receiver did receive offers for the Techlantic business from Mr. Eric Van Essen, which the Receiver, in consultation with MBL, believed was likely below the liquidation value of the remaining Techlantic assets.

58. As noted above, the Receiver continues to investigate the Debtors' affairs and evaluate potential claims. As that investigation progresses, the Receiver may determine that the enhanced powers available to a trustee in bankruptcy would facilitate matters and potentially benefit all stakeholders. For clarity, the Receiver has not yet made such a conclusion, and thus at this time only seeks the authority, and not the requirement, to assign one or more of the Debtors into bankruptcy. The Receiver is mindful of the potential additional administrative costs associated with bankruptcy assignments, and prior to proceeding with any potential bankruptcy assignment of any of the Debtors, the Receiver will assess whether such an assignment would likely provide benefits as compared to those available in these receivership proceedings.

I. CONCLUSION

59. The Receiver may be able to recover substantial amounts through commencing actions on behalf of the Debtors in respect of the transactions described herein. However, the Receiver requires additional and accurate information to better assess the viability of these claims and whether it is worthwhile to advance them.

60. The books and records and other information obtained by the Receiver do not appear to be at all times reliable or consistent, and the accounting records of the Debtors are complex and

difficult to interpret absent additional information and assistance from the Debtors' representatives and other parties, a number of whom have refused to meet with the Receiver to date.

61. The Receiver accordingly respectfully requests the relief set forth herein and in the Receiver's Notice of Motion dated March 21, 2024, so that it is able to obtain the additional information it requires to make appropriate assessments on potential additional recoveries that may be available to the Debtors for the benefit of their creditors.

62. Further, the Receiver believes that there is a likelihood that it may, at some point, be necessary or desirable to assign the Debtors' into bankruptcy for the benefit of the creditors as a whole.

Dated this 27th day of March, 2024.

FTI Consulting Canada Inc.,

solely in its capacity as Court-appointed Receiver of certain property of Trade X Group of Companies Inc., 12771888 Canada Inc., TVAS Inc., Tradexpress Auto Canada Inc., Trade X Fund GP Inc., Trade X LP Fund I, Trade X Continental Inc., TX Capital Corp., Techlantic LTD., and TX OPS Canada Corporation, and not in its personal or corporate capacity

Paul Bishop
Senior Managing Director

Kamran Hamidi
Managing Director

N

This is Exhibit “N” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

Goodmans LLP

Barristers & Solicitors

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mdunn@goodmans.ca

February 15, 2024

Via Email

Rosemount Law PC
150 King Street W. Suite 200
Toronto, ON M5H 1J9

Attention: Alexis Beale

Dear Ms. Beale:

Re: MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., et al

As you know, the Receiver[1] is conducting a review of claims between the Techlantic and the Van Essen Companies, including the claims asserted by the Van Essen Companies in their Notice of Cross-Motion (the "Cross-Motion") dated February 7, 2024. We write to further that review, and to respond to your letter dated February 15, 2024.

For the reasons described below, we agree with you that an exchange of information between the Receiver and the Van Essen Companies would be beneficial. That exchange is separate from, and can be conducted in parallel with, the preparation for the motion to be heard on April 3, 2024. We suggest that a meeting be held so that the parties can exchange information and further understand the facts relevant to this matter.

Response to Letter dated February 15, 2024

As I have previously told you, the Receiver is prepared to disclose documents to your clients that are relevant to their proprietary claim. I asked you to identify specific documents that your client wants access to. The request in your letter is not specific enough to permit production of documents. It is, in effect, asking that the Receiver conduct a forensic accounting exercise for the benefit of your client.

As I also explained to you, the Receiver is concerned about the cost of conducting a forensic accounting exercise for the benefit of your clients without addressing how it will be funded. To be clear, the Receiver is not refusing the request. It remains prepared to discuss these issues with your client.

[1] Capitalized terms in this letter have the meaning ascribed to them in the Notice of Motion.

We also do not understand the connection between the Cross-Motion and the properietary relief. The Cross-Motion explicitly does not seek any proprietary relief. Moreover, on the facts as we understand them, it does not seem that there is a potential proprietary claim to the Techlantic Funds. The purchase of the Techlantic Vehicles in 2023 was funded by the Global Facility. It seems to follow that the proceeds of the 2022 Vehicles did not flow into the 2023 Vehicles. We would like to understand how there is a potential proprietary claim to the Techlantic Funds in these circumstances.

Liquidity Support Agreement and Vehicle Transactions

Based on the Receiver's review of Techlantic's accounting records, Techlantic paid the Van Essen Companies approximately $3.9 million in respect of various vehicle transactions in the three month period prior to the Receivership. These amounts are in addition to the Techlantic Funds.

In addition, we understand that Techlantic paid the Van Essen Companies approximately $1.4 million in consulting fees in 2023. The invoices for the consulting fees, which are attached for reference, do not specify what services were provided or how the fees were calculated.

We also understand, from our review of the Cross-Motion, that Techlantic and the Van Essen Companies entered into a Liquidity Support Plan on or around November 15, 2021. The Cross-Motion identifies certain amounts that were due from Techlantic to the Van Essen Companies under the Liquidity Support Plan.

The Van Essen Companies claim proprietary and equitable relief with respect to certain vehicles sold in 2022. The Cross-Motion seeks production of documents but it does not specify what documents the Van Essen Companies want produced or what proprietary relief is being claimed in respect of what property.

In order to further the Receiver's understanding of these issues, and its ongoing consideration of the Van Essen Companies' claims, we would like to suggest a meeting (in person or by zoom) between the Receiver, the Van Essen Companies and counsel. Please advise whether the Van Essen Companies are prepared to participate in this meeting and when Mr. Van Essen is available.

The Motion and Cross-Motion

The Receiver's Motion currently seeks an interim order for preservation of the Techlantic Funds. The Cross-Motion seeks a final determination that the Van Essen Companies are entitled to the Techlantic Funds. Given the timeline established at the scheduling hearing held on February 9, 2024, the Receiver has determined that an interim motion by the Receiver may not be necessary in such circumstances (unless the Receiver becomes aware in the meantime that the Van Essen Companies are dissipating the funds and determines urgent relief is required). Rather, in the Receiver's view, the proceeding will be more efficient if the Motion also seeks a final determination on the issue of who is entitled to the Techlantic Funds.

To be clear, the Receiver has not yet reached a final determination on the issues raised on the Cross-Motion and Motion. However, since there is significant time before the hearing of the motion, the Receiver expects that it will have the opportunity to obtain, review and assess additional information necessary to be able to make a final determination about these issues prior to the hearing date.

Before reaching a final conclusion, the Receiver would like to invite the Van Essen Companies to submit any further evidence available to them in support of their position. Ideally, any such documents would be provided in advance of the meeting described above. Alternatively, further evidence can be provided in advance of, or together with, the evidence that is to be served on March 1, 2024.

After receiving the Van Essen Companies' motion record, and any further evidence that they choose to submit, the Receiver intends on working to make its final determination and amending its Notice of Motion accordingly.

Finally, the Receivership Order requires that all Persons produce Records in their possession relating to Techlantic's business. We understand that the Van Essen Companies and Mr. Van Essen have Records in their possession, and we will send a request for Records under separate cover.

Yours truly,

Goodmans LLP

Mark Dunn
Partner
MD/es

1410-6637-8506

O

This is Exhibit “O” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

February 19, 2024

BY E-MAIL

Mark Dunn
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
mdunn@goodmans.ca

Dear Mr. Dunn,

MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., *et al*

I am in receipt of your letter dated February 15, 2024. In your letter, you: (a) responded to my correspondence of that same day requesting documents for the motion scheduled on April 3, 2024; (b) advised that the Receiver will be amending its Notice of Motion to seek a final determination of the entitlement to the disputed funds; and (c) requested further information from my clients. The Van Essen Companies respond to each of the issues below.

The Outstanding Document Request

You will recall that my letter requested a discrete list of documents related to the sale of 36 Misappropriated Vehicles (as defined therein). The documents requested are sales invoices, vehicle registration documents, proof of receipt of funds, accounting ledgers showing in which account the funds were deposited, and any information regarding the application of the funds, including whether the payments were directed to Post Road Group (or another MBL entity). This request is now incorporated into my clients' Request to Inspect, served upon the Receiver along with this correspondence.

Your latest correspondence states, "the Receiver is prepared to disclose documents […] that are relevant to [the] proprietary claim" but advises that my letter is not specific enough. I disagree, and your response demonstrates an unwillingness to engage meaningfully in this request. Regardless, to the extent that it assists, my clients have advised that based on their limited knowledge of the records kept by Trade X, these documents should be identifiable by the work order/invoice numbers associated with the VINs referenced in the attached schedule.

Your letter asks about the relevance of the proprietary claim to the motions to be heard. The relevance of proprietary claims over funds is clear on the face of the Receiver's motion materials, which plead facts about the Misappropriated Vehicle transactions (paras. 20 and 24). Taking the Receiver's motion materials at face value, it is clear the Receiver contemplated reviewing the documents and information my clients requested to assess my clients' claims. That information must be shared, especially as the Receiver appears to acknowledge that it cannot preserve funds without first establishing that it is entitled to the same.

If there is any question that the entitlement to the funds between the parties turns on the nature of their respective proprietary rights, my clients will amend their Notice of Cross-Motion to make this express.

My clients reiterate their previous request that these documents be provided by **February 23, 2024**. The Receiver has had nearly two months to respond to this request, and any further delay will be prejudicial.

The Receiver's Proposed Amended Notice of Motion

Your letter forecasts an Amended Notice of Motion. Please note that any step by the Receiver to Amend its Notice of Motion, not least after the delivery of my clients' Responding Record, will be prejudicial, and my clients will not consent to the same. Leave of the court will be required under the *Rules,* and the proposed motion date will need to be adjourned to allow my clients time to respond.[1] I also expect to have instructions to seek my clients' costs associated with the prejudice incurred.

The Receiver's Information Request

My clients acted with complete transparency and made continuous good-faith attempts to resolve all these issues before the Receiver pursued its motion. To that end, my clients understand that the Receiver has been provided with the calculations underlying the consulting fees charged in 2023 and my clients' **complete bookkeeping records**. The Receiver has already had all the information it could require for some time.

Regrettably, the Receiver opted to bring its motion. Still, we are now on the path of litigation, and the *Rules of Civil Procedure* will dictate the procedures for exchanging further information.

Regards,

Alexis Beale

[1] In the circumstances, the Receiver's Motion Record is an Originating Process under Rule 14.09 and Rules 26.02(a) and 26.05 apply to protect from the prejudice associated with late amendments to pleadings.

SCHEDULE "A"

Party	Order Number	Reference Num	Currency	Amount
1309767 Ontario Ltd. (SBFS)	S22395	Inv919 / T11109	CAD	$33,617.50
1309767 Ontario Ltd. (SBFS)	S22400	Inv920 / T11099	CAD	$145,084.09
1309767 Ontario Ltd. (SBFS)	S22428	Inv940 / T10769	CAD	$31,600.45
1309767 Ontario Ltd. (SBFS)	S22429	Inv940 / T11100	CAD	$32,042.28
1309767 Ontario Ltd. (SBFS)	S22430	Inv940 / T11069	CAD	$33,515.80
1309767 Ontario Ltd. (SBFS)	S22531	Inv949 / T11633	CAD	$35,649.24
1309767 Ontario Ltd. (SBFS)	S22534	Inv954 / T11216	CAD	$45,200.00
1309767 Ontario Ltd. (SBFS)	S22535	Inv944 / T11208	CAD	$62,150.00
1309767 Ontario Ltd. (SBFS)	S22547	Inv945 / T9469	CAD	$44,578.50
1309767 Ontario Ltd. (SBFS)	S22552	Inv948 / T11654	CAD	$33,165.50
1309767 Ontario Ltd. (SBFS)	S22556	Inv959 / T11648	CAD	$48,081.50
1309767 Ontario Ltd. (SBFS)	S22561	Inv948 / T11652	CAD	$43,221.37
1309767 Ontario Ltd. (SBFS)	S22580	Inv962 / T11645	CAD	$46,154.85
1309767 Ontario Ltd. (SBFS)	S22581	Inv962 / T11661	CAD	$39,945.50
1309767 Ontario Ltd. (SBFS)	S22582	Inv961 / T11678	CAD	$61,980.50
1309767 Ontario Ltd. (SBFS)	S22583	Inv961 / T11679	CAD	$43,221.37
1309767 Ontario Ltd. (SBFS)	S22584	Inv962 / T11684	CAD	$43,335.50
1309767 Ontario Ltd. (SBFS)	S22585	Inv961 / T11611	CAD	$51,628.57
1309767 Ontario Ltd. (SBFS)	S22587	Inv961 / T11642	CAD	$68,986.50
1309767 Ontario Ltd. (SBFS)	S22588	Inv961 / T11650	CAD	$68,986.50
1309767 Ontario Ltd. (SBFS)	S22589	Inv962 / T11695	CAD	$168,765.50
1309767 Ontario Ltd. (SBFS)	S22593	Inv962 / T11657	CAD	$66,500.50
1309767 Ontario Ltd. (SBFS)	S22609	Inv962 / T11687	CAD	$48,985.50
1309767 Ontario Ltd. (SBFS)	S22610	Inv962 / T11688	CAD	$48,897.36
1309767 Ontario Ltd. (SBFS)	S22611	Inv962 / T11689	CAD	$58,025.50
1309767 Ontario Ltd. (SBFS)	S22612	Inv962 / T11690	CAD	$63,248.36
1309767 Ontario Ltd. (SBFS)	S22614	Inv962 / T11694	CAD	$58,025.50
1309767 Ontario Ltd. (SBFS)	S22658	Inv983 / T11605	CAD	$73,845.50
TOTAL:			**CAD**	**$1,598,439.24**
2601658 Ontario Ltd.	S22586	Inv186 / T11665	CAD	$47,573.00
2601658 Ontario Ltd.	S22599	Inv191 / T11659	CAD	$41,300.37
2601658 Ontario Ltd.	S22602	Inv186 / T11672	CAD	$48,420.50
2601658 Ontario Ltd.	S22604	Inv186 / T11675	CAD	$48,420.50
2601658 Ontario Ltd.	S22605	Inv186 / T11676	CAD	$53,278.37
2601658 Ontario Ltd.	S22607	Inv186 / T11685	CAD	$32,038.89
2601658 Ontario Ltd.	S22608	Inv186 / T11686	CAD	$48,420.50
2601658 Ontario Ltd.	S22613	Inv199 / T11692	CAD	$50,340.37
2601658 Ontario Ltd.	S22621	Inv185 / T11726	CAD	$33,052.50
2601658 Ontario Ltd.	S22622	Inv185 / T11677	CAD	$47,299.54
TOTAL:			**CAD**	**$450,144.54**

P

This is Exhibit “P” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, February 27, 2024 6:18 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Renner, Natalie <nrenner@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Alexis,

Thank you for your e-mail. Our responses are below:

1. We expect to respond to your request tomorrow. As you know, we do not agree that the Request to Inspect is valid or appropriate;
2. We are preparing a supplementary report, based on the information located in Techlantic's records. It will primarily attach e-mails sent to or received by your clients. We are aiming to deliver the supplementary report this week, although that depends on our ongoing review and how much additional material we find;
3. The motion has been amended such that no relief is sought against Wouter Van Essen personally. The Receiver reserves all rights against Mr. Van Essen.

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Tuesday, February 27, 2024 12:12 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Renner, Natalie <nrenner@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Hi Mark,

Thank you. I will review with my clients, but before I respond, I request that you advise of the following:

1) When the Receiver will serve its responses to our request to inspect;
2) Whether the Receiver will proffer any further evidence in support of the motion and if so when it will be served?

And confirm, the following:

1) That the Receiver will not be pursuing Wouter Van Essen in his personal capacity.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
https://www.rosemountlaw.com/

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, February 27, 2024 11:56 AM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Renner, Natalie <nrenner@dwpv.com>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: Trade-X and 1309767 Ontario Ltd. et al. (Court File No. CV-23-00710413-00CL)

Alexis,

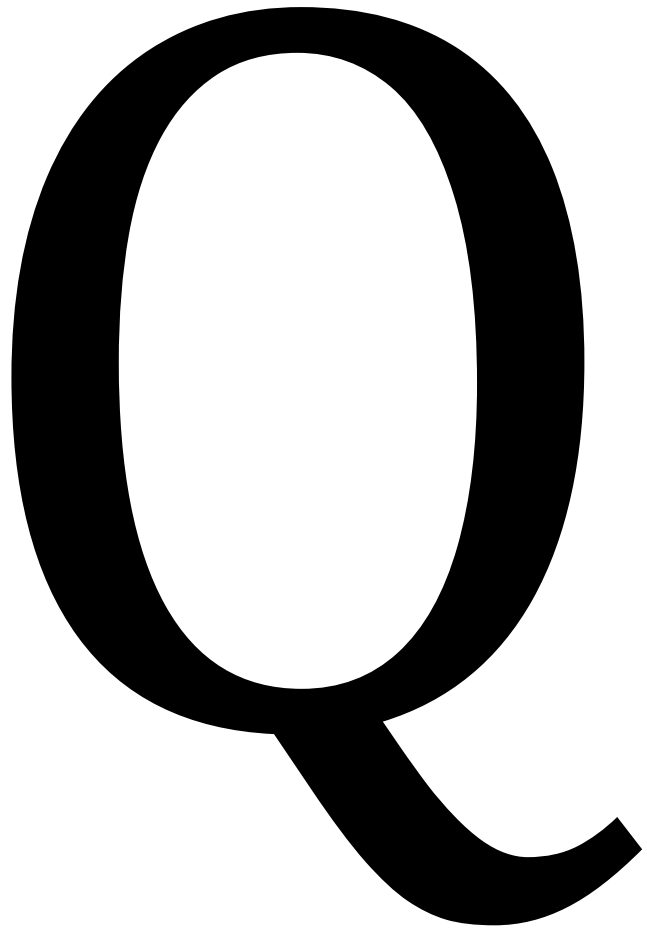
Please see attached correspondence. With respect to your earlier e-mail about an extension, I would suggest that we have a discussion about next steps once you have reviewed our correspondence.

Regards,
Mark

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca



This is Exhibit “Q” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

From: Alexis Beale
To: Dunn, Mark; Tee, Brittni; Descours, Caroline
Subject: Trade X Receivership
Date: Friday, April 5, 2024 1:08:36 PM

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

- Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
- Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

R

This is Exhibit “R” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

From: Dunn, Mark
To: Alexis Beale
Cc: Tee, Brittni; Descours, Caroline
Subject: RE: Trade X Receivership
Date: April 9, 2024 1:15:20 PM

Thank you. We will respond with our position. To be clear, I am not sure that you have fully or accurately captured our discussion but there is no need to debate that as our position will be set out in writing.

To be clear, I do not believe any review of the database is occurring or has occurred since we received your letter. My statement was that we were not committing to going "pens down" as you put it.

I understand from our discussion your clients' perspective on this issue and what they are trying to accomplish so the conversation was helpful from that perspective.

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Tuesday, April 9, 2024 1:08 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Subject: FW: Trade X Receivership

Mark,

I am writing to provide a summary of our recent conversation following my email dated April 5, 2024, concerning the potential unauthorized review of privileged correspondence by FTI/Goodmans. In that discussion, I mentioned that the email domains techlantic.com and techlanticconsulting.com contain privileged emails, including advice from me regarding this litigation.

You mentioned that you are in the process of collecting relevant information to address the concern raised in my email. You advised that there were no custodian interviews or other formal protocols for the review and collection of documents in this case.

On the database topic, you indicated that there appears to be no evidence of unauthorized access to the techlanticconsulting emails and expressed uncertainty regarding their specifics.

You mentioned no prior knowledge that the information could be privileged and noted the lack of a third-party screening protocol for such documents. You suggested that if there were privileged documents, it was the responsibility of my client to notify the receiver.

You also informed me that your work has not ceased and that you are preparing for the examinations. You stated that you were concerned that this issue would cause some delay in the main motion.
You implied that raising these concerns might be seen as tactical and mentioned that resolving this through a motion would incur significant costs. I responded by stating that receiving the First Supplemental Report to the Receiver's First Report prompted these concerns. I reiterated that we are still unclear about the full extent of the collected data, and we would have to assess first.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Alexis Beale
Sent: Friday, April 5, 2024 4:18 PM
To: Mark Dunn <mdunn@goodmans.ca>; Brittni Tee <btee@goodmans.ca>; Caroline Descours <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Counsel,

I note that my email of 1:08 pm should refer to the First Supplemental Report to the First Report of the Receiver, dated April 3, 2024, and not the 'Amended Responding Record.'

Apologies for any confusion.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Alexis Beale
Sent: Friday, April 5, 2024 1:08 PM
To: Mark Dunn <mdunn@goodmans.ca>; Brittni Tee <btee@goodmans.ca>; Caroline Descours <cdescours@goodmans.ca>
Subject: Trade X Receivership

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

- Detailed Inventory: A comprehensive list of all email accounts and any other

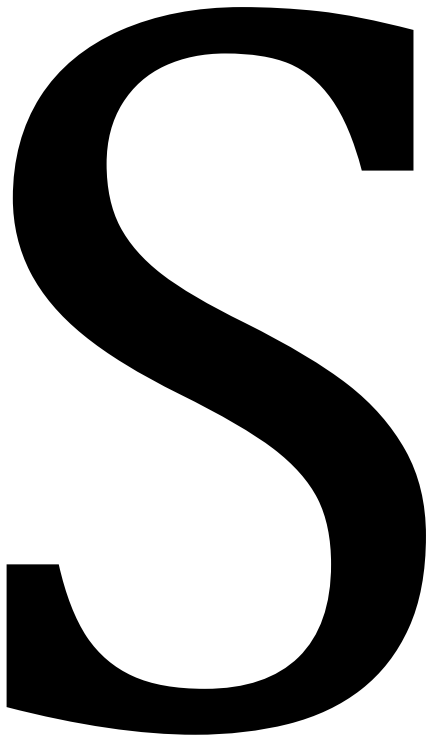
documents collected from the servers.

- Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com



This is Exhibit “S” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

From: Dunn, Mark
To: Alexis Beale
Cc: Tee, Brittni; Descours, Caroline
Subject: RE: Trade X Receivership
Date: Thursday, April 11, 2024 2:36:10 PM

Ms. Beale,

I am writing in response to your e-mail below. As set out below, we (and our client) will work with you to ensure that any privileged documents are dealt with appropriately. We do not, however, accept your assertion that there has been "unauthorized" access to any material. We also do not understand why your client has waited so long to raise its concerns, and we do not believe that those concerns should confer any procedural or substantive advantage on them.

