

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF CANWEST GLOBAL  
COMMUNICATIONS CORP. AND THE OTHER  
APPLICANTS LISTED ON SCHEDULE "A"**

**TWENTY-THIRD REPORT OF FTI CONSULTING CANADA INC.  
IN ITS CAPACITY AS MONITOR**

**September 22, 2011**

**INTRODUCTION**

1. By Order of this Court dated October 6, 2009 (the "**Initial Order**"), Canwest Global Communications Corp. (now 2737469 Canada Inc.) ("**Canwest Global**") and certain of its subsidiaries listed in **Schedule "A"** hereto (collectively the "**Applicants**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the "**CCAA**"). The Initial Order also granted relief in respect of certain affiliated partnerships of the Applicants listed in **Schedule "B"** hereto (collectively, the "**Partnerships**", and together with the Applicants, the "**CMI Entities**") and appointed FTI Consulting Canada Inc. ("**FTI**") as monitor (the "**Monitor**") of the CMI Entities. The proceedings commenced by the CMI Entities under the CCAA will be referred to herein as the "**CCAA Proceedings**".

## GENERAL BACKGROUND

2. Canwest carried on business through a number of subsidiaries and until recently was Canada's largest publisher of English language daily and non-daily newspapers. Canwest directly or indirectly owned, operated and/or held substantial interests in free-to-air television stations and subscription-based specialty television channels, and websites in Canada.
3. Relief in the CCAA Proceedings was obtained by: Canwest Global, its principal operating subsidiary Canwest Media Inc. (now 4514866 Canada Inc.) ("CMI"), certain subsidiary corporations and partnerships of CMI that owned and operated Canwest's free-to-air television broadcast business and certain Canadian subscription-based specialty television channels and The National Post Company/La Publication National Post (now Legacy NPC Partnership).
4. On October 6, 2009, the CMI Entities obtained the Initial Order which provided for a stay of proceedings until November 5, 2009 (the "**Stay Period**").
5. The CMI Entities prepared and filed a consolidated plan of compromise, arrangement and reorganization accepted for filing by this Court on June 23, 2010, as restated on July 16, 2010, concerning, affecting and involving Canwest Global, CMI, Canwest Television GP Inc., Canwest Television Limited Partnership, Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Fox Sports World Canada Holdco Inc., Fox Sports World Canada Partnership, National Post Holdings Ltd. (now 4514858 Canada Inc.), The National Post Company/La Publication National Post, MBS Productions Inc.,

Yellow Card Productions Inc., Global Centre Inc. and 4501063 Canada Inc., as may be amended (the “**Plan**”).

6. On July 19, 2010, an excess of the majority in number and two-thirds in value of the Affected Creditors of the Plan Entities with Proven Voting Claims (as these terms are defined in the Plan) present and voting at the creditors’ meetings voted in favour of approving the Plan. On July 28, 2010, this Court granted an Order sanctioning the Plan (the “**Plan Sanction Order**”).
7. The Plan was successfully implemented on October 27, 2010. The Monitor delivered and filed with the Court its certificate required under the Plan stating, *inter alia*, that the Plan Implementation Date (as defined in the Plan) has occurred.
8. By Orders dated October 30, 2009, January 21, 2010, March 29, 2010, June 8, 2010, and September 8, 2010, the Stay Period was extended until November 5, 2010. Following the Plan Implementation Date, the Stay Period with respect to Canwest Television GP Inc., Canwest Television Limited Partnership, Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc., Fox Sports World Canada Holdco Inc., and Fox Sports World Canada Partnership (the “**Shaw Entities**”) was terminated. By Orders dated November 2, 2010 and May 3, 2011, the Stay Period with respect to the Remaining CMI Entities (as defined in the Plan) was extended until September 30, 2011.
9. Further background information regarding the CMI Entities and the CCAA Proceedings is provided in, *inter alia*, the affidavit of John E. Maguire sworn October 5, 2009, the Pre-filing Report of the Monitor dated October 5, 2009 (the “**Pre-filing Report**”) and

subsequent reports of the Monitor, copies of which have been posted on the Monitor's website for the CCAA Proceedings at <http://cfcanada.fticonsulting.com/cmi>.

## **TERMS OF REFERENCE**

10. In preparing this report, FTI has relied upon unaudited financial information of the CMI Entities, the CMI Entities' books and records, certain financial information prepared by, and discussions with, the CMI Entities' management. FTI has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information and accordingly expresses no opinion or other form of assurance on the information contained in this report.
11. Capitalized terms not defined in this report are used as defined in the Plan. Unless otherwise stated, all monetary amounts contained in this report are expressed in Canadian dollars.

## **PURPOSE OF THIS REPORT**

12. The purpose of this Twenty-Third Report of the Monitor is to inform and/or provide an update to this Honourable Court on:
  - (a) the status of the CCAA Proceedings;
  - (b) the Monitor's motion to extend the Stay Period until December 31, 2011;
  - (c) summary of the Monitor's activities since April 26, 2011;
  - (d) the Monitor's and its legal counsel's professional fees; and

- (e) the Monitor's recommendations.