The Timing of your client's objection

Your client has known that the Receiver had access to Techlantic's electronic records since the Receivership Order was granted on December 22, 2023. It grants the Receiver a broad right to access Techlantic's electronic records. If (as you now suggest) your clients stored privileged material on Techlantic's system then they knew that the Receiver had access to that material. Conversely, the Receiver did not know (and had no reason to suspect) that your client's privileged material might be stored on Techlantic's system.

Your clients have also known that the Receiver was reviewing Techlantic's electronic records in order to understand various issues relating to its business. We advised in our February 27, 2024 letter that the Receiver had reached certain conclusions based on its review of the "contemporaneous documents". My e-mail of February 27, 2024 specifically said that the Receiver's supplementary report would be based on information located in Techlantic's records including e-mails sent and received by your clients. I discussed certain specific e-mails with you during our discussions about the merits of the case around the same time.

In the circumstances, it is not clear why any *bona fide* privilege concerns were not raised earlier so that any privileged (or potentially privileged) documents could be identified and addressed.

Request for a protocol and inventory

Your comments with respect to the scope of our client's review are, with respect, not correct. The Receiver requested a download of the following e-mails from the Debtors' IT provider:

eric@techlantic.com
eric.vanessen@tradexport.com
eric@tradexport.com
june@techlantic.com
michelle@techlantic.com
ping@techlantic.com
wouter@techlantic.com

Tradex custodians were also collected, but those custodians are not directly relevant to your request.

The Receiver did not request access to any e-mails from techlanticconsulting.com. We do not believe that such e-mails are in the database provided to the Receiver, except to the extent that someone with a techlanticconsulting.com e-mail sent or received to one of the e-mail addresses listed above.

Your assertion that the Receiver reviewed all of the e-mails in the Techlantic.com domain is also not correct. The Receiver did not believe that a review of all of the Techlantic e-mails would be efficient. It conducted a targeted review of certain e-mails likely to be relevant, or to address specific issues. The specific searches performed by the Receiver and its counsel are privileged, and need not be disclosed.

It is not clear, from your e-mail, whether you are asking for a list of all of the documents that are in our database. We are prepared to provide this to you, but we note that there are more than one million documents in the database.

With respect to your request for a "protocol", we did not institute any protocol to identify privileged documents belonging to third parties because we had no reason to believe such documents were (or might be) in Techlantic's possession.

Procedures

All of that said, we would be pleased to work with you to address any concerns your clients have about this issue and an appropriate protocol to ensure that no privileged documents are in the Receiver's database. We would propose the following:

1. We are prepared to have FTI's technology personnel run a search at your request, solely to identify privileged documents;
2. The personnel that run the search will be separate from the team that has been working on this matter for FTI, and FTI will establish an ethical wall to prevent anyone working on this matter for the Receiver from accessing the information provided to you;
3. You will provide us with a list of documents that are alleged to be privileged, in a format equivalent to Schedule "B" to an Affidavit of Documents;
4. Any documents that you identify will be segregated and removed from the database, without prejudice to the Receiver's right to challenge any privileged designation.

We have temporarily shut down the Receiver's document database so that it cannot be accessed while this issue is being resolved. We are not, however, prepared to pause our review indefinitely.

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, April 5, 2024 4:18 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Counsel,

I note that my email of 1:08 pm should refer to the First Supplemental Report to the First Report of the Receiver, dated April 3, 2024, and not the 'Amended Responding Record.' Apologies for any confusion.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Alexis Beale
Sent: Friday, April 5, 2024 1:08 PM
To: Mark Dunn <mdunn@goodmans.ca>; Brittni Tee <btee@goodmans.ca>; Caroline Descours <cdescours@goodmans.ca>
Subject: Trade X Receivership

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

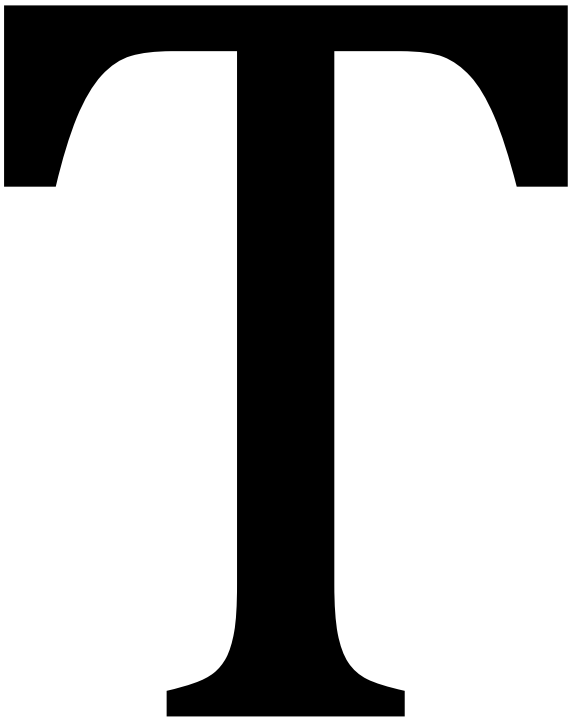
To address this matter effectively, we request the following information:

1. Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
1. Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com



This is Exhibit “T” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

From: Alexis Beale
To: Dunn, Mark
Cc: Tee, Brittni; Descours, Caroline
Subject: RE: Trade X Receivership
Date: Thursday, April 11, 2024 4:19:37 PM

Mark,

Thank you for your email. It is unfortunate that you think my clients' concerns are tactical. I can assure you that they are not. My clients had no choice but to raise this concern once they determined that their privileged correspondence had been accessed. You seem to imply from your email that they ought not to have notified you, which is problematic.

It is settled law that a breach of privilege "creates a serious risk to the integrity of the administration of justice." The *Celanese* test provides that "the onus is on the party with unauthorized access to another party's privileged documents to show that there is no risk that privileged and confidential information attributable to a solicitor and client relationship will be used to the prejudice of the party possessing the privilege."

That is why I asked you to provide my client with an inventory and protocol so they could be comforted that the Receiver did not review their privileged correspondence. My client would be happy to receive any other record keeping that serves the same purpose. **Please advise immediately if the Receiver is unwilling or unable to provide the same.**

Please also confirm: 1) the date when the relevant accounts were collected; 2) whether the server as a whole has been collected; and 3) the date when the 'temporary shut down' occurred.

Finally, the forward-looking procedures you suggest are acceptable, but they do not cure the prejudice that already exists.

The premise that the Receiver had no obligation to guard against unauthorized access is problematic for several reasons, but it is not productive to address them here, nor are they relevant to any legal argument.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Thursday, April 11, 2024 2:36 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Ms. Beale,

I am writing in response to your e-mail below. As set out below, we (and our client) will work with you to ensure that any privileged documents are dealt with appropriately. We do not, however, accept your assertion that there has been "unauthorized" access to any material. We also do not understand why your client has waited so long to raise its concerns, and we do not believe that those concerns should confer any procedural or substantive advantage on them.

The Timing of your client's objection

Your client has known that the Receiver had access to Techlantic's electronic records since the Receivership Order was granted on December 22, 2023. It grants the Receiver a broad right to access Techlantic's electronic records. If (as you now suggest) your clients stored privileged material on Techlantic's system then they knew that the Receiver had access to that material. Conversely, the Receiver did not know (and had no reason to suspect) that your client's privileged material might be stored on Techlantic's system.

Your clients have also known that the Receiver was reviewing Techlantic's electronic records in order to understand various issues relating to its business. We advised in our February 27, 2024 letter that the Receiver had reached certain conclusions based on its review of the "contemporaneous documents". My e-mail of February 27, 2024 specifically said that the Receiver's supplementary report would be based on information located in Techlantic's records including e-mails sent and received by your clients. I discussed certain specific e-mails with you during our discussions about the merits of the case around the same time.

In the circumstances, it is not clear why any *bona fide* privilege concerns were not raised earlier so that any privileged (or potentially privileged) documents could be identified and addressed.

Request for a protocol and inventory

Your comments with respect to the scope of our client's review are, with respect, not correct. The Receiver requested a download of the following e-mails from the Debtors' IT provider:

eric@techlantic.com
eric.vanessen@tradexport.com
eric@tradexport.com
june@techlantic.com
michelle@techlantic.com
ping@techlantic.com
wouter@techlantic.com

Tradex custodians were also collected, but those custodians are not directly relevant to your request.

The Receiver did not request access to any e-mails from techlanticconsulting.com. We do not believe that such e-mails are in the database provided to the Receiver, except to the extent that someone with a techlanticconsulting.com e-mail sent or received to one of the e-mail addresses listed above.

Your assertion that the Receiver reviewed all of the e-mails in the Techlantic.com domain is also not correct. The Receiver did not believe that a review of all of the Techlantic e-mails would be efficient. It conducted a targeted review of certain e-mails likely to be relevant, or to address specific issues. The specific searches performed by the Receiver and its counsel are privileged, and need not be disclosed.

It is not clear, from your e-mail, whether you are asking for a list of all of the documents that are in our database. We are prepared to provide this to you, but we note that there are more than one million documents in the database.

With respect to your request for a "protocol", we did not institute any protocol to identify privileged documents belonging to third parties because we had no reason to believe such documents were (or might be) in Techlantic's possession.

Procedures

All of that said, we would be pleased to work with you to address any concerns your clients have about this issue and an appropriate protocol to ensure that no privileged documents are in the Receiver's database. We would propose the following:

1. We are prepared to have FTI's technology personnel run a search at your request, solely to identify privileged documents;
2. The personnel that run the search will be separate from the team that has been working on this matter for FTI, and FTI will establish an ethical wall to prevent anyone working on this matter for the Receiver from accessing the information provided to you;
3. You will provide us with a list of documents that are alleged to be privileged, in a format equivalent to Schedule "B" to an Affidavit of Documents;
4. Any documents that you identify will be segregated and removed from the database, without prejudice to the Receiver's right to challenge any privileged designation.

We have temporarily shut down the Receiver's document database so that it cannot be accessed while this issue is being resolved. We are not, however, prepared to pause our review indefinitely.

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, April 5, 2024 4:18 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Counsel,

I note that my email of 1:08 pm should refer to the First Supplemental Report to the First Report of the Receiver, dated April 3, 2024, and not the 'Amended Responding Record.' Apologies for any confusion.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Alexis Beale
Sent: Friday, April 5, 2024 1:08 PM
To: Mark Dunn <mdunn@goodmans.ca>; Brittni Tee <btee@goodmans.ca>; Caroline Descours <cdescours@goodmans.ca>
Subject: Trade X Receivership

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have

collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

1. Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.
1. Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222

www.rosemountlaw.com

U

This is Exhibit “U” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

From: Dunn, Mark
To: Alexis Beale
Cc: Tee, Brittni; Descours, Caroline
Subject: RE: Trade X Receivership
Date: Tuesday, April 16, 2024 10:24:42 AM

I am not sure that we are fully understanding each other, and I will try my best to clarify our position below.

The difficulty we are facing on our side is that we do not know what documents are alleged to be privileged. Your e-mail indicates that some of these e-mails are to or from you, but does not specify what (if any) other documents your clients are alleging to be privileged.

You seem to be asking for evidence that a particular set of documents has not been reviewed, but to do that we need to know what documents are in the set. Otherwise, we would need to disclose complete details of all the searches we did and everything that was reviewed. This is problematic from both a privilege perspective (since our work is privileged) and a practicality perspective (since I'm not sure if we can compile this information).

To be clear, here is what we propose:

1. You advise (whether based on the searches, inventory or both) what documents are alleged to be privileged, using the same information that would be in included in a detailed schedule "B";
2. We can then assess: whether there is any dispute about privilege or who privilege belongs to (ie., Techlantic, the Van Essen Companies or both); whether any of the allegedly privileged documents were reviewed; whether any review caused (or could be reasonably alleged to cause) any prejudice; what evidence can be provided with respect to any of the above;
3. Once the two steps above are completed, we can determine what steps (if any) are appropriate to address the issue.

We want to deal with this issue expeditiously, in order to avoid any interference with the existing motion schedule and keep the matter moving forward. But I do believe that an appropriate process can certainly narrow and likely avoid any dispute.

Thanks,
Mark

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Monday, April 15, 2024 8:56 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Hi Mark,

Your communications have not confirmed whether any privileged documents have been reviewed, nor have you proposed a method to confirm that such a review has not occurred. Please provide this by tomorrow, barring which my client will have no choice but to bring this motion.

The rest of your email concerns a prospective method to guard against future disclosure. It is likely too late and we will have to seek court directions on that as well.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Monday, April 15, 2024 8:01 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Thank you Alexis. I had suggested that you identify the documents over which privilege is claimed. We are not looking for any information beyond what would typically be included in a detailed schedule "B" to an affidavit of documents. But, as you can appreciate, we are operating at an informational disadvantage. If you identify the documents then we can provide an informed answer to your concerns. The information in your e-mail below, for example, is new to me.

Your e-mail seems to imply that you are waiting for an answer from us by end of day tomorrow, but it is not clear what answer you are waiting for and so clarification about that would be appreciated.

In the interim I can confirm (again) that the database is currently shut down and we will give you notice before it is activated. As I previously advised, we expect that this will occur after you identify the documents

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Monday, April 15, 2024 7:40 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Good evening,
Thank you for the inventory provided at 5:50 pm. **Note that this email does not constitute waiver of privilege. It is purely for the purpose of identifying in broad categories the privileged correspondence that the Receiver has collected and presumptively reviewed.**
Upon a very preliminary review, I can advise that you have collected and presumptively reviewed not less than 150 emails to or from me related to this litigation. To make matters worse, these were collected from folders called 'legal' as per the metadata in the inventory sheet that you circulated. These folders contain other privileged correspondence. I have not had time to identify all of the other solicitor-client and litigation-privileged content and I expect that a thorough privilege review of the type required would be prohibitively costly for my clients.
As I previously advised, I will wait until EOD tomorrow and then proceed to serve my clients' motion.
In the meantime, please confirm that no one will use this database for any purpose.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Monday, April 15, 2024 5:19 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: Re: Trade X Receivership

My email states that the inventory will be provided shortly.

It is hard to see how we can address the issue further on our side without knowing what documents are involved but we remain prepared to cooperate and see if we can find a reasonable solution.

If you choose to bring a motion, we will review it and respond accordingly.

Sent from my iPhone

> On Apr 15, 2024, at 5:07 PM, Alexis Beale <abeale@rosemountlaw.com> wrote:
>
> Hi Mark,
>
> Please confirm if you are no longer providing an inventory that you previously offered and advised would be delivered today?
>
> I advised that there are definitely litigation privileged and solicitor client privileged documents in what you have collected.
>
> What you are sharing will simply go to the extent and unfortunately, that review may have to occur in parallel with my clients' motion even the gravity of the issue.
>
> Kind Regards,
> Alexis Beale
>
> **Alexis Beale**
> Rosemount Law
> (647) 692-0222
>
> www.rosemountlaw.com
>
>

On Apr 15, 2024, at 5:02 PM, Dunn, Mark <mdunn@goodmans.ca> wrote:

Alexis,

You seem to have misunderstood our position. You asked for specific information and I answered. I did not make the statement attributed to me below.

We do not, at this stage, know what (if any) documents in the database are alleged to be privileged. That is why we offered to have FTI run searches for you, and set up an ethical screen to facilitate that. Contact information has been provided and the inventory your asked for will be provided shortly. Once we know what (if any) documents you are concerned about, we can determine how to best address any remaining concerns.

Sent from my iPhone

> On Apr 15, 2024, at 4:13 PM, Alexis Beale <abeale@rosemountlaw.com> wrote:
>
> Mark,
>
> Further to your email of April 12, 2024, please advise when I can anticipate FTI to contact me.
>
> I reiterate my request in my emails of April 5 and 11 that the Receiver confirm and provide proof that neither it nor its' counsel reviewed any privileged documents. You previously refused to answer based on an assertion of privilege.
>
> If I do not hear from you by EOD tomorrow, I will assume that you maintain this position and I will act on instructions to bring a motion to stay the Receiver's motion, among other things.
>
> Kind Regards,

Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Friday, April 12, 2024 5:25 PM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

We don't think the tone below or the accusations about "unauthorized access" and "the prejudice that already exists" are appropriate in these circumstances. We would also like to limit further debate of these issues by e-mail. We have been (and will continue to be) prepared to work cooperatively to address any valid concerns. Suffice to say that we do not agree that there has been any unauthorized access, we are confident that there has been (and will be) no prejudice and we remain concerned about the (unexplained) delay in raising these concerns. The Receiver is very much focused on a fair and appropriate approach to these issues so that it can move forward with its mandate.

With respect to your requests for information:

1. We have already offered to provide you with an inventory, and we will provide it on Monday;
2. The entire Techlantic server was preserved but is not in our database and has not been reviewed. Only the identified mailboxes were loaded into the database. The collection occurred on January 11, February 14 and February 16 for all of the databases apart from Wouter Van Essen. Mr. (Wouter) Van Essen's mailbox was downloaded

on February 22 and February 23. I believe the download occurred later because we did not know that Mr. (Wouter) Van Essen had a Techlantic e-mail when our review began;

3. The temporary shut down occurred on April 10, but no one from Goodmans accessed the database after your letter was received. FTI was conducting certain limited reviews during this period and we will confirm what (if any) access to the database this involved.

I will be back to you on Monday with contact information for the FTI personnel who can run the searches referenced in my prior e-mail. I suspect that we will be able to have a much more productive discussion about this once you are able to tell us what (if any) allegedly privileged material is in the database.

Mark Dunn
He/Him
Goodmans LLP

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Thursday, April 11, 2024 4:19 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Mark,

Thank you for your email. It is unfortunate that you think my clients' concerns are tactical. I can assure you that they are not. My clients had no choice but to raise this concern once they determined that their privileged correspondence had been accessed. You seem to imply from your email that they ought not to have notified you, which is problematic.

It is settled law that a breach of privilege "creates a serious

risk to the integrity of the administration of justice." The *Celanese* test provides that "the onus is on the party with unauthorized access to another party's privileged documents to show that there is no risk that privileged and confidential information attributable to a solicitor and client relationship will be used to the prejudice of the party possessing the privilege."

That is why I asked you to provide my client with an inventory and protocol so they could be comforted that the Receiver did not review their privileged correspondence. My client would be happy to receive any other record keeping that serves the same purpose. **Please advise immediately if the Receiver is unwilling or unable to provide the same.**

Please also confirm: 1) the date when the relevant accounts were collected; 2) whether the server as a whole has been collected; and 3) the date when the 'temporary shut down' occurred.

Finally, the forward-looking procedures you suggest are acceptable, but they do not cure the prejudice that already exists.

The premise that the Receiver had no obligation to guard against unauthorized access is problematic for several reasons, but it is not productive to address them here, nor are they relevant to any legal argument.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Thursday, April 11, 2024 2:36 PM
To: Alexis Beale <abeale@rosemountlaw.com>

Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Ms.
Beale,

I am writing in response to your e-mail below. As set out below, we (and our client) will work with you to ensure that any privileged documents are dealt with appropriately. We do not, however, accept your assertion that there has been "unauthorized" access to any material. We also do not understand why your client has waited so long to raise its concerns, and we do not believe that those concerns should confer any procedural or substantive advantage on them.

The Timing of your client's objection

Your client has known that the Receiver had access to Techlantic's electronic records since the Receivership Order was granted on December 22, 2023. It grants the Receiver a broad right to access Techlantic's electronic records. If (as you now suggest) your clients stored privileged material on Techlantic's system then they knew that the Receiver had access to that material. Conversely, the Receiver did not know (and had no reason to suspect) that your client's privileged material might be stored on Techlantic's system.

Your clients have also known that the Receiver was reviewing Techlantic's electronic records in order to understand various issues relating to its business. We advised in our February 27, 2024 letter that the Receiver had reached certain conclusions based on its review of the "contemporaneous documents". My e-mail of February 27, 2024 specifically said that the Receiver's supplementary report would be based on information located in Techlantic's records including e-mails sent and received by your clients. I discussed certain specific e-mails with you during our discussions about the merits of the case around the same time.

In the circumstances, it is not clear why any *bona fide* privilege concerns were not raised earlier so that any privileged (or potentially privileged) documents could be identified and addressed.

Request for a protocol and inventory

Your comments with respect to the scope of our client's review are, with respect, not correct. The Receiver requested a download of the following e-mails from the Debtors' IT provider:

eric@techlantic.com

eric.vanessen@tradexport.com

eric@tradexport.com

june@techlantic.com

michelle@techlantic.com

ping@techlantic.com

wouter@techlantic.com

Tradex custodians were also collected, but those custodians are not directly relevant to your request.

The Receiver did not request access to any e-mails from techlanticconsulting.com. We do not believe that such e-mails are in the database provided to the Receiver, except to the extent that someone with a techlanticconsulting.com e-mail sent or received to one of the e-mail addresses listed above.

Your assertion that the Receiver reviewed all of the e-mails in the Techlantic.com domain is also not correct.

The Receiver did not believe that a review of all of the Techlantic e-mails would be efficient. It conducted a targeted review of certain e-mails likely to be relevant, or to address specific issues. The specific searches performed by the Receiver and its counsel are privileged, and need not be disclosed.

It is not clear, from your e-mail, whether you are asking for a list of all of the documents that are in our database. We are prepared to provide this to you, but we note that there are more than one million documents in the database.

With respect to your request for a "protocol", we did not institute any protocol to identify privileged documents belonging to third parties because we had no reason to believe such documents were (or might be) in Techlantic's possession.

Procedures

All of that said, we would be pleased to work with you to address any concerns your clients have about this issue and an appropriate protocol to ensure that no privileged documents are in the Receiver's database. We would propose the following:

1. We are prepared to have FTI's technology personnel run a search at your request, solely to identify privileged documents;
2. The personnel that run the search will be separate from the team that has been working on this matter for FTI, and FTI will establish an ethical wall to prevent anyone working on this matter for the Receiver from accessing the information provided to you;
3. You will provide us with a list of documents that are alleged to be privileged, in a format equivalent to Schedule "B" to an Affidavit of Documents;
4. Any documents that you identify will be segregated and removed from the database,

without prejudice to the Receiver's right to challenge any privileged designation.

We have temporarily shut down the Receiver's document database so that it cannot be accessed while this issue is being resolved. We are not, however, prepared to pause our review indefinitely.

Mark Dunn

He/Him

Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)

mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

goodmans.ca

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, April 5, 2024 4:18 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Trade X Receivership

Counsel,

I note that my email of 1:08 pm should refer to the First Supplemental Report to the First Report of the Receiver,

dated April 3, 2024, and not the ‘Amended Responding Record.’ Apologies for any confusion.

Kind Regards,

Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

abeale@rosemountlaw.com

www.rosemountlaw.com

From: Alexis Beale
Sent: Friday, April 5, 2024 1:08 PM
To: Mark Dunn <mdunn@goodmans.ca>; Brittni Tee <btee@goodmans.ca>; Caroline Descours <cdescours@goodmans.ca>
Subject: Trade X Receivership

Counsel,

We have reviewed the Amended Responding Record and note that your client appears to have collected and reviewed all emails with the @techlantic.com domain and many with the @techlanticconsulting.com domain. These email domains were used by my clients for the purposes of receiving legal advice, settlement-related discussions and litigation advice and strategy, including in relation to the litigation herein. We have significant concerns regarding unauthorized access. It is trite to say that any such access would be prejudicial and in breach of the Receiver's authority.

To address this matter effectively, we request the following information:

1. Detailed Inventory: A comprehensive list of all email accounts and any other documents collected from the servers.

1. Document Collection and Review Protocol: Details on the protocols followed for document collection and review in this case, including measures taken to identify and exclude privileged information.

Kind Regards,

Alexis Beale

Alexis Beale

Rosemount Law

(647) 692-0222

www.rosemountlaw.com

This communication may be solicitor/client privileged and contain confidential information intended only for the person(s) to whom it is addressed. Any unauthorized disclosure, copying, other distribution of this communication or taking any action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or forwarding it to anyone.

V

This is Exhibit “V” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

_____

Commissioner for Taking Affidavits (or as may be)

From: Alexis Beale
To: Dunn, Mark
Cc: Tee, Brittni; Descours, Caroline
Subject: RE: Case Conference - Court File No. CV-23-00710413-00CL
Date: Tuesday, April 23, 2024 11:04:35 AM

Mark,

Thank you for your email. I agree that a consent schedule makes sense.

1. In this case, where every piece of correspondence between Wouter and me sent or received up to the dates of collection (February 22 and 23, 2024) appears to have been reviewed (among other privileged documents), the presumed prejudice is indisputable. Nonetheless, my clients have made several requests for confirmation that no privileged emails were reviewed, particularly after the First Supplemental Report implied a comprehensive review of Wouter's emails. Despite these requests, you have declined to provide specifics.

   Considering this, my clients have a fundamental concern with your proposal that they "provide a complete list of everything that is alleged to be privileged."

   Similar proposals have been made and rejected in several leading cases. I have reproduced some excerpts below so we are on the same page. In the face of this settled law, on what basis does the Receiver distinguish the present scenario? Please advise so that I can consider and get instructions.

   - *Celanese Canada Inc. v. Murray Demolition Corp*., 2006 SCC 36 (CanLII), [2006] 2 SCR 189, at paras 49-55:

     > *Placing the onus on Celanese accords with the usual practice that the party best equipped to discharge a burden is generally required to do so. Celanese's lawyers know what they looked at. Canadian Bearings' lawyers do not.* ***The latter should not have to reveal the universe of potential confidences to the former who, at this point, refuse (or have rendered themselves unable) to identify precisely what they have seen.***

   - *Continental Bank of Canada v. Continental Currency Exchange Canada Inc.,* 2022 ONSC 647 (CanLII), at para 116-118; as upheld in 2023 ONCA 61 (CanLII), at para 80.

     > [116] In *MacDonald Estate v. Martin*, 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235, Sopinka J., at p. 1260, addressed the dilemma with which the court is confronted when asked to determine whether confidential information attributable to a solicitor and client relationship was received by a solicitor for another party, where exploring the matter in depth may require the very confidential information for which protection is sought to be revealed, which would defeat the purpose of the application. Sopinka J. held that

> once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. Sopinka J. observed that this will be a difficult burden to discharge.
>
> [117] In *Celanese*, a search authorized by an *Anton Piller* order was executed. Documents that were subject to solicitor-client privilege were disclosed to lawyers for the searching party. A motion was brought to disqualify the lawyers. Binnie J., at para. 42, noted that in *MacDonald Estate*, Sopinka J. imposed no onus on the moving party to adduce further evidence as to the nature of the confidential information beyond that which was needed to establish that the lawyer had obtained confidential information attributable to a solicitor and client relationship which was relevant to the matter at hand. Binnie J., at para. 49, held that the party whose privileged information was obtained was not required to reveal "the universe of potential confidences" to the recipient of the privileged information and its lawyers "who refuse (or have rendered themselves unable) to identify precisely what they have seen".
>
> **[118] I do not agree that the Sprott Parties have an onus to identify all of the emails and other documents over which they claim privilege.**

2. Please advise how long you will need to prepare your responding record, and I am happy to then provide a proposed time for a reply record.

3. Please advise who will be examined on behalf of the Receiver/Goodman's. My interpretation of the law is that you will not be entitled to examine Wouter, but let me know if you disagree (and the basis for the same).

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Tuesday, April 23, 2024 8:57 AM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: Tee, Brittni <btee@goodmans.ca>; Descours, Caroline <cdescours@goodmans.ca>
Subject: RE: Case Conference - Court File No. CV-23-00710413-00CL

Alexis,

Now that we have set a date for the scheduling of your clients' motion, we would like to see if we can arrive at a consent schedule.

We believe that the first step in addressing a consent schedule is to determine whether, when and how your clients intend to provide a complete list of everything that is alleged to be privileged. You advised on Friday that the affidavit contains only "examples" of the allegedly privileged documents that are at issue.

We have made various proposals meant to allow your clients to provide a complete list of the allegedly privileged documents. None of these appear to have been acceptable to your clients. Please advise how your clients plan to address this. Alternatively, if your clients intend to proceed solely based on Wouter Van Essen's affidavit (supplemented by proper reply, if necessary) then please confirm that.

On a related point, we would appreciate a response to #1 in my e-mail below. The proposal is intended to allow us to gather basic information about the documents identified in Wouter Van Essen's affidavit, without compromising any privilege. If you take the position that the proposed steps are not acceptable, or will cause some sort of prejudice, we would appreciate it if you could let us know.

Finally, I want to be clear that our (as-yet unsuccessful) attempts to find common ground on a path forward should not be taken as acceptance of your clients' position or any part of it. We reserve all of our client's rights, including the right to claim from your clients all of the costs incurred in connection with this issue and the motion.

I look forward to hearing from you, so that we can hopefully co-operate to have this motion resolved on the merits expeditiously.

Mark Dunn
He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: Friday, April 19, 2024 4:13 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Cc: Tee, Brittni <btee@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>
Subject: RE: Case Conference - Court File No. CV-23-00710413-00CL

Good afternoon, Mannie,

Please find enclosed the parties' request form for a case conference before Justice Cavangh on either April 30, 2024 or May 2, 2024.

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com

From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Sent: Wednesday, April 17, 2024 11:53 AM
To: Alexis Beale <abeale@rosemountlaw.com>
Cc: 'Tee, Brittni' <btee@goodmans.ca>; 'Dunn, Mark' <mdunn@goodmans.ca>
Subject: RE: Case Conference - Court File No. CV-23-00710413-00CL

Hello

April 30, May 1, 2, or 3, for 15 min before Justice Cavanagh

Please email a request form to secure the date.
Follow instructions per below.

> Subject line of the e-mail with attached request form must have short title of proceedings and file # or stating new matter if no file # issued yet.
> **Request form must be copied via e-mail to opposing counsel/parties.**
> Request form must indicate the relief or purpose for court appearance and amount of time.

Request form must indicate the material that will be provided for that court appearance and that material must be uploaded to Caselines ahead of the hearing date.
Request form must indicate if matter seized, or case managed by the specific judge or there is perhaps a judicial conflict .
Request form also must be uploaded to Caselines along with the participant sheet (in Word format) .
Please note that we are not allowed to book contested hearings for one hour , if matter contested counsel must proceed for scheduling , providing request form for 9:30am .
For 9:30am zoom appearance is allotted a **max of 15 minutes in length**. The moving party will be required to upload their request form, a 2-page Aide Memoire and a participant sheet (in word format) to Caselines.

Thanks
Mannie

REMINDER:
Kindly, continue to reply/ respond/communicate on the original email chain.
It helps us assist you better.

Thank-you.
Ms. Mannie Maneli
Assistant Trial Coordinator
Commercial, Estates, Civil, Trial Scheduling Office

From: Alexis Beale <abeale@rosemountlaw.com>
Sent: April 17, 2024 10:13 AM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Cc: Tee, Brittni <btee@goodmans.ca>; Dunn, Mark <mdunn@goodmans.ca>
Subject: Case Conference - Court File No. CV-23-00710413-00CL

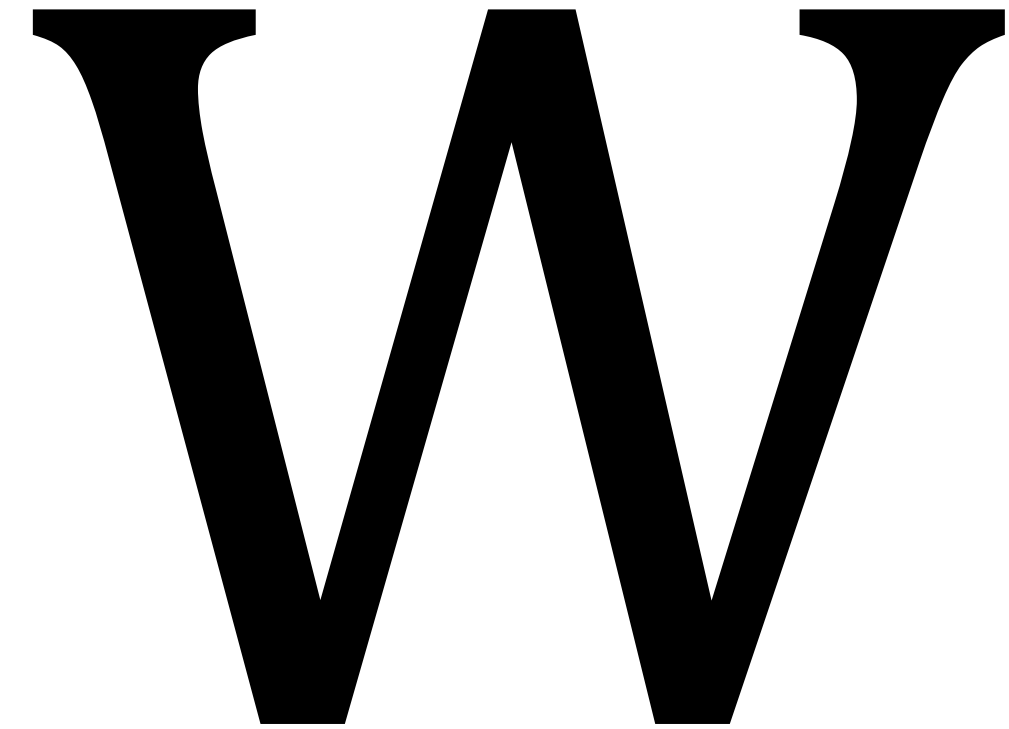
Good morning,

Could you please advise if there is any availability for a case conference before Justice Cavanagh in the near term? The case conference is required to schedule a motion related to a motion already scheduled to be heard on June 27, 2024.

Court File Number: CV-23-00710413-00CL
Date of Hearing Sought: TBD
Short Title of Proceedings: In the Matter of Application under s. 243(1) of the BIA - Trade X Group of Companies et. al.
Purpose of Hearing: Scheduling and rescheduling motions
Time Required: 15 minutes
Material Required: Aide Memoire
Justice (Seized of matter/ most familiar with matter): Justice Cavanagh

Kind Regards,
Alexis Beale

Alexis Beale
Rosemount Law
(647) 692-0222
abeale@rosemountlaw.com
www.rosemountlaw.com



This is Exhibit “W” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

May 2, 2024

BY E-MAIL

Mark Dunn
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
mdunn@goodmans.ca

Dear Mr. Dunn,

MBL Administrative Agent II LLC v. Trade X Group of Companies Inc., *et al*

We understand from your aide memoire dated April 29, 2024 that the Receiver intends to argue on the stay motion that our clients have "refused to provide any information" about the documents over which we assert privilege. We disagree with the accuracy of this statement, but in any event, we can advise that while it is not possible for our clients to catalogue the documents in issue, based on our review of the metadata provided and to the best of our clients' recollection, we believe that the most prejudicial of the documents collected are: 1) correspondence between Wouter Van Essen and myself in relation to this litigation; 2) correspondence between Wouter Van Essen and Andrea Brinston from October 2023 onwards; and 3) correspondence among the Van Essens and others that is subject to (or potentially subject to) litigation privilege during the period starting October 2023 onwards, in relation to the ILD, the outstanding debt and their interests in the CCAA and Receivership proceedings.

In light of the above, we reiterate our demand for the Receiver and its counsel to identify, with full particulars, the extent of their review of any documents falling into the above categories or any other documents that are potentially privileged to our clients. We understand that the Receiver may be able to generate logs of its (or its counsel's) activity in its documentary database that would show precisely which documents have been reviewed. We believe that it is incumbent on the Receiver to make transparent reference to those logs in its response to this inquiry.

If your response satisfies us that no (or limited) prejudicial conduct has occurred, then we will be happy to discuss with you whether the relief sought on this motion can be tailored or whether the motion can be withdrawn in its entirety. Unless and until that occurs, we will rely on your existing position that the specific documents reviewed by the Receiver and its counsel "need not be disclosed," a position we view as contrary to *Continental Currency v. Sprott*.

Finally, we intend to have Wouter Van Essen swear a supplemental affidavit, which we intend to deliver by the end of next week.

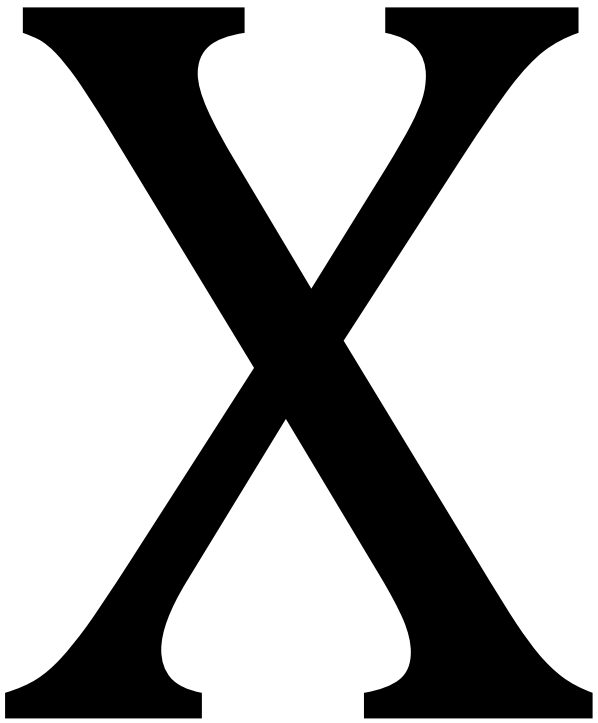
Please note that Dan Rosenbluth has been retained as co-counsel on this motion, and we would appreciate it if he could be copied on future correspondence.

We are open to discussing other procedural aspects prior the attendance before Justice Cavanagh on May 16.

Regards,

Alexis Beale

cc. Dan Rosenbluth
Daniel.Rosenbluth@paliareroland.com



This is Exhibit “X” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

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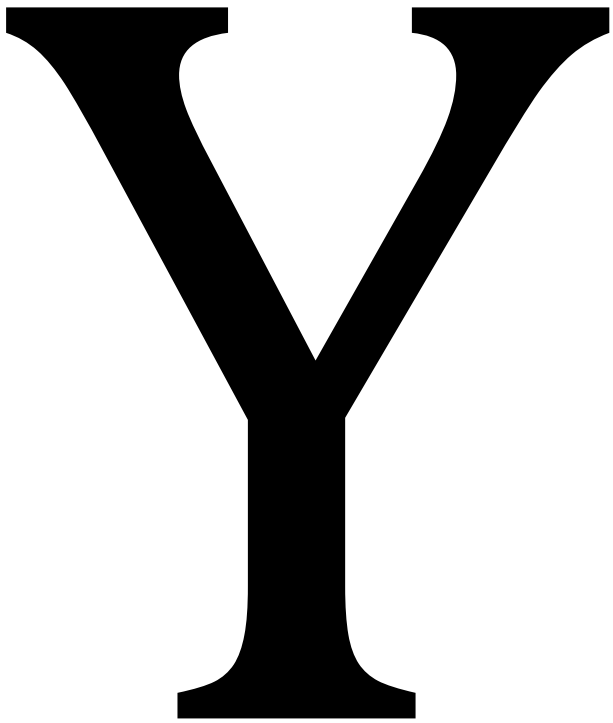

This is Exhibit “Y” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

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F12484-000239054	Essen, Eric Van	11/1/2023 8:05	Wouter Van Essen	Wouter Van Essen [wouter@techlantic.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [eric.vanessen@tradexport.com];Tom C [tom@techlanticconsulting.com]		Tee, Brittni
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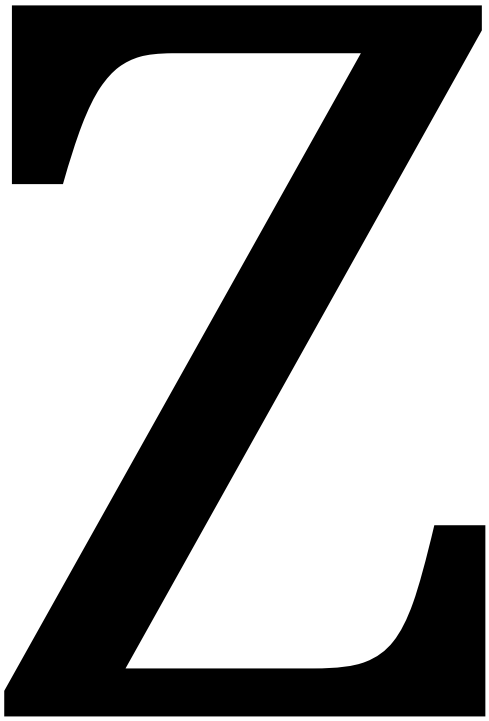
F12484-000794308	Essen, Wouter Van	12/13/2023 20:33	Wouter Van Essen	Wouter Van Essen [wouter@techlanticconsulting.com]	Abeale@rosemountlaw.com;ericvanessen@gmail.com	Andrea Brinston [andrea@brinstonbusinesslaw.com]		Patel, Anita
F12484-000794290	Essen, Wouter Van	12/13/2023 21:07	Wouter Van Essen	Wouter Van Essen [wouter@techlanticconsulting.com]	Alexis Beale [abeale@rosemountlaw.com];Andrea Brinston [andrea@brinstonbusinesslaw.com]	Eric van Essen [ericvanessen@gmail.com]		Patel, Anita
F12484-000794461	Essen, Wouter Van	1/10/2024 17:05	Wouter Van Essen	Wouter Van Essen [wouter@techlanticconsulting.com]	Alexis Beale [abeale@rosemountlaw.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com];ericvanessen@gmail.com		Tee, Brittni
F12484-000794124	Essen, Wouter Van	2/2/2024 10:20	Wouter Van Essen	Wouter Van Essen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1B903EF489C24E8E83B50BAF2CB7D4B2-DE54A9B3-85]	Alexis Beale [abeale@rosemountlaw.com]	Andrea Brinston [andrea@brinstonbusinesslaw.com];Eric van Essen [eric@smallbusinessfleetsolutions.com]		Tee, Brittni



This is Exhibit “Z” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

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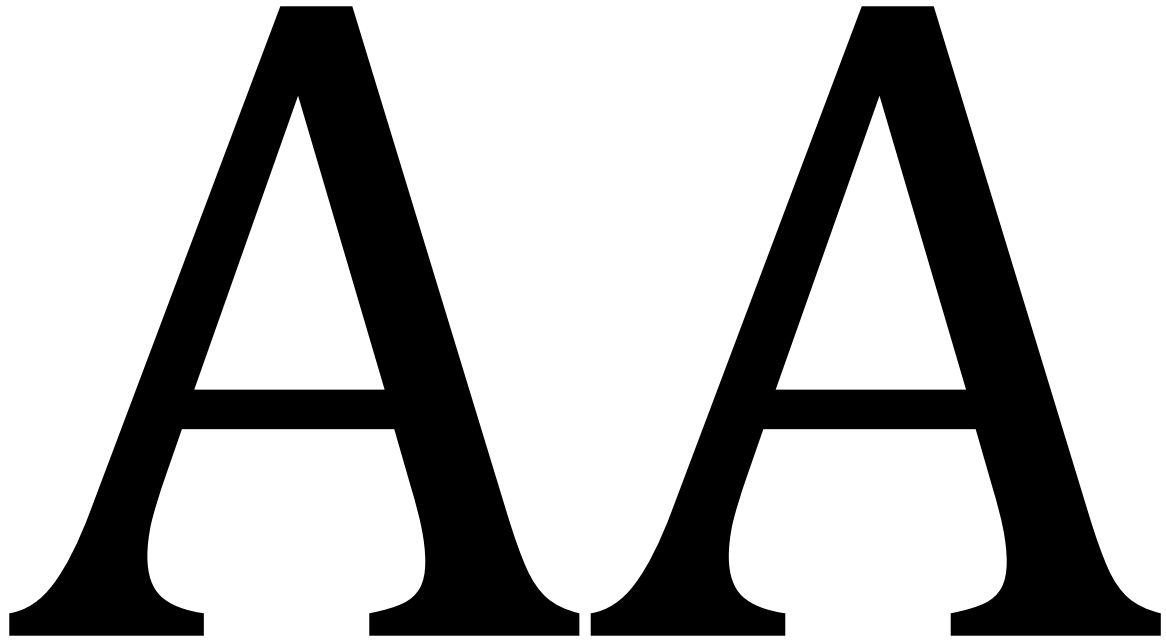
Commissioner for Taking Affidavits (or as may be)

Document ID	M-All Custodians	M-Master Date	M-Author	M-Email From	M-Email To	M-Email CC	M-Email BCC	View Audit
F12484-000652510.0001	Essen, Wouter Van	8/3/2021 18:51	Neil Shah					Sloan, Josh
F12484-000652513.0001	Essen, Wouter Van	8/10/2021 11:10	Neil Shah					Sloan, Josh
F12484-000652522.0001	Essen, Wouter Van	8/17/2021 20:12	Neil Shah					Sloan, Josh
F12484-000652539.0002	Essen, Wouter Van	8/3/2021 14:15	Neil Shah					Sloan, Josh
F12484-000652543.0001.0001	Essen, Wouter Van	8/3/2021 21:17	Neil Shah					Sloan, Josh
F12484-000652597.0001	Essen, Wouter Van	4/27/2021 22:05						Sloan, Josh
F12484-000652602.0003	Essen, Wouter Van	4/27/2021 10:40	Murray Box					Sloan, Josh
F12484-000652619.0001	Essen, Wouter Van	12/30/2021 18:05						Sloan, Josh
F12484-000652621.0001.0001	Essen, Wouter Van	12/7/2021 14:39						Sloan, Josh
F12484-000652621.0001.0002	Essen, Wouter Van	12/7/2021 14:39	Mahmood, Wajahat					Sloan, Josh
F12484-000652621.0002.0001	Essen, Wouter Van	12/7/2021 14:39	Dawson, Jeff					Sloan, Josh
F12484-000652622.0001	Essen, Wouter Van	1/15/2022 13:57	PDF Merge					Chen, Vicky
F12484-000652643.0001	Essen, Wouter Van	11/12/2021 17:44	Mahmood, Wajahat					Sloan, Josh
F12484-000652652.0001.0001	Essen, Wouter Van	12/6/2021 16:45						Sloan, Josh
F12484-000652652.0001.0002	Essen, Wouter Van	12/6/2021 16:45	Mahmood, Wajahat					Sloan, Josh
F12484-000652652.0002.0001	Essen, Wouter Van	12/6/2021 16:45	Dawson, Jeff					Sloan, Josh
F12484-000652720.0013	Essen, Wouter Van	8/26/2021 22:02						Sloan, Josh
F12484-000652731.0003.0002	Essen, Wouter Van	8/27/2021 16:22						Sloan, Josh
F12484-000652740.0002	Essen, Wouter Van	8/30/2021 16:00						Sloan, Josh
F12484-000652754.0002	Essen, Wouter Van	8/26/2021 19:39						Sloan, Josh
F12484-000652778.0002	Essen, Wouter Van	8/30/2021 13:02						Steven, Kira; Sloan, Josh
F12484-000652788.0002	Essen, Wouter Van	8/29/2021 9:59						Sloan, Josh
F12484-000789978.0004	Essen, Wouter Van	12/23/2022 14:18	PDF Merge					Chen, Vicky
F12484-000789990.0001	Essen, Wouter Van	12/11/2022 15:11	PDF Merge					Chen, Vicky
F12484-000789993.0002.0001	Essen, Wouter Van	12/20/2022 13:50	PDF Merge					Chen, Vicky
F12484-000789994.0002.0001	Essen, Wouter Van	12/20/2022 13:52	PDF Merge					Chen, Vicky



This is Exhibit “AA” referred to in the Affidavit
of Mark Dunn sworn May 17, 2024.