## STATUS OF CCAA PROCEEDINGS

### *Plan Implementation Fund*

13. In accordance with the Plan Emergence Agreement (a copy of which is attached hereto as **Appendix "A"**), on the Plan Implementation Date, the Monitor set up six (interest bearing) accounts at the Bank of Nova Scotia for the following costs and expenses:
  - (a) Account 1 – Post-Filing Claims
  - (b) Account 2 – fees and expenses of the replacement administrator for the CH Plan
  - (c) Account 3 – fees and expenses of legal counsel to the CMI Entities' former directors and officers
  - (d) Account 4 – fees and expenses related to the wind-up of the Remaining Canwest Subsidiaries
  - (e) Account 5 – fees and expenses of the Monitor, its legal counsel and other advisors
  - (f) Account 6 – post-filing claims against the CMI Entities' former directors and officers, if any
  
14. Pursuant to the Plan and the Plan Emergence Agreement, if the amounts in these accounts are inadequate to pay the full amounts of the fees and expenses contemplated thereby, New Canwest and/or CTLP shall pay to the Monitor for the benefit of CMI the funds necessary to pay such amounts in full. In accordance with the Plan and the Plan

Emergency Agreement, any excess funds remaining in these accounts following payment of all such fees and expenses must be returned to the Plan Sponsor.

15. In accordance with the Plan Emergency Agreement, the Monitor is providing periodic updates to the Plan Sponsor with respect to activity in and balance of these accounts.

### *Implementation and Status of the Wind-up Strategy*

16. On or before the Plan Implementation Date, the CMI Entities commenced the wind-up of the various Canwest Subsidiaries in accordance with the Plan, the Plan Emergency Agreement and the Wind-Up Strategy (as defined in the Order dated September 27, 2010).

### Canadian Subsidiaries

17. The Monitor and its counsel have been engaged in correspondence with various Canadian federal and provincial government agencies with respect to dissolution of certain of the CMI Entities as contemplated by the Wind-Up Strategy. In addition, the Monitor commenced preparation of materials required to assign CMI into bankruptcy. The Monitor will provide updates with respect to such dissolutions and wind-up proceedings once they are completed.

### National Post Bankruptcies

18. As described in greater detail in the Twenty Second Report of the Monitor dated April 26, 2011, on October 28, 2010, FTI was appointed trustee in bankruptcy (the “**Trustee**”) of the bankrupt estates of Legacy NPC Partnership (“**Legacy**”) and 4514858 Canada Inc.

("4514858"). On January 24, 2010, in accordance with the Plan, the Trustee applied for and was granted a consolidation order in respect of the estates of Legacy and 4514858 (the "**Consolidation Order**"). The Trustee is continuing with its duties under the *Bankruptcy and Insolvency Act* (Canada), including determining a realization strategy with respect to the remaining assets of Legacy and 4514858 and performing a review of preferences, settlements and reviewable transactions.

### US Subsidiaries

19. On October 6, 2009, the Monitor applied for recognition of the CCAA Proceedings as "foreign main proceedings" in the United States Bankruptcy Court (Southern District of New York) pursuant to Chapter 15 of the United States Bankruptcy Code (the "**Code**"). On November 3, 2009, the Monitor obtained an Order granting formal recognition of the CCAA Proceedings as "foreign main proceedings" and a permanent injunction for the duration thereof.
20. On July 5, 2011, the Monitor obtained an order terminating proceedings commenced under the Code in the United States, without prejudice, pursuant to sections 350 and 1517(d) of the Code. A copy of the Order terminating the U.S. proceedings is attached hereto as **Appendix "B"**.

### Other Foreign Subsidiaries

21. *Barbados*. The Monitor continues to work with its Barbados advisors to file the necessary tax returns, memoranda of satisfaction, and articles of dissolution and requested clearance certificates to effect the wind-up of the Barbados Canwest

- subsidiaries. The Monitor's Barbados advisors are currently waiting for certain documents from government agencies and expect the wind-up process to be completed by the end of 2011.
22. *United Kingdom.* The wind-up of the U.K. Remaining Canwest Subsidiaries has been completed.
23. *Netherlands.* The wind-up of the Dutch Remaining Canwest Subsidiaries has been completed.
24. *Luxembourg.* Due to the corporate structure of the Remaining Canwest Subsidiaries, in order to complete the liquidation of the Luxembourg Remaining Canwest Subsidiaries, the wind up of the Dutch Remaining Canwest Subsidiaries had to be completed. The liquidation process with respect to the Luxembourg Remaining Canwest Subsidiaries has been commenced and a second meeting of shareholders will need to occur and a liquidation auditor will be appointed. A third and final general meeting will be held once the liquidator's report is finalized. This process is expected to be completed before the end of 2011.
25. *Ireland.* The Monitor's Irish advisors filed the necessary tax returns for the Irish Remaining Canwest Subsidiaries and a liquidator has been appointed with respect thereto. The Monitor expects to complete the wind-up process for the Irish Remaining Canwest Subsidiaries before the end of 2011.