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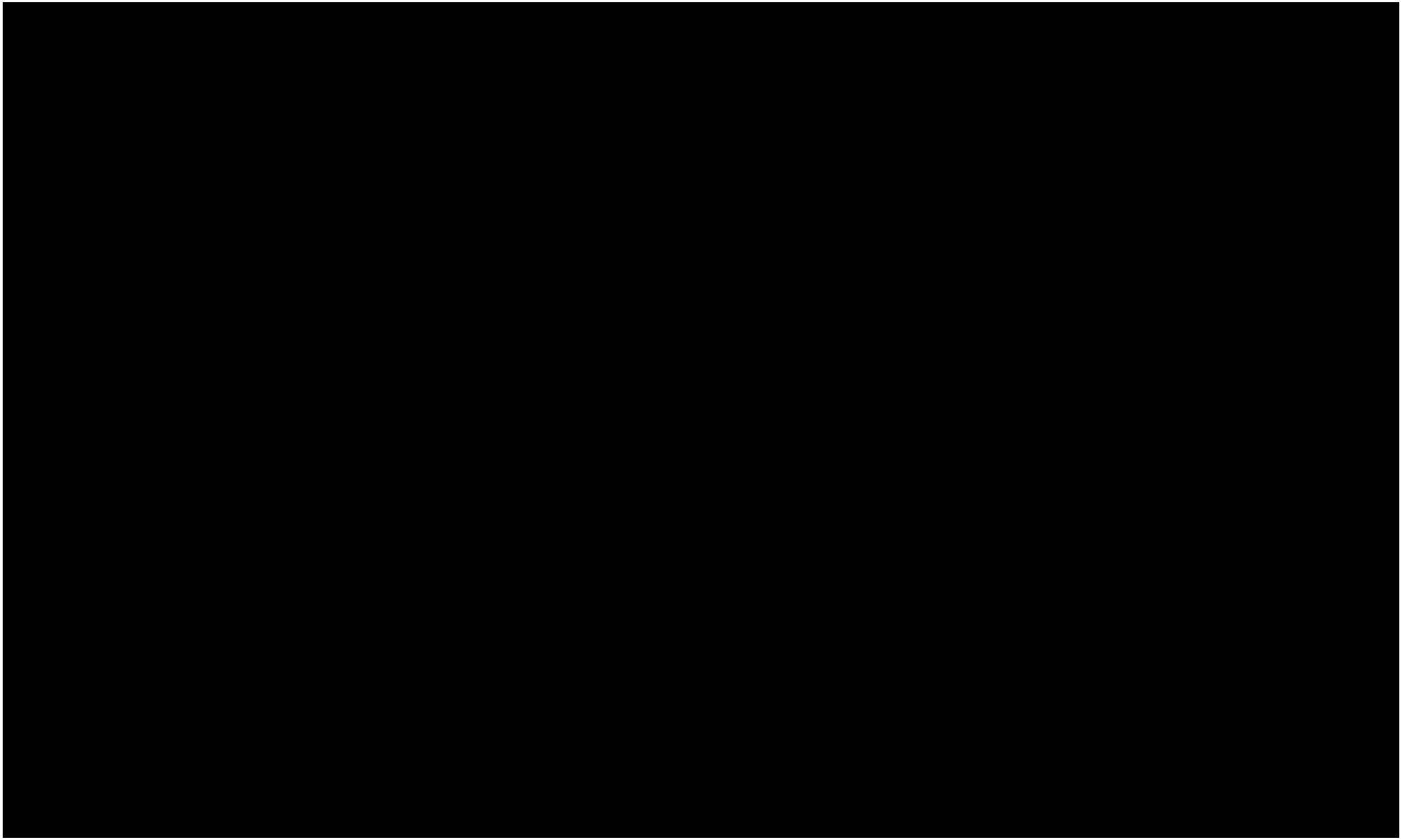
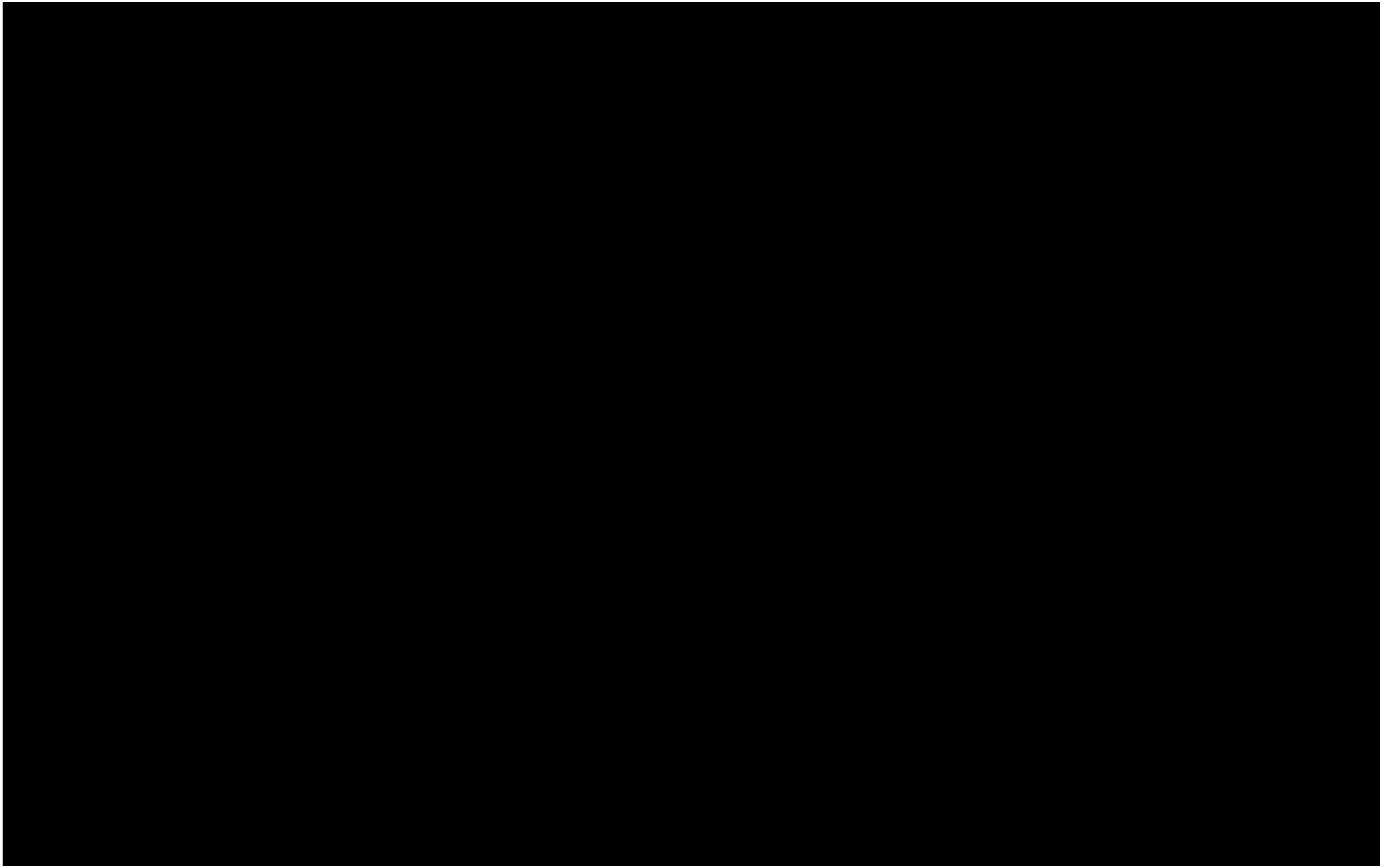
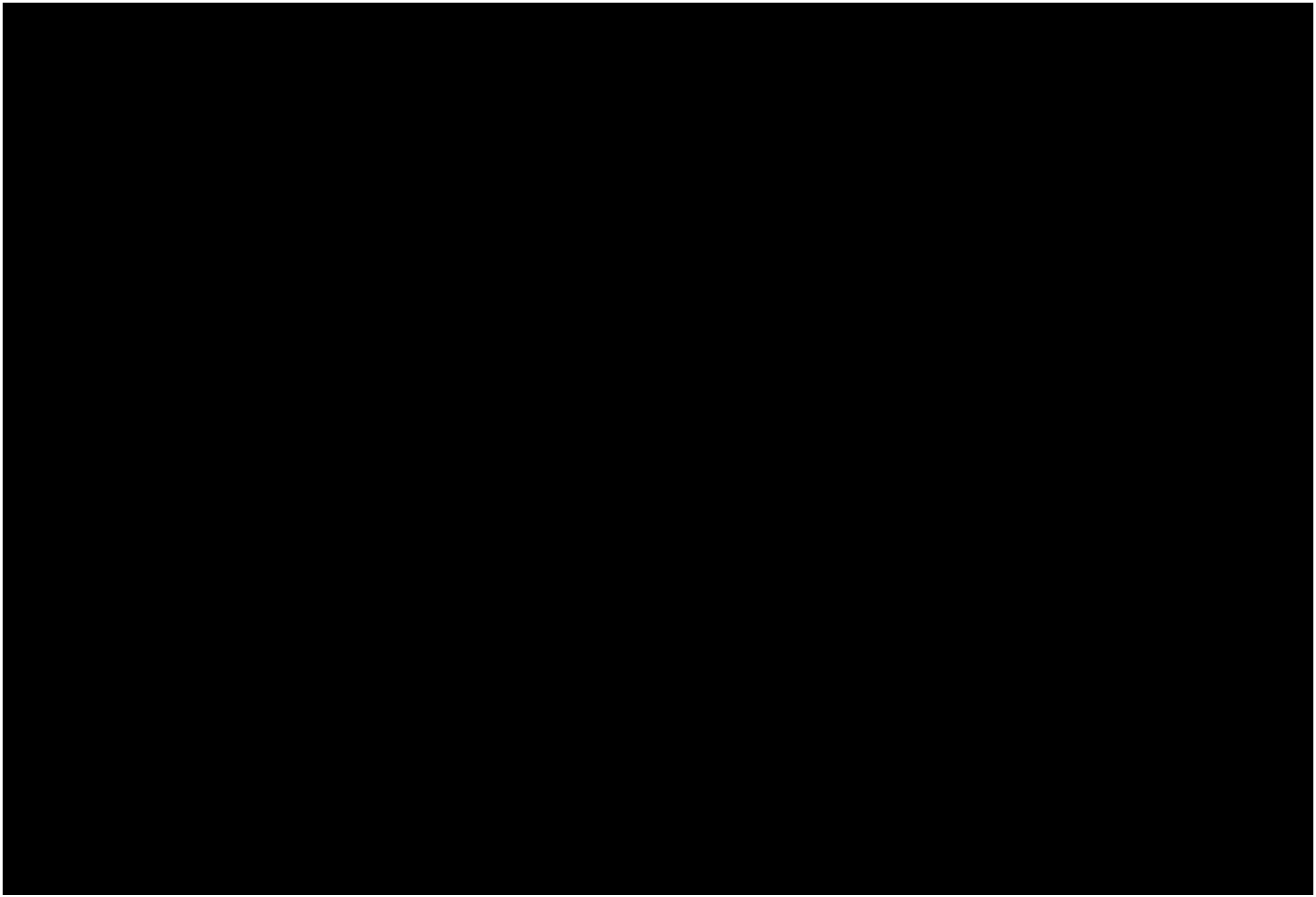
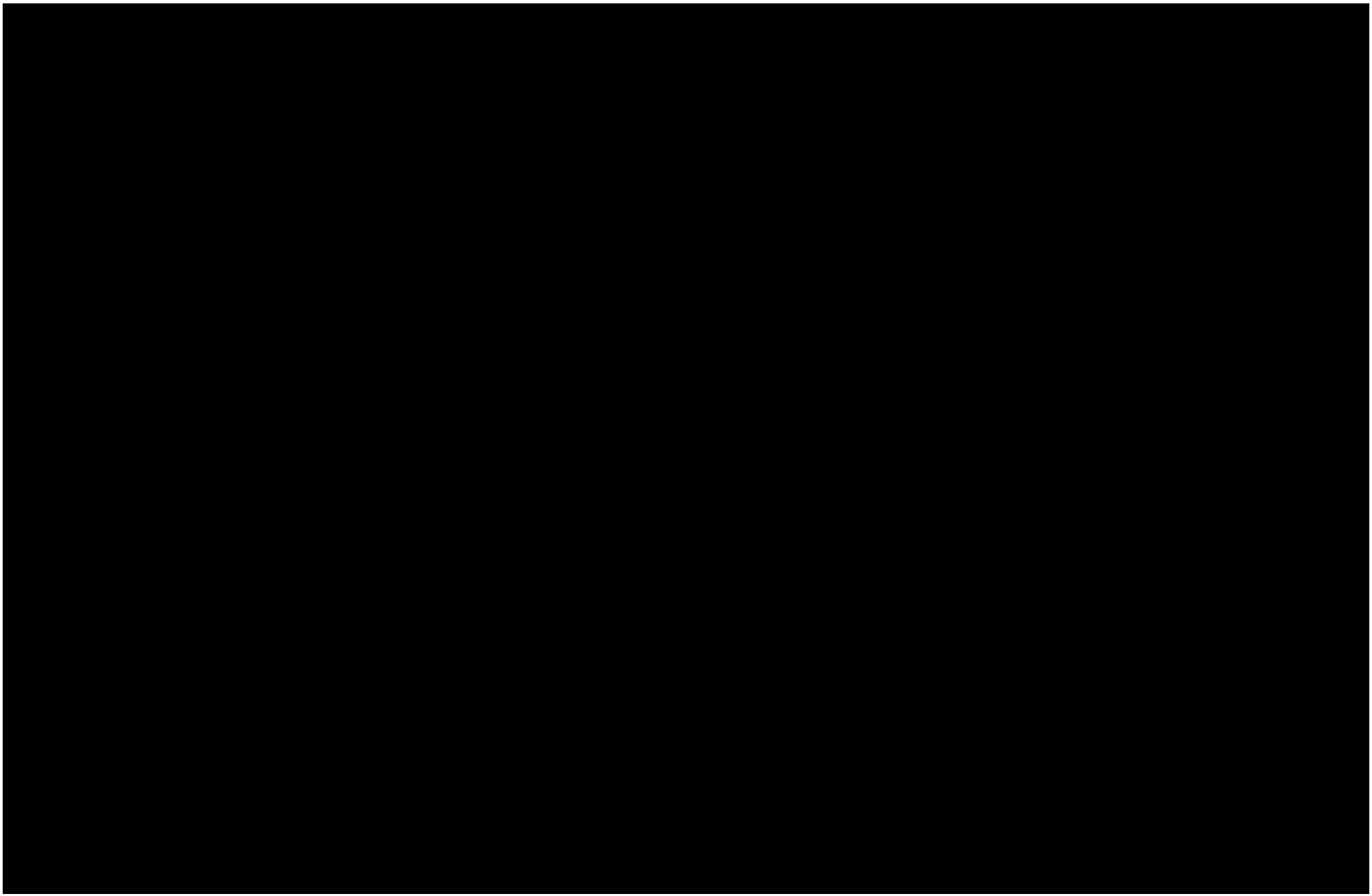
Commissioner for Taking Affidavits (or as may be)

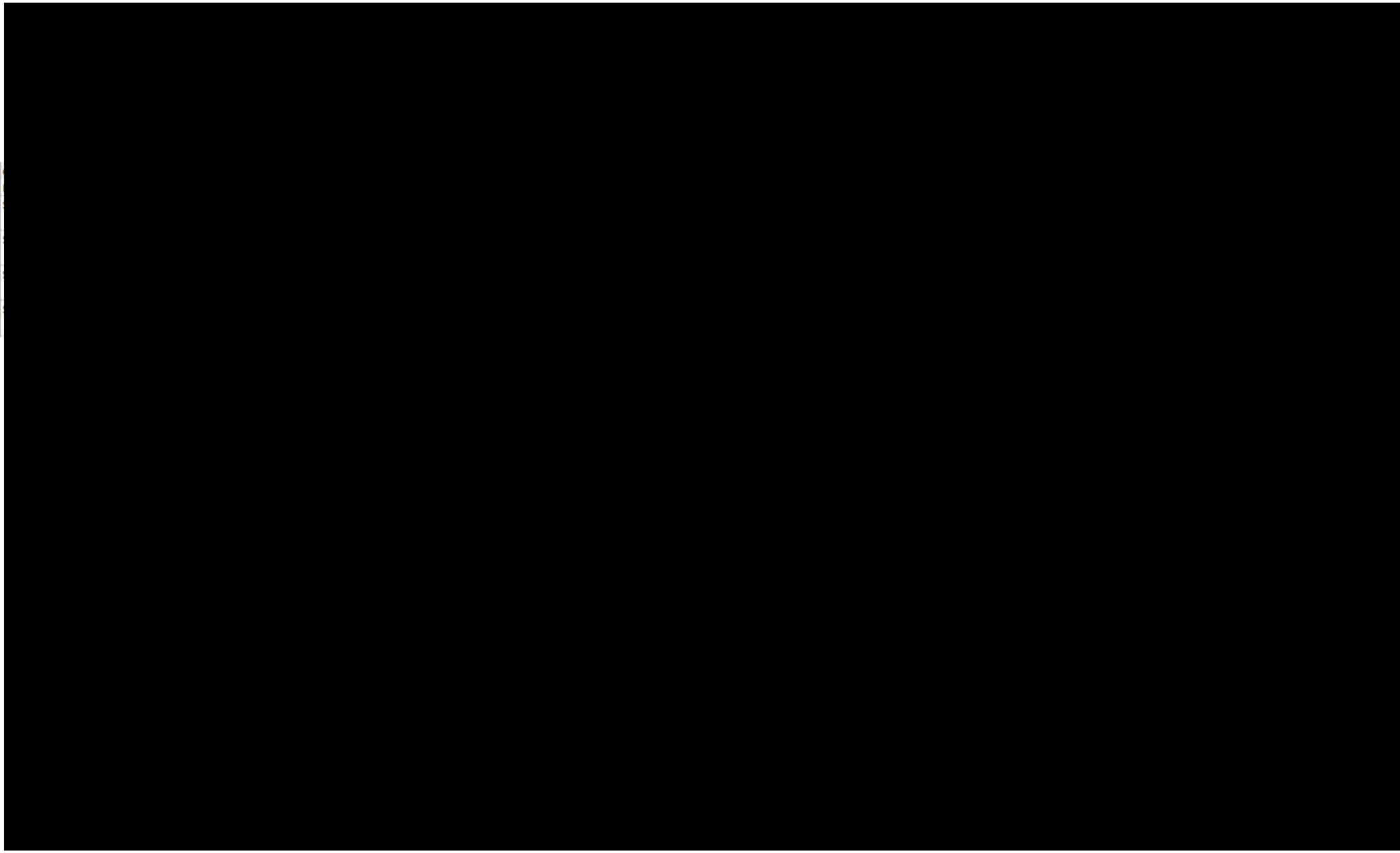

FTI Consulting Inc.
Trade X
Discussion with
Goodmans
March 22, 2024

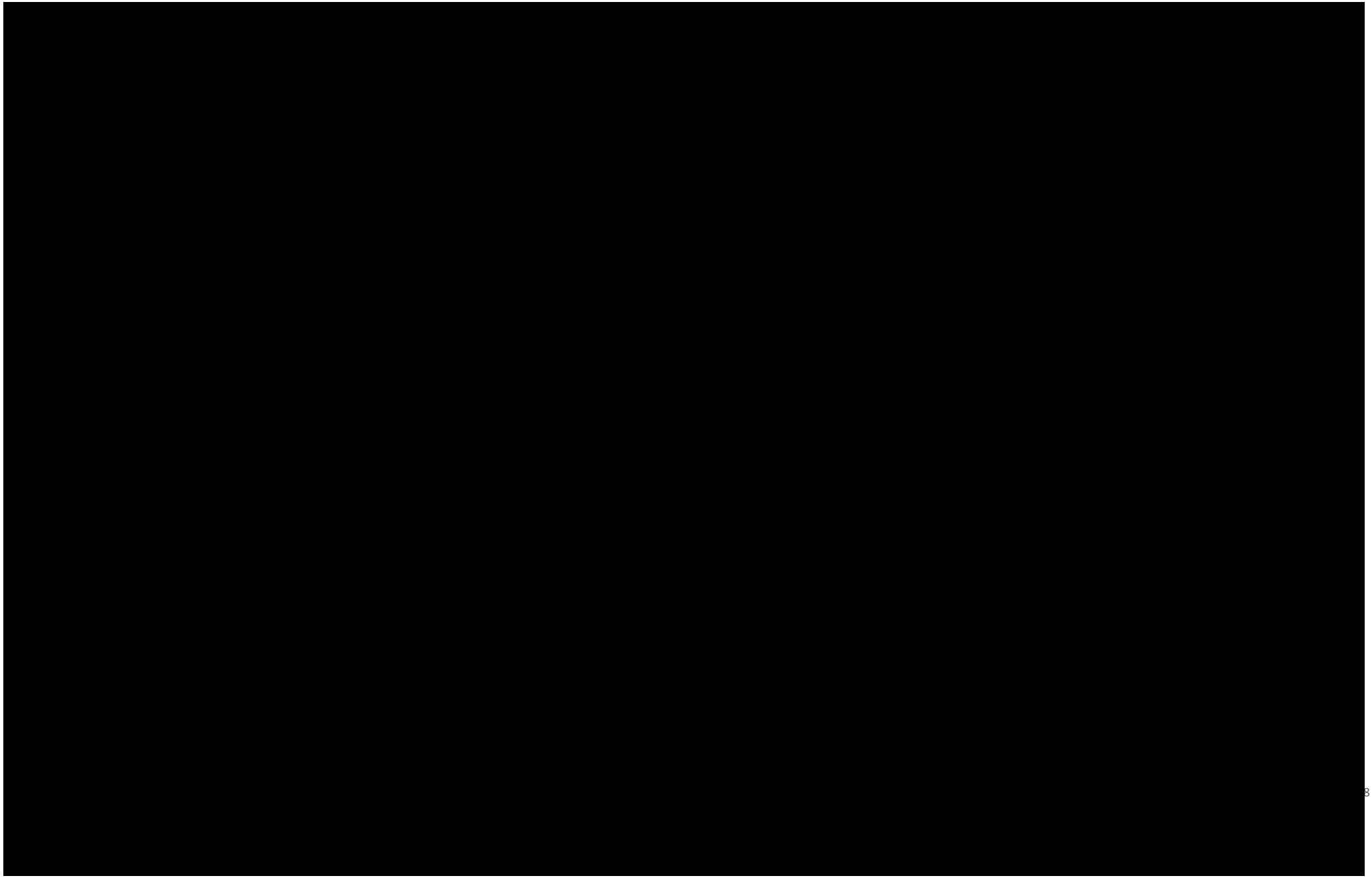


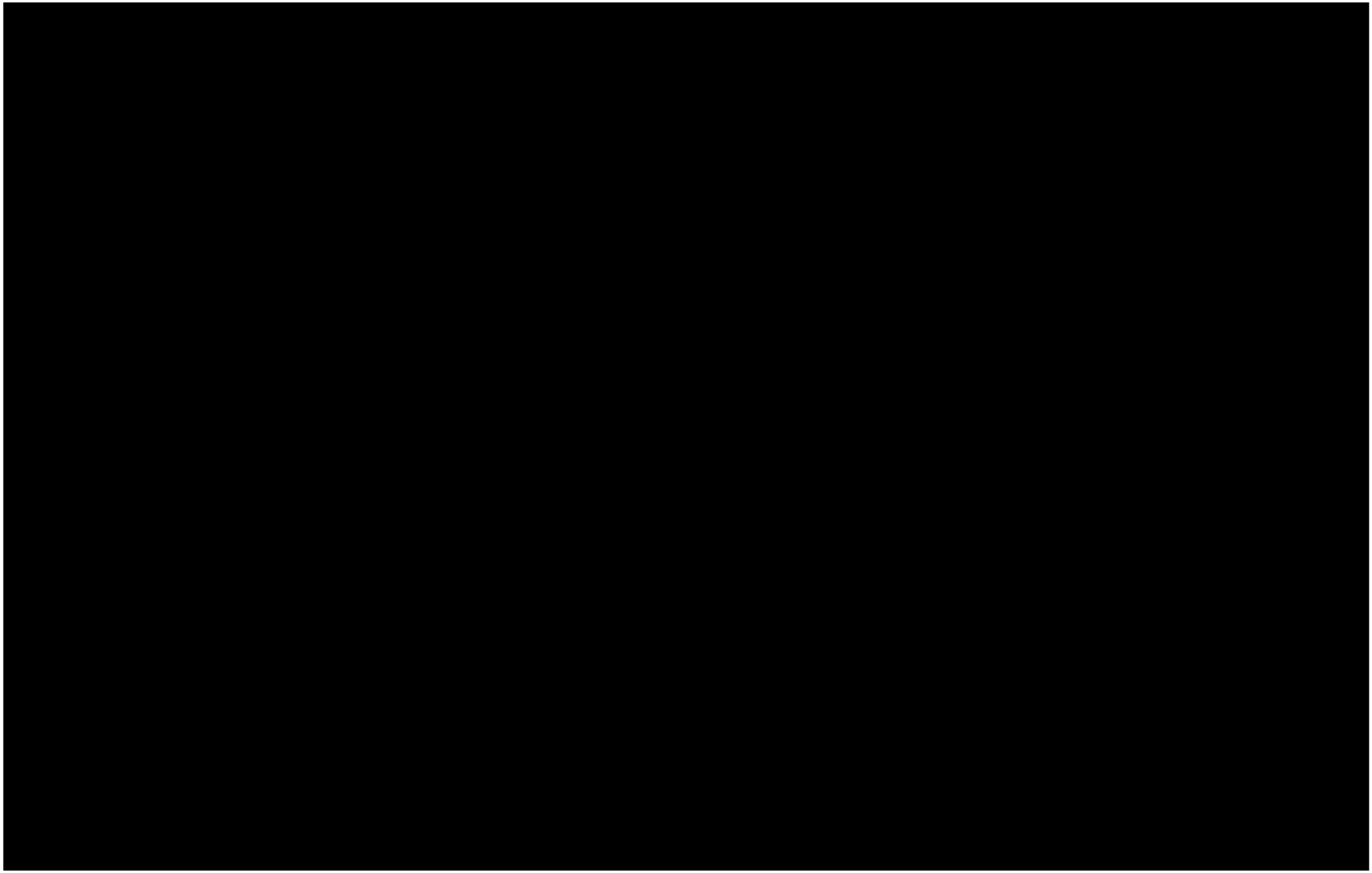












FTI ID 29 – S24016

[redacted]

Good morning

Please make S23990 1309767 Order company.

@Ping Hong – you will probably need to expense/accrue this vehicle in 130. Also, please do a GL entry for the shipping charge paid by TL to the intercompany account. @June da Costa – please approve this.

@Jaskiran Binepal @Nikitia Ramruthan – please have Sam make 1309767 the exporter for this vehicle. It already sailed in early October. Not sure if he can change since the estimated arrival is Oct 29th.

Thanks,
Michelle

From: Eric van Essen <eric.vanessen@tradexport.com>
Sent: Tuesday, October 31, 2023 9:03 AM
To: Michelle Ralph <michelle@techlantic.com>
Cc: Wouter Van Essen <wouter@techlantic.com>; June da Costa <june@techlantic.com>
Subject: RE: Change to 130 and 1 asset vehicle?

Sorry, if the taxes were not claimed yet, it makes sense to move S23990 to 130 as order company. Please proceed with that.

Thank you,

Eric van Essen
VP of Funding & Financial Services

I also found the following that is a non pledged car and not on the asset list to PRG. TL paid the purchasing company October 4 but taxes were claimed and returned to TL.

S24016 SLATV4C06PU218729

Thanks,

Michelle Ralph
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 224
www.techlantic.com

TECHLANTIC

INVOICE # S240168729-3T

Date: 03/10/2023

GST/HST#: 88417 9318 RT0001
Dealer Reg.#: 4782181

Techlantic Ltd.
700 Third Line
Oakville, Ontario, Canada, L6L 4B1
Tel: 1-905-465-1062 Fax: 1-905 465-3974
sales@techlantic.com
www.techlantic.com

Bill To:
SINA TRADING CO L.L.C 100587772800003
Unit 67A, 6th Floor, Block A, Zomorrodah
Commercial Bldg. Za'abeel Road
Dubai,
United Arab Emirates
120326

Invoice for S24016	Price
2023 ROLLS ROYCE CULLINAN (BLACK/BLACK) VIN: SLATV4C06PU218729 Odometer: 220 KM	CA$ 582,100.00
Planned for shipping to JEBEL ALI, DUBAI	

Amount Due CFR JEBEL ALI, DUBAI CANADIAN DOLLARS: CA$ 582,100.00
We received 552,689.76 CAD on Oct 03, 2023, the balance outstanding is 29,410.24 CAD

We kindly ask you to wiretransfer your payment to

ROYAL BANK OF CANADA
2460 WINSTON CHURCHILL BLVD.
OAKVILLE, ONTARIO, CANADA, L5H 6J5

Wire Activity - Detail Report

Michelle Ralph , 1309767 ONTA
Report Creation Date: Oct 03, 2023 12:35

Value Date Range: From **Oct 03, 2023** To **Oct 03, 2023**
Debit Account(s): **All** **Status:** All
Amount Range: **All**
Payment Currency: All

Payment Currency: CAD

Template Name: NOBS Financial
Template Description: CAD wire
Value Date: Oct 03, 2023
Debit Account: 00003-03592-1002179-CAD-1309767 ONTARIO LIMI
Amount Charged: 521,500.00 CAD
Credit Information: 00003-02874-1002286-CAD-NOBS Financial Services Inc.
Amount Sent: 621,500.00 CAD
Exchange Rate: 0.0
Bank: Royal Bank of Canada, Sheppard Center Branch, North York M2N 5X3, Ontario, Canada
Beneficiary: NOBS Financial Services Inc. 1100 - 20 Bay Street, Toronto ON M5J 2R8 CA
Payment Method: Credit Account under advice
Comments:
Payment Details: Inv 10079 S24016 SLATV4C06PU218729

Wire Activity - Detail Report

MICHELLE RALPH , TECHLANT
Report Creation Date: Oct 04, 2023 12:06:27

Template Name: 1309767 (SBFS)
Template Description: Wire CAD
Value Date: Oct 04, 2023
Debit Account: 00003-00932-1004050-CAD-TL CAD
Amount Charged: 91,500.00 CAD
Credit Information: 00003-03592-1002179-CAD-1309767 Ontario Ltd.
Amount Sent: 91,500.00 CAD
Exchange Rate: 0.0
Bank: Royal Bank of Canada, 1005 Speers Road, Oakville ON, Canada
Beneficiary: 1309767 Ontario Ltd., 1467 Otis Avenue, Mississauga ON L5C 2R7 CA
Payment Method: Credit Account under advice
Comments:
Payment Details: Balance payment S24016

Wire Activity - Detail Report

JUNE DA COSTA , TECHLANT
Report Creation Date: Oct 03, 2023 01:45:29

Value Date Range: From **Oct 03, 2023** To **Oct 03, 2023**
Debit Account(s): **All** **Status:** All
Amount Range: **All**
Payment Currency: All

Payment Currency: CAD

Template Name: 1309767 (SBFS)
Template Description: Wire CAD
Value Date: Oct 03, 2023
Debit Account: 00003-00932-1004050-CAD-TL CAD
Amount Charged: 530,000.00 CAD
Credit Information: 00003-03592-1002179-CAD-1309767 Ontario Ltd.
Amount Sent: 530,000.00 CAD
Exchange Rate: 0.0
Bank: Royal Bank of Canada, 1005 Speers Road, Oakville ON, Canada
Beneficiary: 1309767 Ontario Ltd., 1467 Otis Avenue, Mississauga ON L5C 2R7 CA
Payment Method: Credit Account under advice
Comments:
Payment Details: S24016 SLATV4C06PU218729 partial

FTI ID – 32 S24019

From: Michelle Ralph[michelle@techlantic.com]
Sent: Thur 10/5/2023 8:35:15 AM (UTC-04:00)
To: Ping Hong[ping@techlantic.com]
Cc: Eric van Essen[eric.vanessen@tradexport.com]; Wouter Van Essen[wouter@techlantic.com]; June da Costa[june@techlantic.com]; Karen Hyslop[karen.hyslop@techlantic.com]
Subject: RE: S24019 - enter in September

[WARNING] EXTERNAL EMAIL [!]
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Please use September 29th

From: Michelle Ralph
Sent: Thursday, October 5, 2023 8:35 AM
To: Ping Hong <ping@techlantic.com>
Cc: Eric V <eric.vanessen@tradexport.com>; Wouter Van Essen <wouter@techlantic.com>; June da Costa <june@techlantic.com>; Karen Hyslop <karen.hyslop@techlantic.com>
Subject: S24019 - enter in September
Importance: High

Hi Ping:

For this morning, please enter the attached Purchase in 1309767 and invoice Techlantic in September. Please let me know when this is done so I can proceed with the HST reporting. The BOS will be revised to show a September date.

Please

Michelle Ralph
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 224

NOBS

Financial Services Inc

y St #1100
to, Ontario, M5J 5R6

67 Ontario Ltd
hird Line
le, On

INVOICE
10085

Date:	Oct 4, 2023
Due Date:	Oct 4, 2023
HST:	790 815 542
Balance Due:	**$621,500.00**

	Quantity	Rate	Amount
lolls Royce Phantom Mandarin anticipated) 6C07NU208953	1	$550,000.00	$550,000.00

Subtotal:	$550,000.00
Tax (13%):	$71,500.00
Total:	$621,500.00

TECHLANTIC

INVOICE # S240198953-13T
Date: 13/10/2023
GST/HST#: 88417 9318 RT0001
Dealer Reg.#: 4782181

Techlantic Ltd.
700 Third Line
Oakville, Ontario, Canada
L6L 4B1
Tel: 1-905-465-1062

Bill To:
SINA TRADING CO L.L.C 100587722800003
Unit 67A, 6th Floor, Block A, Zomorrodah
Commercial Bldg. Za'abeel Road
Dubai,
United Arab Emirates
120326

Invoice for S24019 Inv1194	Price
2022 ROLLS ROYCE PHANTOM (BLACK/MANDARIN) VIN: SCATT6C07NU208953 Odometer: 106 KM Scheduled to be shipped: 09/10/2023 from TORONTO, CANADA Scheduled to arrive 13/10/2023 at JEBEL ALI, DUBAI On board: TURKISH AIRLINES TK6079/ 6054	CA$ 582,100.00

Amount Due CFR JEBEL ALI, DUBAI CANADIAN DOLLARS: CA$ 582,100.00
We received 146,988.57 CAD on Oct 19, 2023 and 223.48 CAD on Oct 18, 2023 and 367,568.73 CAD on Oct 20, 2023, the balance outstanding is 67,319.22 CAD

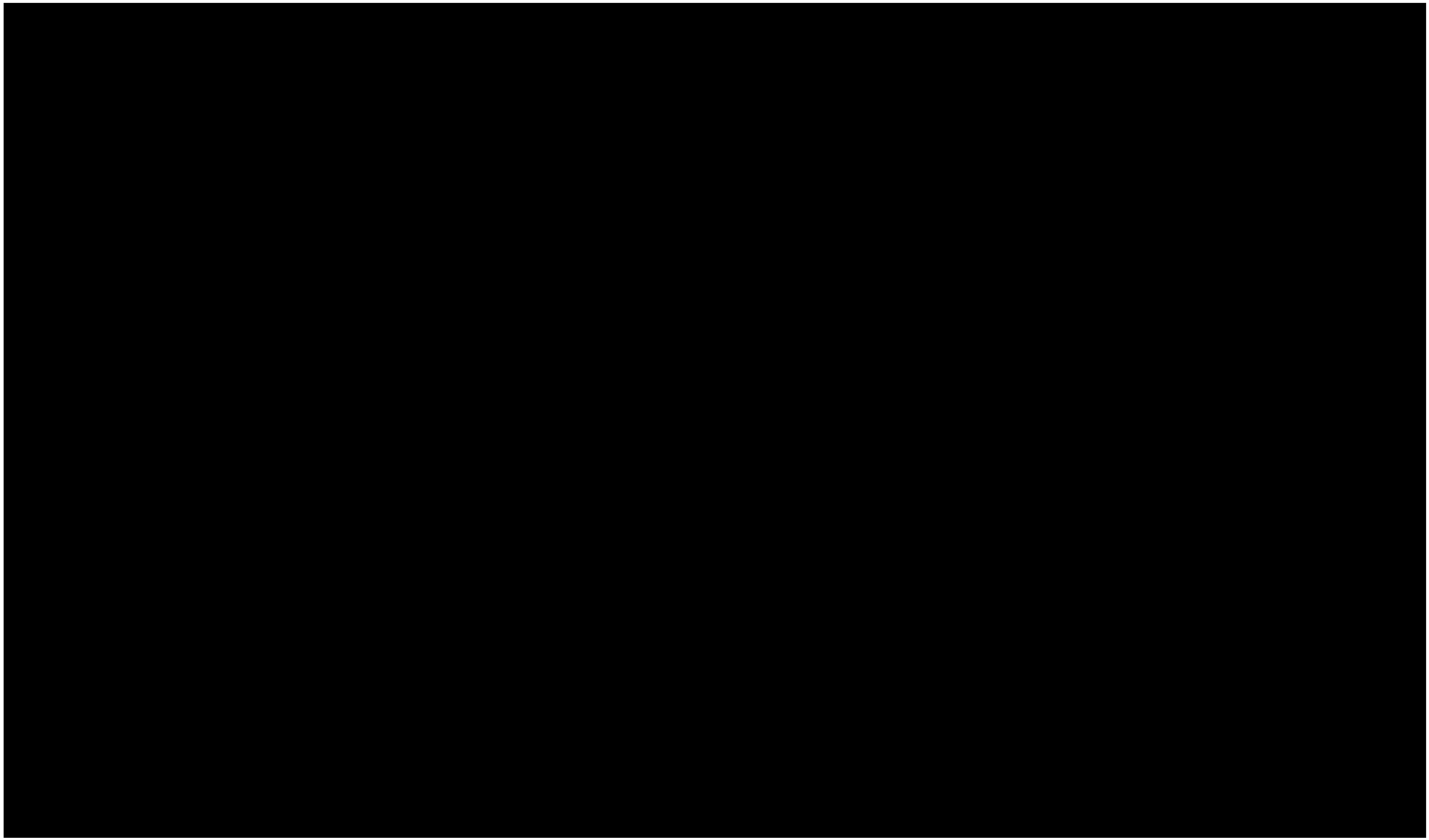
We kindly ask you to wire transfer your payment to

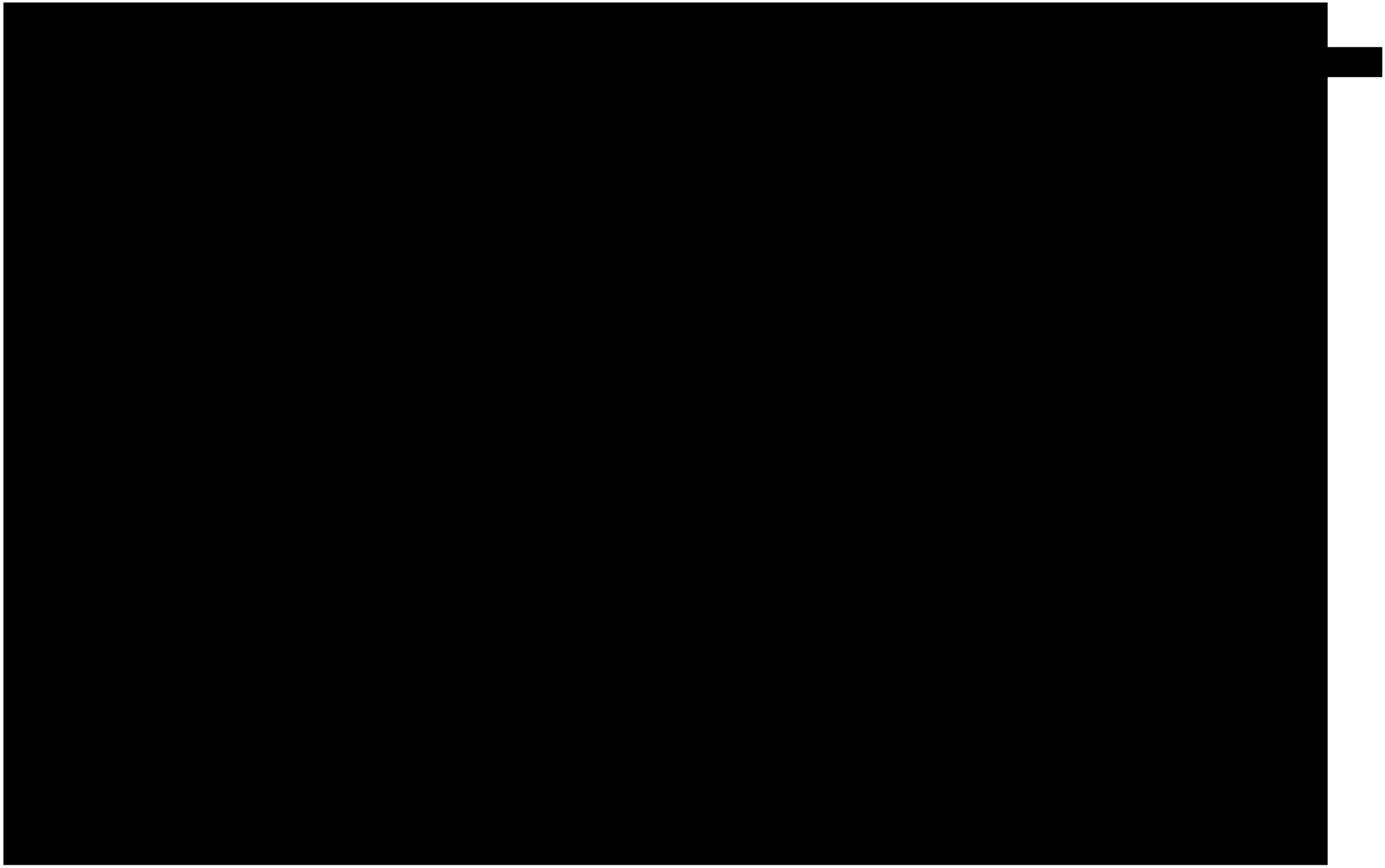
ROYAL BANK OF CANADA
2460 WINSTON CHURCHILL BLVD.
OAKVILLE, ONTARIO, CANADA, L5H 6J5

FOR THE CANADIAN DOLLARS ACCOUNT OF:
TECHLANTIC LTD., 700 THIRD LINE, OAKVILLE, ONTARIO, CANADA

ACCOUNTNR: 0 0 9 3 2 --- 0 0 3 --- 1 0 0 4 0 5 0
TRANSIT # BANK # ACCOUNT #

SORT CODE: //CC000300932
ROYAL BANK ABA #: 021000021 (USE FOR TRANSFERS ORIGINATING IN THE USA)
ROYAL BANK SWIFT #: ROYCCAT2 (FOR ALL INTERNATIONAL TRANSFERS)





[redacted]

FTI ID 30 S23969 (cont'd)

From: Eric van Essen <eric@techlantic.com>
Sent: Friday, October 27, 2023 8:47 AM
To: June da Costa <june@techlantic.com>
Cc: Wouter Van Essen <wouter@techlantic.com>; Michelle Ralph <michelle@techlantic.com>
Subject: Balance_Due_to_Purchasing_Company (81).xlsx

Hi June,

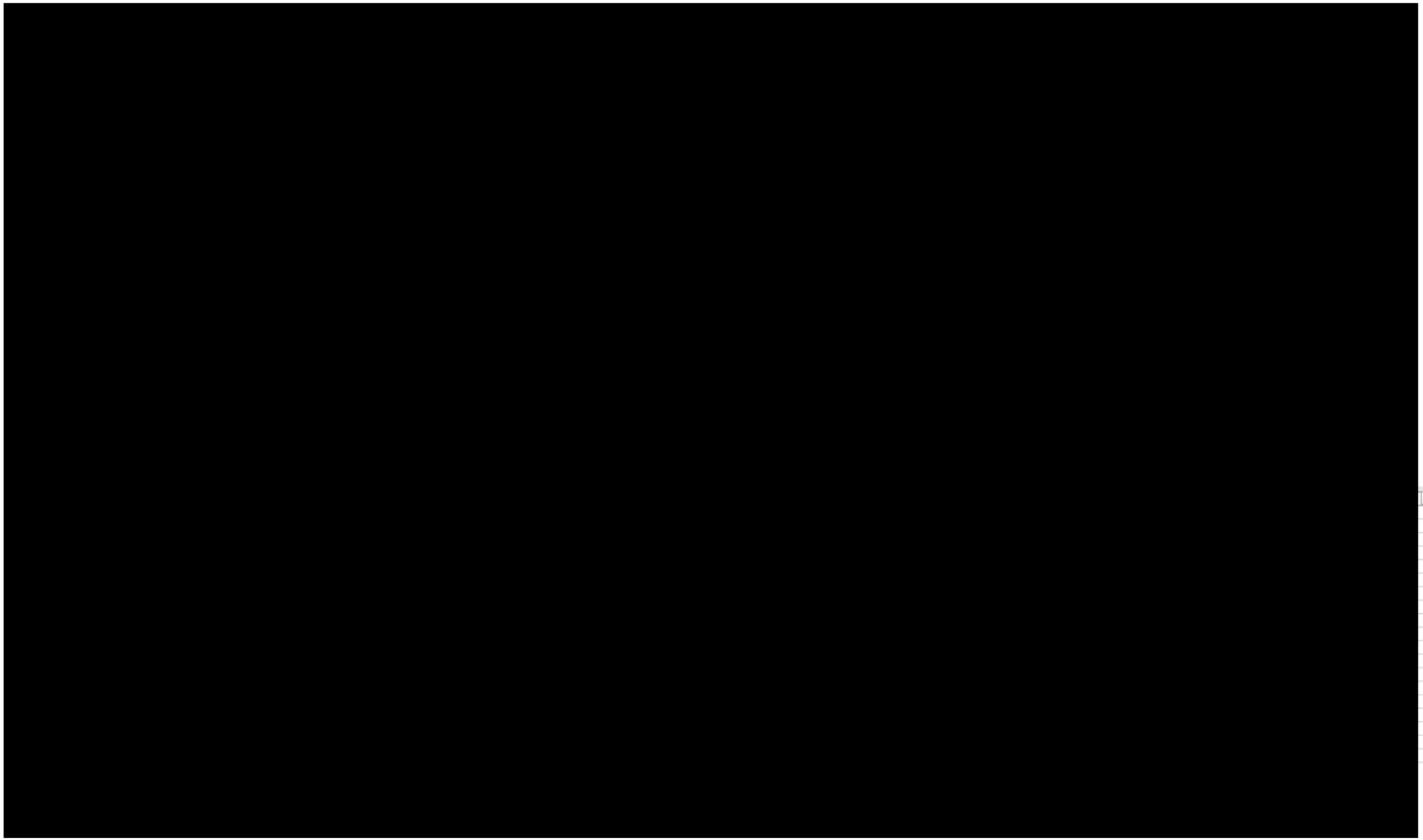
We need change all highlighted orders to have 130 as order company or change them so 130 purchases the vehicle/receivable back to justify the collections in 130. If they were purchased with Transcan, Transcan should be the purchasing company for 130. 130 should do all collections on them. Could be a mix of a few different options to make it easier for HST and deposit allocation.

You don't need to take immediate action, but please make a plan on how to accomplish this and what needs to be done and what the ramifications are for HST and deposits. It's also possible that if HST is already collected by Techlantic that we keep the transaction as is but 130 purchases the vehicle back from Techlantic at time of collections from the client. I would like to complete this before Oct month end.

Also, S24045 likely has something incorrect like purch company paid date as it doesn't make sense that NOBs is the purchasing company. Can you please coordinate the correction.

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com



Neway Rentals Inc.

[redacted]

Clear Data

Canada Revenue Agency / Agence du revenu du Canada

Shareholder Information
(2006 and later tax years)

Schedule 50
Code 0602
Protected B
when completed

Corporation's name	Business number	Tax year-end (Year Month Day)
Baird Aviation Inc.	865093256 RC 0001	2020 04 30

- All private corporations must complete this schedule for any shareholder who holds 10% or more of the corporation's common and/or preferred shares.
- Provide only one number (business number, partnership account number, social insurance number or trust number) per shareholder.

Name of shareholder (after name, indicate in brackets if the shareholder is a corporation, partnership, individual, or trust) 100	Business number or partnership account number (9 digits, 2 letters, and 4 digits. If not registered, enter "NR") 200	Social insurance number (9 digits) 300	Trust number (T followed by 8 digits) 250	Percentage common shares 400	Percentage preferred shares 500
Bartelt Van Essen		508 990 801		100.00%	

From: Wouter Van Essen <wouter@techlantic.com>
Sent: Friday, June 26, 2020 11:09 AM
To: June da Costa <june@techlantic.com>
Cc: Tom Van Essen <tom@techlantic.com>; Eric van Essen <eric@techlantic.com>; Robin Jones <robin@techlantic.com>; Damon Lyons <damon@techlantic.com>; Kate and Bartelt van Essen <kbvanessen@gmail.com>
Subject: Baird Aviation Inc.

Hi June,

I will do April 30, 2020 tax filing. Bartelt will sign.

We plan making the company active and need the following:

1. HST # (the company is not yet registered): 865093256RT0001. Effective May 26th. Year end Apr 30th
2. Name change to Neway Rentals Inc. Articles of Amendment to be submitted (in person or mail) to Ministry of Government Services. Cost is $150.00
3. Ownership change from Bartelt to Robin Done via Initial Return of Change Report – May 1/2020 effective date
4. Address per rental agreement provided by Damon. Done via Initial Return of Change Report – May 1/2020 effective date

Wire Activity - Detail Report

June da Costa , 1309767 ONTAR
Report Creation Date: May 18, 2023 04:18:08

Value Date Range: From **May 18, 2023** To **May 18, 2023**
Debit Account(s): **All** **Status:** All
Amount Range: **All**
Payment Currency: All

Payment Currency: CAD

Template Name: Park Val Neway

Template Description: CAD Wire

Value Date: May 18, 2023

Debit Account: 00003-00932-1037886-CAD-NEWAY RENTALS INC. **Amount Charged:** 721,505.00 CAD

Credit Information: 00004-44401-5285415-CAD-Park Valley Import and Export Ltd.

Amount Sent: 721,505.00 CAD

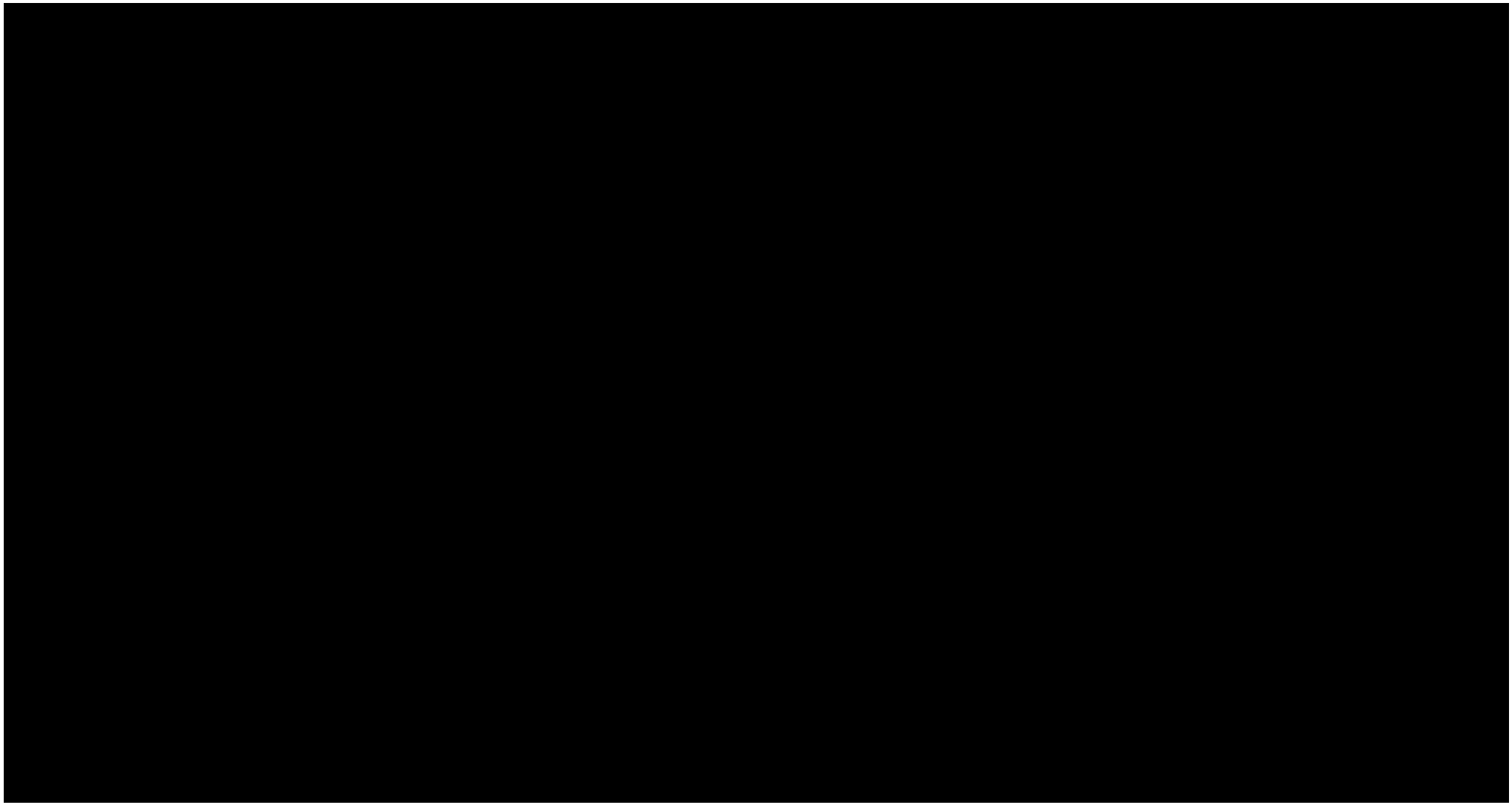
Exchange Rate: 0.0

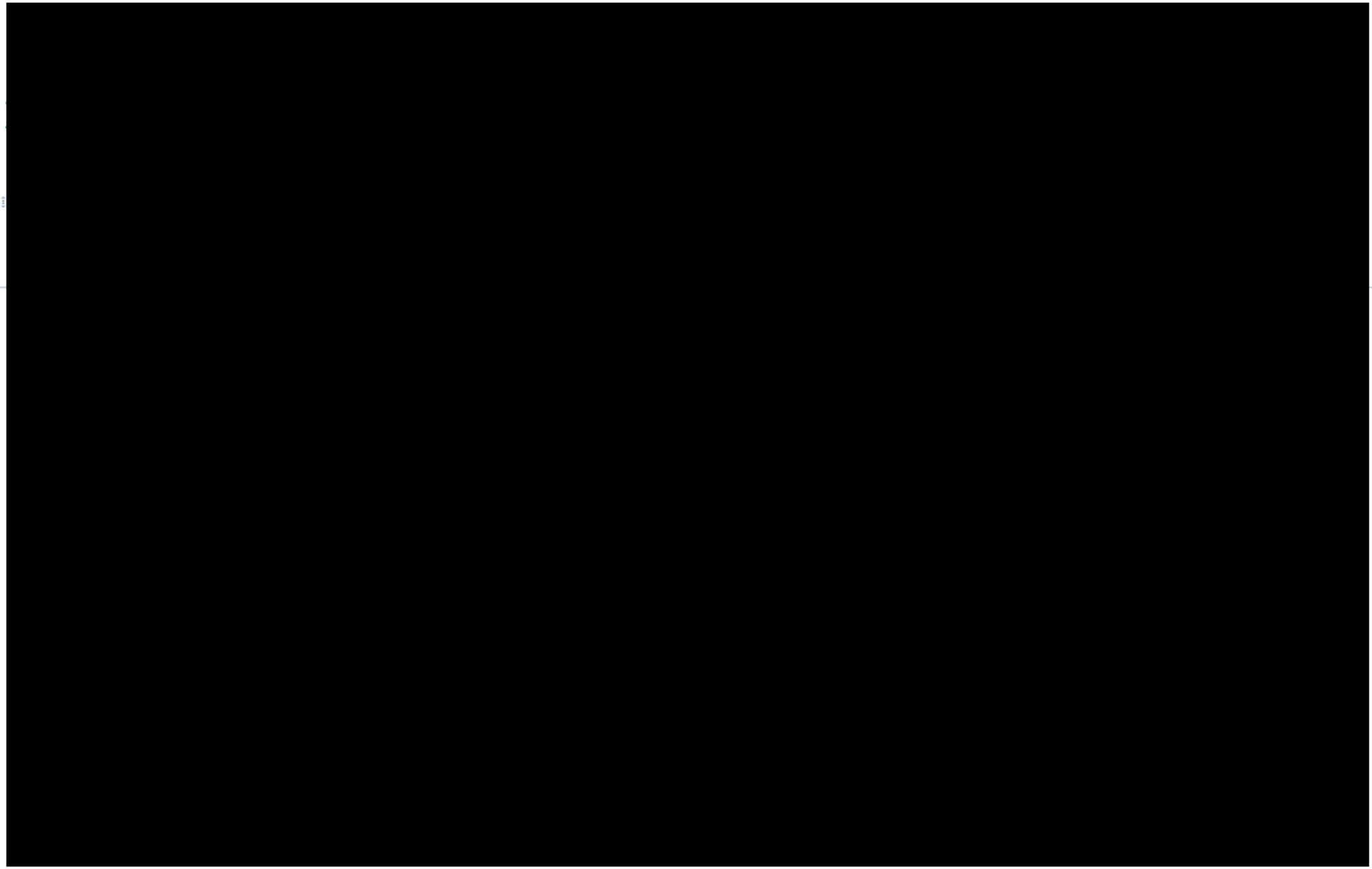
Bank: TD Canada Trust
2105 Blvd Daniel Johnson
Laval QC
Canada

Beneficiary: Park Valley Import and Export Ltd.
3055 Blvd Saint-Martin O. 5093
Laval PQ H7T 3C2 CA

Payment Method: Credit Account under advice **Comments:**

Payment Details: 04902 S23551 PA959447 04889 S23546P
4024803 04891 S23552 PA956568 04
893 S23553 PA948959 and 04
895 S23554 PA955348





[redacted]

From: Wouter Van Essen

To: Eric van Essen, Ryan Davidson, Eric Gosselin

[WARNING] EXTERNAL EMAIL [!]

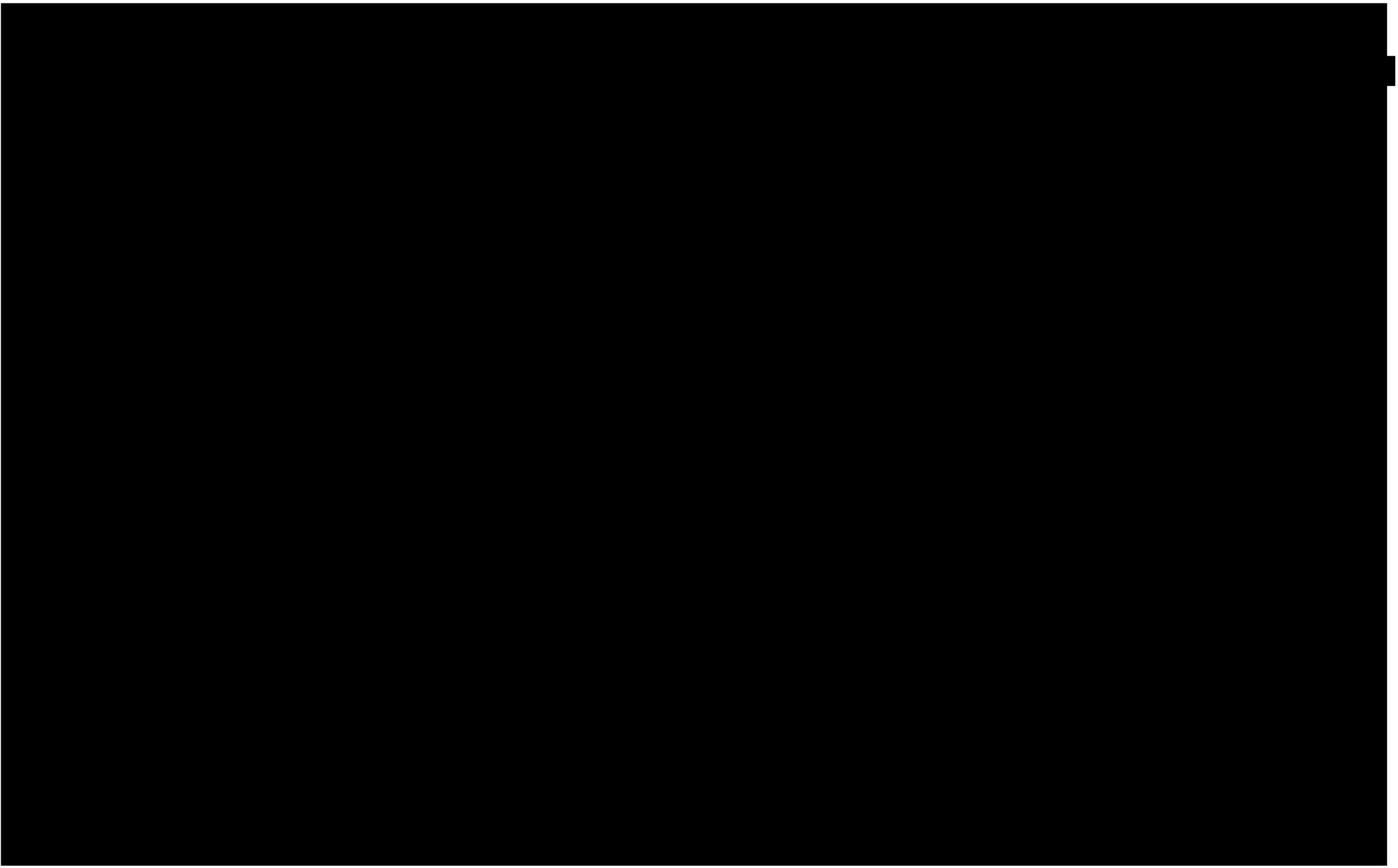
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Just two more (government) considerations:

a. CRA: Techlantic tends to get HST refunded without an audit as long as its claims stay under 1.3M HST refund per month. Trade-X has now a higher limit. We should balance who the exporter is and claims the HST when volume increases. If we totally amalgamate, we will be due for audits.
b. OMVIC: Techlantic has an OMVIC license. Please read attached email of Kevin who likes using Techlantic also for sales staff for export from Canada to the USA. The issue would however be that Techlantic should not be the exporters for all vehicles per a) above.

Wouter van Essen
Techlantic Ltd. |700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 226 Mobile: +1-416-414-1967
www.techlantic.com


lt
22



HST Chatter (cont.)

[redacted]

FW: CRA audit - 1309767 Ont Sept/23 HST audit **Sent:** Tue 1/9/2024 4:00:11 PM (UTC-05:00)

Ping

From: Michelle Ralph <michelle@techlantic.com>
Sent: Thursday, December 21, 2023 10:44 AM
To: Ping Hong <ping@techlantic.com>
Cc: June da Costa <june@techlantic.com>; Eric van Essen <eric@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>; Wouter Van Essen <wouter@techlantic.com>
Subject: Re: CRA audit - 1309767 Ont Sept/23 HST audit

Hi Ping

Please supply the submit dates for Jas and Nikitia.
I cannot find them on the sheet

Thanks
Michelle
Sent from my iPhone

> On 21 Dec 2023, at 10:35, Ping Hong <ping@techlantic.com> wrote:
>
> Hi Jas/Nikitia, please mark HST refund date per the excel when fund received.
>
> Ping
>
> **From:** Michelle Ralph <michelle@techlantic.com>
> **Sent:** Wednesday, December 20, 2023 4:43 PM
> **To:** June da Costa <june@techlantic.com>
> **Cc:** Wouter C <wouter@techlanticconsulting.com>; Eric van Essen <eric@smallbusinessfleetsolutions.com>; Ping Hong <ping@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>
> **Subject:** Re: CRA audit - 1309767 Ont Sept/23 HST audit
>
> Hi Ping:
>
> Can you please supply the list of Order numbers and the associated VINS for the October and November submissions?
> Please look up the CRA Netfile report in the HST folder and supply the submit dates as well.
> Please supply the list to Jas and Nikitia so they can enter the submit dates in Zoho.
>
> Thanks!
>
> Michelle
>
> Sent from my iPhone
>
> > On 20 Dec 2023, at 15:20, June da Costa <june@techlantic.com> wrote:
> >
> > Hello,
> >
> > I just spoke with John Park.
> > The additional documents I sent were fine.
> > He is closing the file for Sept/23.
> > A letter will be sent to the Otis Ave address.

HST Chatter (cont.)

[redacted]

FW: CRA audit - 1309767 Ont Sept/23 HST audit

Sent: Tue 1/9/2024 4:00:11 PM (UTC-05:00)

Hi Ping/ Michelle,

HST Submission Dates are updated in Zoho.
I have updated the sheet to show the dates we have in Zoho as 1 vehicle already had a submission date.
Please review the attached so we can correct Zoho as needed.

Thank you,

Nikitia Ramruthan
Techlantic Ltd. - Administrative Assistant
[redacted]
Mobile
Office +1 888.253.1623
Email nikitia.ramruthan@tradexport.com
Web https://www.tradexport.com

TRADE X | 7401 PACIFIC CIRCLE, MISSISSAUGA ON, L5T 2A4
TRADE WITHOUT BORDERS.

From: Michelle Ralph <michelle@techlantic.com>
Sent: Thursday, December 21, 2023 11:16 AM
To: Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>
Cc: June da Costa <june@techlantic.com>; Ping Hong <ping@techlantic.com>; Eric van Essen <eric@techlantic.com>
Subject: Fwd: CRA audit - 1309767 Ont Sept/23 HST audit

Hi Jaskiran and Nikitia:

I believe I supplied September already.
I think you just need to update October and November.

Thanks,
Michelle
Sent from my iPhone
Begin forwarded message:

> **From:** Ping Hong <ping@techlantic.com>
> **Date:** 21 December 2023 at 10:59:41 GMT-5
> **To:** Michelle Ralph <michelle@techlantic.com>
> **Cc:** June da Costa <june@techlantic.com>, Eric van Essen <eric@techlantic.com>, Jaskiran Binepal <jaskiran@techlantic.com>, Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>, Wouter Van Essen <wouter@techlantic.com>
> **Subject: RE: CRA audit - 1309767 Ont Sept/23 HST audit**
>
> Hi Jas/Nikitia, please update submission date per Excel.
>
> Ping

HST Chatter (cont.)

[redacted]

FW: CRA audit - 1309767 Ont Sept/23 HST audit

Sent: Tue 1/9/2024 4:00:11 PM (UTC-05:00)

HST refund order summary.xlsx 12.1 KB

September 2023 HST list.xlsx 17.2 KB

Hi Jas and Nikitia:

Please enter the HST received date in 130 Zoho. The received date is Jan 5, 2024 for all 3 months.
Please use the attached September 2023 List for Sept cars and for October and November please use the list Ping provided.

Thanks,
Michelle

From: Michelle Ralph
Sent: Friday, January 5, 2024 9:41 AM
To: Ping Hong <ping@techlantic.com>
Cc: Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>; June da Costa <june@techlantic.com>; Eric van Essen <eric@techlantic.com>; Wouter C <wouter@techlanticconsulting.com>
Subject: FW: CRA audit - 1309767 Ont Sept/23 HST audit

Good morning!

We received the refunds for Sept., Oct and Nov.
I will need to double check the list as September we only claimed the following vehicles:

S23963	20,800.00
S23965	19,630.00
S23968	16,900.00
S23970	11,570.00
S23971	20,514.00
S23974	26,260.00
S23986	5,896.67
S23995	7,150.00
	128,720.67

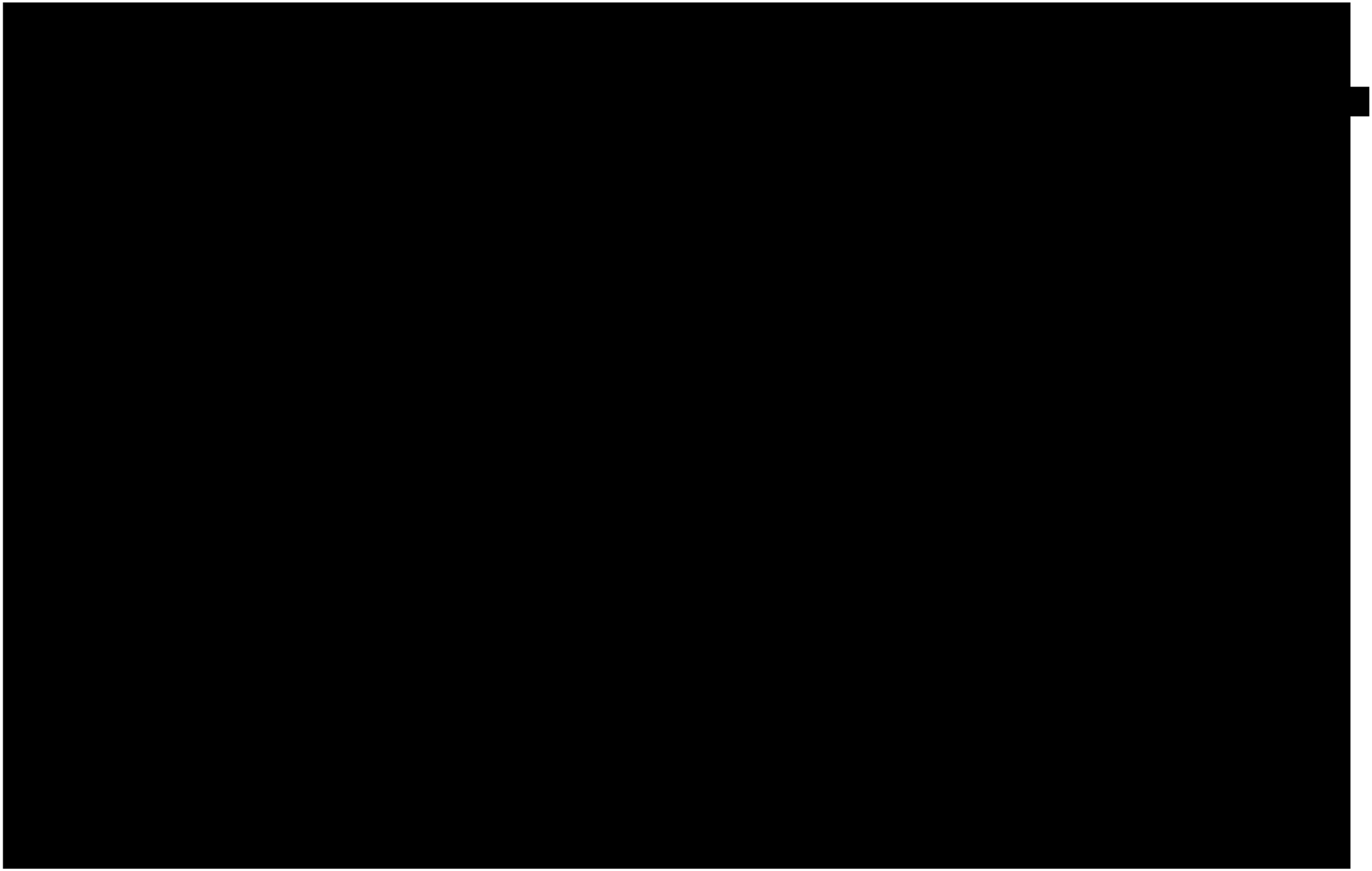
Please do not enter anything yet until we have access to the Translantic Zoho and I have to double check the vehicles on the list Ping provided.

Thanks,
Michelle

From: Ping Hong <ping@techlantic.com>
Sent: Thursday, December 21, 2023 12:20 PM
To: Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>
Cc: June da Costa <june@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>; Michelle Ralph <michelle@techlantic.com>; Eric van Essen <eric@techlantic.com>
Subject: RE: CRA audit - 1309767 Ont Sept/23 HST audit

Please leave them unchanged if Order company is not 130.

Ping



HST – June 2023 Email [F12484-000237070]

[redacted]

RE: June 2023 HST to PRG.xlsx **Sent:** Thur 7/27/2023 8:35:37 AM (UTC-04:00)

From: Michelle Ralph
To: Wouter Van Essen
CC: June da Costa, Eric van Essen

June 2023 HST to PRG.xlsx 11 KB
June 2023 HST claim 113.7 KB

[WARNING] EXTERNAL EMAIL [!]
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Wouter;

The attached is correct. I only list the vehicles that I have submitted to CRA.
If I hold back vehicles, due to the threshold, then they will be on the list to PRG next month.

Thanks,

7/17/23, 12:51 PM GST/HST NETFILE - Confirmation

Government of Canada / Gouvernement du Canada

Home > Canada Revenue Agency > Ready to file > GST/HST NETFILE

GST/HST NETFILE - confirmation

Your return has been successfully filed.

Your confirmation number is: 850992.

Business number:	**884179318 RT0001**
Business name:	**TECHLANTIC LTD.**
Reporting period:	**2023-06-01 to 2023-06-30**
Filing date:	**2023-07-17**

GST/HST return summary

Line 101	Sales and other revenue	$12,112,165.63
Line 135	Total GST/HST new housing rebates (included in line 108)	$0.00
Line 136	Deduction for pension rebate amount (included in line 108)	$0.00
Line 105	Total GST/HST and adjustments for period	$0.00
Line 108	Total ITCs and adjustments	$1,294,773.45
Line 109	Net tax	-$1,294,773.45
Line 110	Instalments and other annual filer payments	$0.00
Line 111	Rebates (note: rebate forms must be mailed separately)	$0.00
Line 205	GST/HST due on purchases of real property or purchases of emission allowances	$0.00
Line 405	Other GST/HST to be self-assessed	$0.00
Line 114	Refund claimed	$1,294,773.45
Line 115	Amount owing	$0.00

S23505/TXP12268	4JGFB4KB0LA157970	$	5,594.36
S23506/TXP12265	W1NYC7HJXNX457793	$	22,719.06
S23515/TXP12287	W1NYC7HJ0MX417091	$	19,270.58
S23535	WBA33EJ0XPCM37381	$	18,181.80
S23536	SAL1V9E79PA128721	$	14,718.17
S23541/TXP12373	WDCYC7HJ2KX300529	$	17,314.62
S23512/TXP12281	W1NYC7HJ8LX357320	$	17,722.58
S23538/TXP12372	WDCYC7HJ6KX302882	$	16,142.49
S23575/TXP12400	ZPBCA1ZL6KLA01712	$	22,510.80
S23576/TXP12401	ZPBCA1ZL7LLA09996	$	26,948.71
S23573	SLATV4C03NU213002	$	46,320.30
S23588/TXP12405	W1NYC7HJ8MX411796	$	17,999.64
S23579/TXP12402	WDCYC7HJ9LX339202	$	16,457.14
S23604/TXP12413	ZPBCA1ZL5LLA07308	$	21,688.29
S23603/TXP12412	SLATV8C02LU202397	$	41,125.50
S23578/TXP12403	W1NYC7HJXLX347971	$	17,082.00
S23574	2T2BAMCA3PC019123	$	6,493.50
S23615	SAL1L9FUXPA111694	$	11,861.46
S23616	SAL1L9FU9PA125019	$	12,121.20
S23614/TXP12416	4JGFD6BBXMA400238	$	8,384.58
S23474	1GT40FDA2NU100639	$	21,352.50
S23656	SALEWEEE3P2121683	$	11,601.72
S23688	SALEWEEE6P2109561	$	11,601.72
S23690	5UX23EM00P9R15412	$	11,515.14
S23636/TXP12418	2T2KGCEZ2PC030657	$	5,663.29
S23639	4JGFB5KB8PA960506	$	9,350.64
S23640	4JGFB5KB5PA966408	$	9,350.64
S23645	4JGFF5KE3PA973176	$	12,813.84
S23646	4JGFB5KB7PA961436	$	9,696.96
S23647	4JGFB5KB8PA959551	$	9,350.64
S23648	4JGFF5KE3PA982444	$	13,419.90
S23650	4JGFB5KB4PA965430	$	9,177.48
		$	515,551.24

Thank You

FTI CONSULTING

EXPERTS WITH IMPACT™

The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals. FTI Consulting, Inc., including its subsidiaries and affiliates, is a consulting firm and is not a certified public accounting firm or a law firm.

FTI Consulting is an independent global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities.

BB

This is Exhibit “BB” referred to in the Affidavit of Mark Dunn sworn May 17, 2024.

Commissioner for Taking Affidavits (or as may be)

FTI Consulting Inc.

Trade X Discussion with PRG

April 8, 2024

This is a draft provided ON A STRICTLY CONFIDENTIAL BASIS for discussion purposes only, and may be revised if and when new information is uncovered. We are not expressing any conclusions or giving any legal advice. The report is subject to litigation privilege, and subject to common interest privilege as applicable.

[redacted]

From: Eric van Essen <eric@techlantic.com>
Sent: Friday, October 27, 2023 8:47 AM
To: June da Costa <june@techlantic.com>
Cc: Wouter Van Essen <wouter@techlantic.com>; Michelle Ralph <michelle@techlantic.com>
Subject: Balance_Due_to_Purchasing_Company (81).xlsx

Hi June,

We need change all highlighted orders to have 130 as order company or change them so 130 purchases the vehicle/receivable back to justify the collections in 130. If they were purchased with Transcan, Transcan should be the purchasing company for 130. 130 should do all collections on them. Could be a mix of a few different options to make it easier for HST and deposit allocation.

You don't need to take immediate action, but please make a plan on how to accomplish this and what needs to be done and what the ramifications are for HST and deposits. It's also possible that if HST is already collected by Techlantic that we keep the transaction as is but 130 purchases the vehicle back from Techlantic at time of collections from the client. I would like to complete this before Oct month end.

Also, S24045 likely has something incorrect like purch company paid date as it doesn't make sense that NOBs is the purchasing company. Can you please coordinate the correction.

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 234 Mobile: +1-289-242-6182
www.techlantic.com

[redacted]

From: Wouter Van Essen <wouter@techlantic.com>
Sent: Friday, June 26, 2020 11:09 AM
To: June da Costa <june@techlantic.com>
Cc: Tom Van Essen <tom@techlantic.com>; Eric van Essen <eric@techlantic.com>; Robin Jones <robin@techlantic.com>; Damon Lyons <damon@techlantic.com>; Kate and Bartelt van Essen <kbvanessen@gmail.com>
Subject: Baird Aviation Inc.

Hi June,

I will do April 30, 2020 tax filing. Bartelt will sign.

We plan making the company active and need the following:

1. HST # (the company is not yet registered): 865093256RT0001. Effective May 26th. Year end Apr 30th
2. Name change to Neway Rentals Inc. Articles of Amendment to be submitted (in person or mail) to Ministry of Government Services. Cost is $150.00
3. Ownership change from Bartelt to Robin Done via Initial Return of Change Report – May 1/2020 effective date
4. Address per rental agreement provided by Damon. Done via Initial Return of Change Report – May 1/2020 effective date

[redacted]

[redacted]

Relativity Bates Reference:
F12484-000604679

Re: What is going on with these? **Sent:** Thur 9/15/2022 3:33:10 PM (UTC-04:00)

From: Tara Davidson <tara.davidson@tradexport.com>
Sent: September 15, 2022 10:21 AM
To: Eric van Essen <eric@techlantic.com>; Drew Donoghue <drew.donoghue@xpressfinancial.ca>; Tony Di Gioia <tony.digioia@xpressfinancial.ca>
Cc: Rumaisa Hanif <rumaisa.hanif@tradexport.com>; Isha Gupta <isha@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>
Subject: Re: What is going on with these?

These ones are a very edge case scenario and there is a complicated back story. Xpress double sold these units to TX Ops Canada and Techlantic. @Tony Di Gioia you will need to void the invoices to Techlantic and issue a credit.

Tara Davidson
Vice Pres[redacted]
Mobil[redacted]
Office[redacted]
Email[redacted]
Web[redacted]

These ones are a very edge case scenario and there is a complicated back story. Xpress double sold these units to TX Ops Canada and Techlantic. @Tony Di Gioia you will need to void the invoices to Techlantic and issue a credit.

From: Eric van Essen <eric@techlantic.com>
Sent: 14 September 2022 15:17
To: Drew Donoghue <drew.donoghue@xpressfinancial.ca>
Cc: Rumaisa Hanif <rumaisa.hanif@tradexport.com>; Tara Davidson <tara.davidson@tradexport.com>; Isha Gupta <isha@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>
Subject: What is going on with these?

[WARNING] EXTERNAL EMAIL [!]
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Drew,

Can you please help investigate the status of these 4 cars below. We paid for them a month ago and I was just talking with Rumaisa and they are not on her radar for requesting Man funding as they were pledged to Highcrest in June. It's possible they never should have been pledged to Highcrest but this is a good example of some process issues that make us resistant to increase the amount outstanding at this time.

If Rumaisa goes through the spreadsheet this morning and validates that TradeX has not received funds for any of the vehicles yet we are ok to use a little more funds. I also need to understand why vehicles in attached report are not marked as received yet. If you can still track that down would be much appreciated.

KMHLM4AGXNU355774
KMHLM4AG8NU308680
KMHLM4AG4NU247344
KMHLM4AG0NU319642

Thank you,

Eric van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1

Relativity Bates Reference:
F12484-000604679 (cont.)

Re: What is going on with these?

Sent: Thur 9/15/2022 3:33:10 PM (UTC-04:00)

From: Tara Davidson
To: Eric van Essen, June da Costa
CC: Sarah Maki, Rehnuma Mahjabeen, Andrew Tymko, Michelle Ralph, Isha Gupta, Jaskiran Binepal, Ping Hong, Wouter Van Essen

Unfortunately we can not do that, as it would be a breach of our agreement with HC. Leave this with me.

From: Eric van Essen <eric@techlantic.com>
Sent: Thursday, September 15, 2022 2:13:47 PM
To: June da Costa <june@techlantic.com>; Tara Davidson <tara.davidson@tradexport.com
Cc: Sarah Maki <sarah.maki@tradexport.com>; Rehnuma Mahjabeen <rehnuma.haque@t
Jaskiran Binepal <jaskiran@techlantic.com>; Ping Hong <ping@techlantic.com>; Wouter V
Subject: RE: What is going on with these?

[WARNING] EXTERNAL EMAIL [!]

I was just talking with Tara about this. She is looking for an alternative solution. They re
elsewhere instead of asking to reverse.

Tara, is it ok to proceed where TX Ops Indiana pays Techlantic when Man Group funcs them?

Unfortunately we can not do that, as it would be a breach of our agreement with HC. Leave this with me.

I was just talking with Tara about this. She is looking for an alternative solution. They really shouldn't have been on the Highcrest collateral list but they do want to reduce the Highcrest loan by that value and may look to reduce loan elsewhere instead of asking to reverse.

Tara, is it ok to proceed where TX Ops Indiana pays Techlantic when Man Group funds them?

Kind regards,

June da Costa, CPA, CGA
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1052 x 228; Fax: +1-905-465-3974
www.techlantic.com


711

[redacted]

[redacted]

Ryan,

If the funds TradeX has invested in Techlantic make sense to use somewhere else in the company, we can certainly talk about that. I didn't mean to sound like I'm ready to quit. I'm excited and proud to be part of TradeX and I'm of course keen to work to make sure it is as profitable as possible.

Having said that, although owned by TradeX, Techlantic is an independent company. It is not correct to pledge assets from one company for debt to another without doing the proper intercompany bookkeeping and involving the management team of that company for that decision.

The way we work with the purchasing companies is unique for a lot of reasons and I think it's in Techlantic and TradeX's best interest for it to continue. Our main concern is overall current assets being able to service payables and also prioritizing payables over loans but need to ensure things stay current. It should be a clear flow and there should never be a case where funds come in but don't go through the flow and are diverted elsewhere. We have already had a case with 4 vehicles that we purchased with one of the purchasing companies in August from Xpress Financial where Tara has told me that when the funds come in that TradeX will choose to pay Highcrest instead of pay for the vehicles. We need to address why this happened and how to prevent it and also do a check to make sure there aren't any other similar cases we aren't aware of. (I understand that there is some confusion on the pledged/loan value on some VINs leading to a shortfall but we need to be made aware immediately if this is the case so we can manage it together)

To move assets that TradeX has in Techlantic back, we need to figure out how to allow Techlantic to work at a higher leverage and free up cash to reduce loans from TradeX. I believe that is exactly what we are trying to do here and is also applicable for the HST receivable as that is required to stay on top of paying for the vehicles and can't be extracted from Techlantic. You are correct that

some of this can be done with intercompany accounting, but it can not be done without the coordination of the accounting team at Techlantic. If we put in a special funding request where Man makes exceptions on assets, we can make the decision to divert some of that to TradeX as a loan reduction. You need to allow us to be part of this decision and we ask that you allow us to have enough funds in Techlantic to be current on payables. You also need to work with us to increase the loan to Techlantic in the future if Techlantic is short working capital again. (Hopefully due to growth)

[redacted]

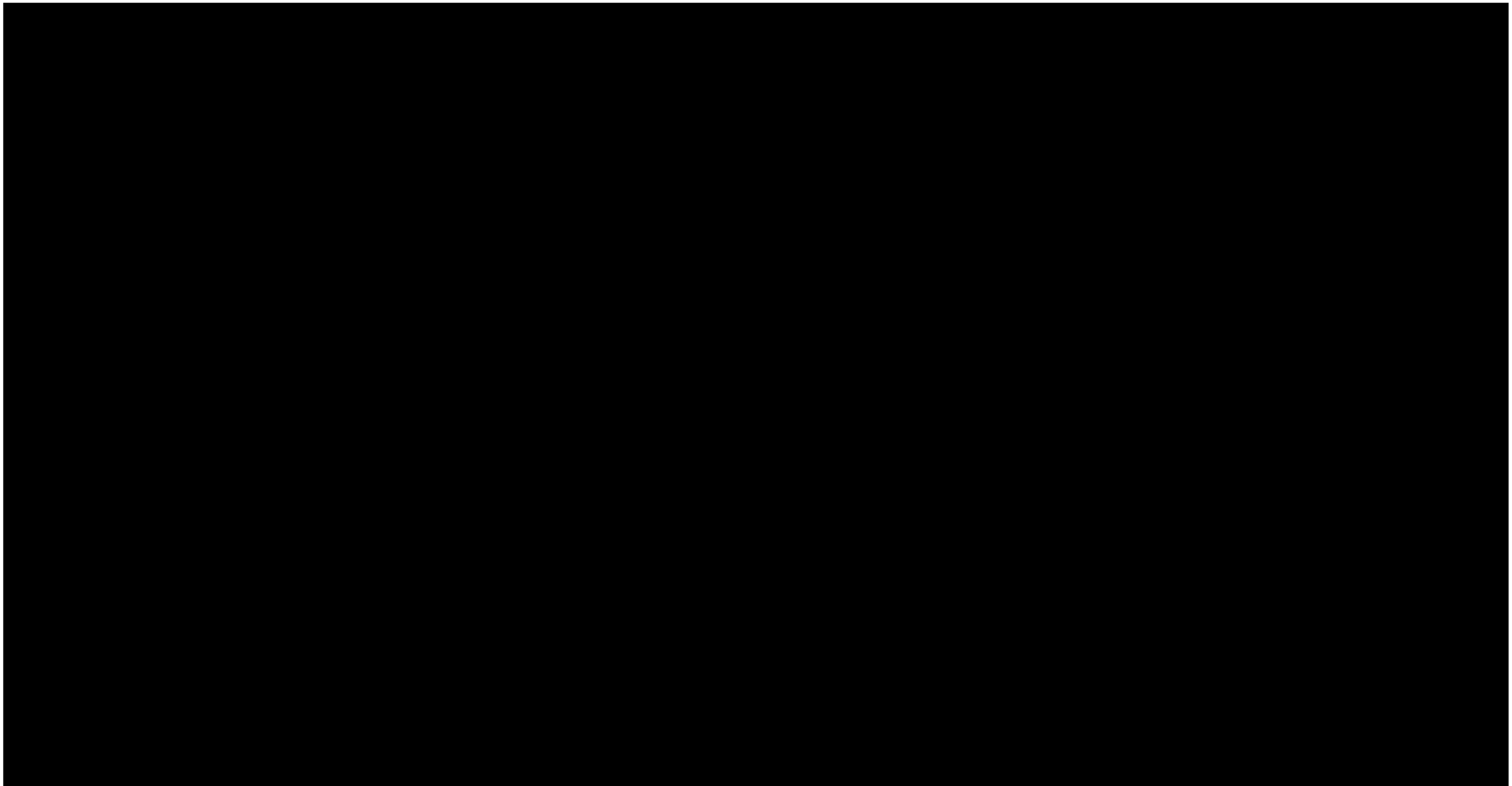
One other thing I wanted to add. I was looking through zoho for TradeX and it's possible I'm wrong but it looks like there is 1.37M USD of vehicles that is either pledged to funding partner or sold and collected from the clients that TX OPS Indiana has not paid Techlantic for and therefore Techlantic has not paid purchasing company. (VINs below) My father would consider this theft. Hopefully I'm wrong on this as I was waiting for Rumaisa and Rehnuma to calculate if there is a situation like this but they have not been able or willing to do that this week.

In addition to this, within Techlantic there is 1.8M CAD of vehicles due to the purchasing companies that are trade financed. (Double pledged) This is our own doing as we wanted to continue business for vehicles that we need to buy through Techlantic but pledging the vehicles elsewhere without the cash coming in to Techlantic to settle this imbalance would also fall under the theft category with my father. If you like, we can take vehicles in Techlantic inventory that are not pledged and pledge them but we haven't bothered doing this as we have been managing the company.

All of this needs to paid for as we organize the special draw from Man Group which is why we need to manage it. Please confirm you agree that we need to manage this properly as a special funding request from Techlantic. As I mentioned earlier, if we are doing a funding request without our agreement limitations, we should ask to include many that are financed by our purchasing companies to free up more cash in the purchasing companies to help business.

[redacted]

723



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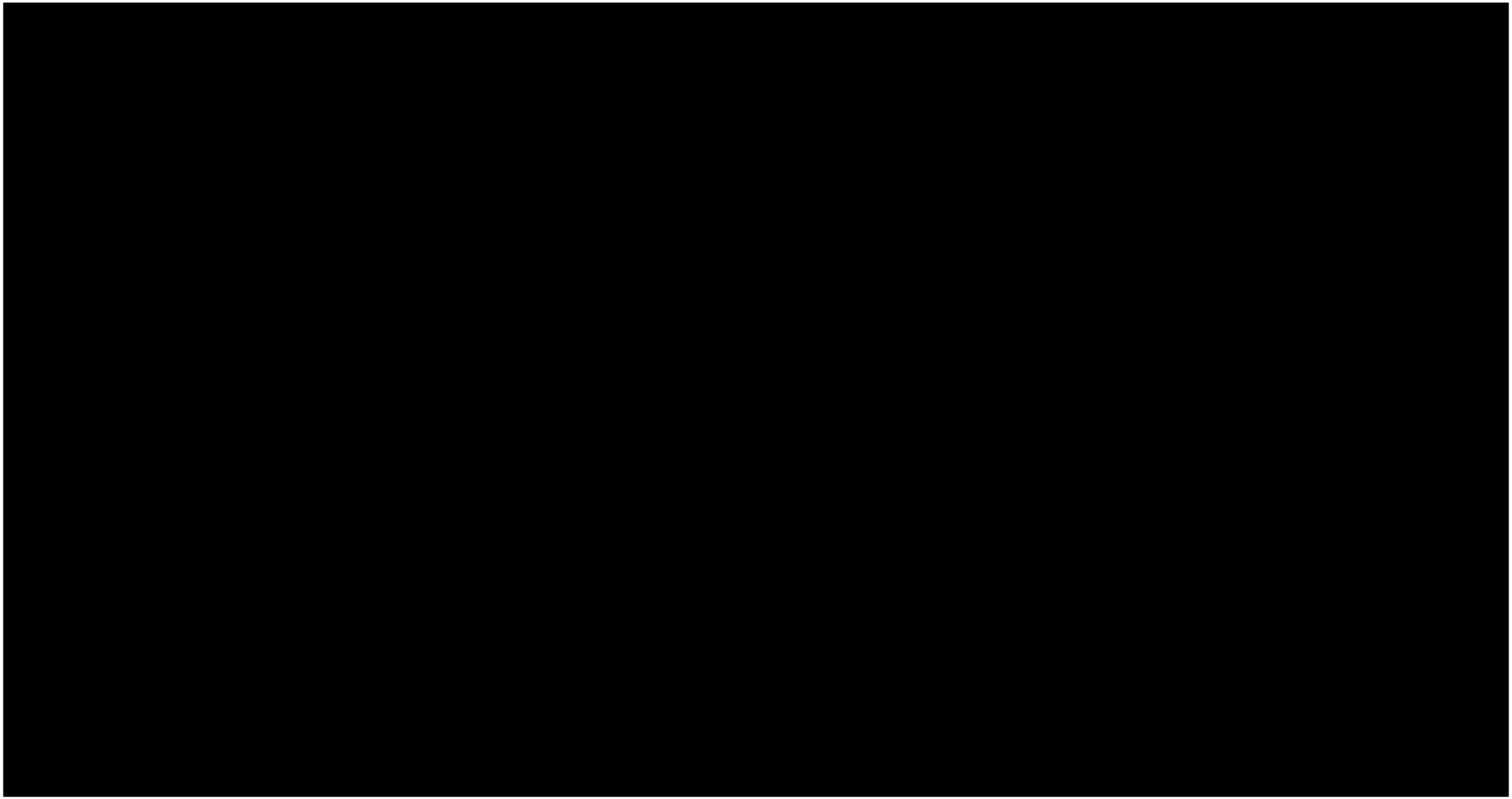
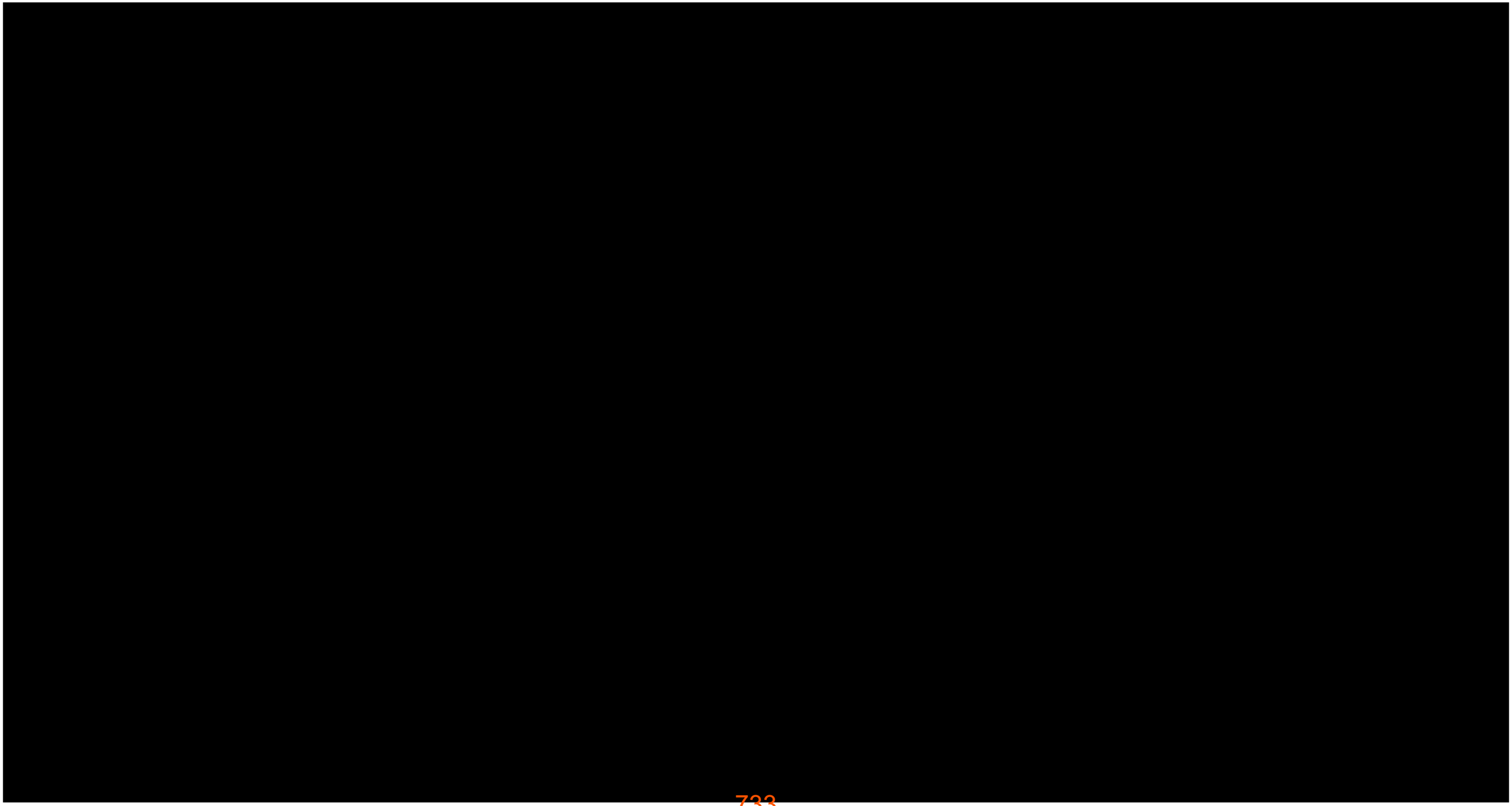


731



733

734

736

[redacted]

Account Cleaned	Type	Date	Name	Memo	Amount	Balance
1000 · Royal Bank CAD	Deposit	16/02/2023	Receiver General	Dec 2022 HST refund	731,015.09	745,841.00
2105A · GST/HST ITCS - Other	Deposit	13/01/2023	Receiver General	November 2022 HST refund	-877,965.36	1,187,739.62
2105A · GST/HST ITCS - Other	Deposit	16/02/2023	Receiver General	December 2022 HST refund	-731,015.09	1,053,610.22
2105A · GST/HST ITCS - Other	Deposit	24/02/2023	Receiver General	January 2023 HST refund	-446,549.85	732,133.96
2105A · GST/HST ITCS - Other	Deposit	23/03/2023	Receiver General	Feb 2023 HST refund	-693,329.03	533,625.45
2105A · GST/HST ITCS - Other	Deposit	01/05/2023	Receiver General	March 2023 HST return	-1,042,110.83	1,418,771.33
2105A · GST/HST ITCS - Other	Deposit	31/05/2023	Receiver General	April 2023 HST refund	-818,224.70	1,188,385.07
2105A · GST/HST ITCS - Other	Deposit	21/06/2023	Receiver General	May 2023 HST refund	-1,247,501.89	1,409,045.00
2105A · GST/HST ITCS - Other	Deposit	27/07/2023	Receiver General	June 2023 HST refund	-1,294,773.45	1,243,140.21
2105A · GST/HST ITCS - Other	Deposit	25/08/2023	Receiver General	July 2023 HST refund	-1,274,837.92	1,216,761.62
2105A · GST/HST ITCS - Other	Deposit	28/09/2023	Receiver General	August 2023 HST return	-1,295,311.80	562,909.60
2105A · GST/HST ITCS - Other	Deposit	17/10/2023	Receiver General	September 2023 HST refund	-769,199.36	163,770.90
2105A · GST/HST ITCS - Other	Deposit	02/11/2023	Receiver General	Refund of Oct 12th wire due to excess funds received	-26.00	175,777.68
2105A · GST/HST ITCS - Other	Deposit	27/11/2023	Receiver General	October 2023 HST return	-140,422.60	35,645.16
2105A · GST/HST ITCS - Other	Deposit	20/12/2023	Receiver General	Nov/2023 HST return	-35,986.22	6,001.91

RE: default Techlantic margin for international to TX OPS Indiana

Sent: Thur 3/23/2023 7:56:49 PM (UTC-04:00)

From: Wouter Van Essen

To: Eric van Essen, Ryan Davidson, Eric Gosselin

Trade X procurement - Techlantic
71.7 KB

[WARNING] EXTERNAL EMAIL [!]

DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Just two more (government) considerations:

a. CRA: Techlantic tends to get HST refunded without an audit as long as its claims stay under 1.3M HST refund per month. Trade-X has now a higher limit. We should balance who the exporter is and claims the HST when volume increases. If we totally amalgamate, we will be due for audits.
b. OMVIC: Techlantic has an OMVIC license. Please read attached email of Kevin who likes using Techlantic also for sales staff for export from Canada to the USA. The issue would however be that Techlantic should not be the exporters for all vehicles per a) above.

Wouter van Essen
Techlantic Ltd. | 700 Third Line, Oakville, Ontario, Canada, L6L 4B1
Office: +1-905-465-1062 x 226 Mobile: +1-416-414-1967
www.techlantic.com

739

[redacted]

FW: CRA audit - 1309767 Ont Sept/23 HST audit

Sent: Tue 1/9/2024 4:00:11 PM (UTC-05:00)

Ping

From: Michelle Ralph <michelle@techlantic.com>
Sent: Thursday, December 21, 2023 10:44 AM
To: Ping Hong <ping@techlantic.com>
Cc: June da Costa <june@techlantic.com>; Eric van Essen <eric@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>; Wouter Van Essen <wouter@techlantic.com>
Subject: Re: CRA audit - 1309767 Ont Sept/23 HST audit

Hi Ping

Please supply the submit dates for Jas and Nikitia.
I cannot find them on the sheet

Thanks
Michelle
Sent from my iPhone

> On 21 Dec 2023, at 10:35, Ping Hong <ping@techlantic.com> wrote:
>
> Hi Jas/Nikitia, please mark HST refund date per the excel when fund received.
>
> Ping
>
> **From:** Michelle Ralph <michelle@techlantic.com>
> **Sent:** Wednesday, December 20, 2023 4:43 PM
> **To:** June da Costa <june@techlantic.com>
> **Cc:** Wouter C <wouter@techlanticconsulting.com>; Eric van Essen <eric@smallbusinessfleetsolutions.com>; Ping Hong <ping@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>
> **Subject:** Re: CRA audit - 1309767 Ont Sept/23 HST audit
>
> Hi Ping:
>
> Can you please supply the list of Order numbers and the associated VINS for the October and November submissions?
> Please look up the CRA Netfile report in the HST folder and supply the submit dates as well.
> Please supply the list to Jas and Nikitia so they can enter the submit dates in Zoho.
>
> Thanks!
>
> Michelle
>
> Sent from my iPhone
>
> > On 20 Dec 2023, at 15:20, June da Costa <june@techlantic.com> wrote:
> >
> > Hello,
> >
> > I just spoke with John Park.
> > The additional documents I sent were fine.
> > He is closing the file for Sept/23.
> > A letter will be sent to the Otis Ave address.

[redacted]

FW: CRA audit - 1309767 Ont Sept/23 HST audit

Sent: Tue 1/9/2024 4:00:11 PM (UTC-05:00)

Hi Ping/ Michelle,

HST Submission Dates are updated in Zoho.
I have updated the sheet to show the dates we have in Zoho as 1 vehicle already had a submission date.
Please review the attached so we can correct Zoho as needed.

Thank you,

Nikitia Ramruthan
Techlantic Ltd. - Administrative Assistant
[redacted]
Mobile
Office +1 888.253.1623
Email nikitia.ramruthan@tradexport.com
Web https://www.tradexport.com

From: Michelle Ralph <michelle@techlantic.com>
Sent: Thursday, December 21, 2023 11:16 AM
To: Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>
Cc: June da Costa <june@techlantic.com>; Ping Hong <ping@techlantic.com>; Eric van Essen <eric@techlantic.com>
Subject: Fwd: CRA audit - 1309767 Ont Sept/23 HST audit

Hi Jaskiran and Nikitia:

I believe I supplied September already.
I think you just need to update October and November.

Thanks,
Michelle
Sent from my iPhone
Begin forwarded message:

> **From:** Ping Hong <ping@techlantic.com>
> **Date:** 21 December 2023 at 10:59:41 GMT-5
> **To:** Michelle Ralph <michelle@techlantic.com>
> **Cc:** June da Costa <june@techlantic.com>, Eric van Essen <eric@techlantic.com>, Jaskiran Binepal <jaskiran@techlantic.com>, Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>, Wouter Van Essen <wouter@techlantic.com>
> **Subject: RE: CRA audit - 1309767 Ont Sept/23 HST audit**
>
> HI Jas/Nikitia, please update submission date per Excel.
>
> Ping

[redacted]

FW: CRA audit - 1309767 Ont Sept/23 HST audit

Sent: Tue 1/9/2024 4:00:11 PM (UTC-05:00)

HST refund order summary.xlsx 12.1 KB

September 2023 HST list.xlsx 17.2 KB

Hi Jas and Nikitia:

Please enter the HST received date in 130 Zoho. The received date is Jan 5, 2024 for all 3 months.
Please use the attached September 2023 List for Sept cars and for October and November please use the list Ping provided.

Thanks,
Michelle

From: Michelle Ralph
Sent: Friday, January 5, 2024 9:41 AM
To: Ping Hong <ping@techlantic.com>
Cc: Jaskiran Binepal <jaskiran@techlantic.com>; Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>; June da Costa <june@techlantic.com>; Eric van Essen <eric@techlantic.com>; Wouter C <wouter@techlanticconsulting.com>
Subject: FW: CRA audit - 1309767 Ont Sept/23 HST audit

Good morning!

We received the refunds for Sept., Oct and Nov.
I will need to double check the list as September we only claimed the following vehicles:

S23963	20,800.00
S23965	19,630.00
S23968	16,900.00
S23970	11,570.00
S23971	20,514.00
S23974	26,260.00
S23986	5,896.67
S23995	7,150.00
	128,720.67

Please do not enter anything yet until we have access to the Translantic Zoho and I have to double check the vehicles on the list Ping provided.

Thanks,
Michelle

From: Ping Hong <ping@techlantic.com>
Sent: Thursday, December 21, 2023 12:20 PM
To: Nikitia Ramruthan <nikitia.ramruthan@techlantic.com>
Cc: June da Costa <june@techlantic.com>; Jaskiran Binepal <jaskiran@techlantic.com>; Michelle Ralph <michelle@techlantic.com>; Eric van Essen <eric@techlantic.com>
Subject: RE: CRA audit - 1309767 Ont Sept/23 HST audit

Please leave them unchanged if Order company is not 130.

Ping

[redacted]

RE: June 2023 HST to PRG.xlsx

Sent: Thur 7/27/2023 8:35:37 AM (UTC-04:00)

From: Michelle Ralph

To: Wouter Van Essen

CC: June da Costa, Eric van Essen

June 2023 HST to PRG.xlsx
11 KB

June 2023 HST claim
113.7 KB

[WARNING] EXTERNAL EMAIL [!]

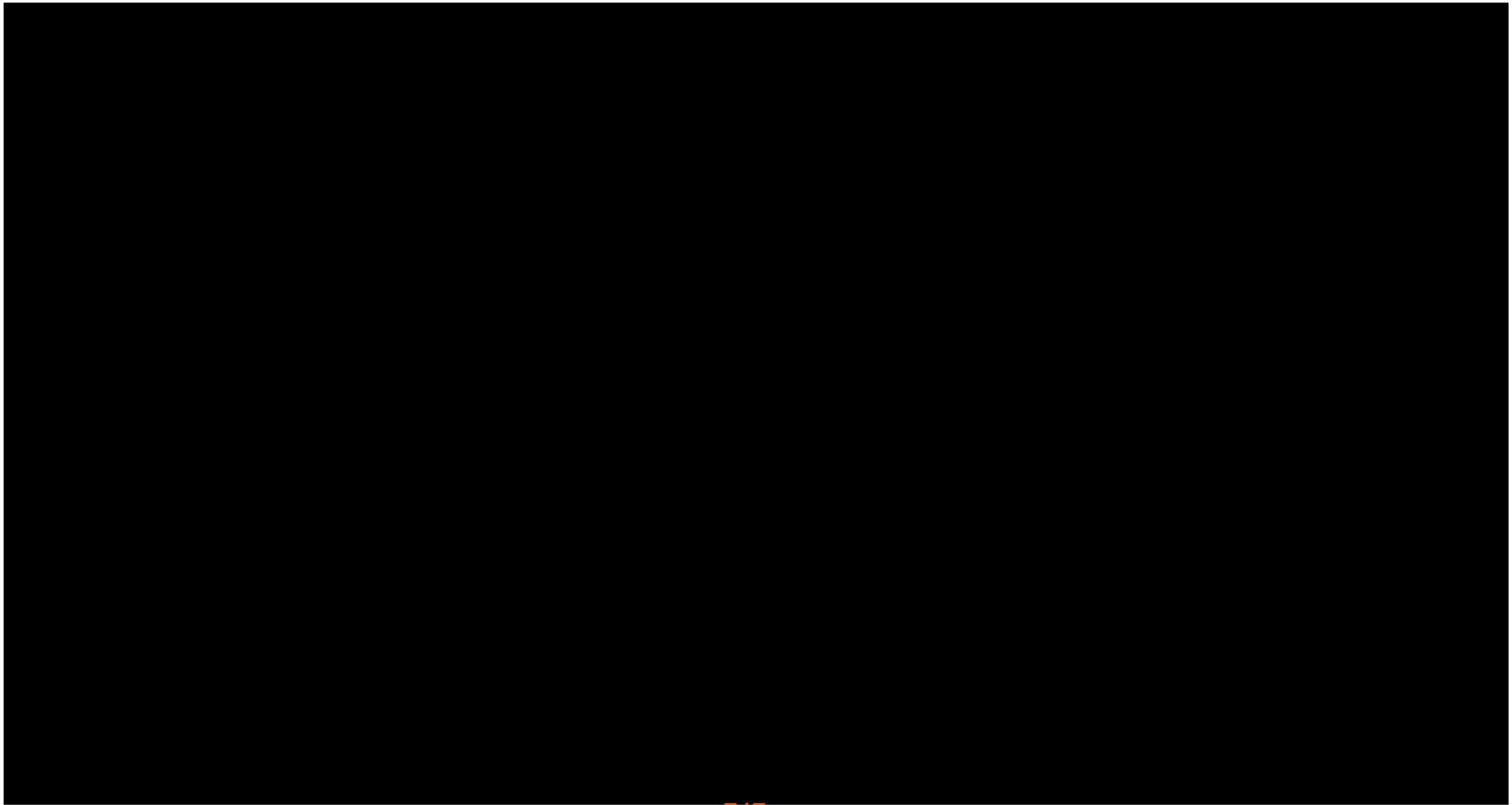
DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Hi Wouter;

The attached is correct. I only list the vehicles that I have submitted to CRA.
If I hold back vehicles, due to the threshold, then they will be on the list to PRG next month.

Thanks,

744



Thank You

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

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