***Status of the Claims Procedure***



26. On October 14, 2009, the CMI Entities obtained an Order (the “**Claims Procedure Order**”) establishing a claims procedure for the identification and quantification of certain claims against the CMI Entities and the CMI Entities’ Directors and Officers (the “**Claims Procedure**”). For reasons described in the Monitor’s Sixth Report, the Claims Procedure Order was amended by Order of Justice Pepall dated November 30, 2009. Copies of the Claims Procedure Order and the Order dated November 30, 2009 are available on the Monitor’s website for these proceedings.
27. The CMI Entities, with the assistance of the Monitor, have reviewed the claims of the CMI Creditors and have worked diligently to resolve these claims.
28. Pursuant to the Order dated September 27, 2010, after the Plan Implementation Date, the Monitor is to “*(a) be empowered and authorized to exercise all of the rights and powers of the CMI Entities under the Claims Procedure Order, including, without limitation, revise, reject, accept, settle and/or refer for adjudication Claims (as defined in the Claims Procedure Order) all without (i) seeking or obtaining the consent of the CMI Entities, the Chief Restructuring Advisor or any other Person, and (ii) consulting with the Chief Restructuring Advisor and the CMI Entities; and (b) take such further steps and seek such amendments to the Claims Procedure Order or additional orders as the Monitor considers necessary or appropriate in order to fully determine, resolve or deal with any Claims.*”
29. The Monitor has continued to resolve the remaining outstanding Claims in accordance with the Claims Procedure Order.

30. As reported in the Monitor's Twenty-Second Report, as at the date of that report, there remained one unresolved and unquantified "marker" Claim filed in the Claims Procedure to which the filing creditor did not ascribe dollar value, which precluded the Monitor from making distributions to the Ordinary Creditors. Also as reported in the Twenty-Second Report, the Monitor and its counsel have been engaged in extensive discussions with this creditor in order to quantify and resolve their claim.
31. Since the date of the Twenty-Second Report, the Monitor and its counsel continued their intensive efforts to resolve, or at least quantify, this remaining "marker" claim as expeditiously as reasonably possible. These efforts included, among other things, responding to numerous queries from the filing creditor regarding assets and liabilities of and transactions undertaken by the CMI Entities in the years preceding and following the commencement of the CCAA Proceedings that, in the view of the filing creditor, have impact on the magnitude of their claim and locating and producing for review voluminous amounts of information and documentation, the vast majority of which are not in the Monitor's possession, but are rather located in storage (together with over 1,000 boxes of other documents amassed by the CMI Entities during their corporate existence). The Monitor and its counsel are continuing to correspond and meet with representatives of this creditor on a regular and frequent basis with a view to resolving their "marker" claim as soon as possible.
32. The Monitor has confirmed the settlement of a claim of one of the CMI Entities' creditors who had previously asserted that the settlement with respect to her claim was not completed and was null and void.

33. The Monitor and its counsel have also reached an agreement in principle with respect to 48 additional claims pending finalization of the settlement documentation.
34. As at the date of this report, there remained 13 unresolved claims (including the “marker” claim described above). The Monitor and its counsel have engaged in discussions and correspondence with the Claims Officer appointed under the Claims Procedure Order and the creditors with the unresolved remaining claims to determine procedure and to schedule hearings for resolution of the remaining claims asserted against the CMI Entities.
35. The expected recoveries for the creditors of the CMI Entities have not varied materially from those previously reported by the Monitor.

#### ***Post-Filing Claims Procedure***

36. In accordance with the Plan Emergence Agreement, the Monitor implemented a Post-Filing Claims Procedure in order to identify and quantify Post-Filing Claims.
37. As at October 27, 2010 (the “**Post-Filing Claims Bar Date**”) the Monitor had received 10 claims that totalled approximately \$1.065 million dollars. The Monitor is reviewing these claims and is in discussions with these claimants.

#### ***Distributions to Creditors***

38. Under the Plan, the Monitor may set one or more Distribution Dates from time to time. The Monitor may not make any distributions to the Ordinary Creditors until all Unresolved Claims without a dollar value have been finally resolved for distribution

purposes. As described above, there remains one "marker" Claim filed in the Claims Procedure to which the filing creditor did not ascribe dollar value that remains unresolved and unquantified and the Monitor and its counsel are continuing to correspond and meet with representatives of this creditor on a regular and frequent basis with a view to resolving their "marker" claim as soon as possible.

39. The first distributions to Convenience Class Creditors occurred on February 7, 2011. In excess of 700 cheques were issued in the aggregate amount exceeding \$900,000. The Monitor has been working with former employees of CMI and Human Resources Development Canada to obtain clearance to make additional Convenience Class distributions (which clearance has now been obtained) and expects to make such distributions in October 2011.

***Remaining Assets of the CMI Entities***

40. Since the Plan Implementation Date, the Monitor has worked to realize and dispose of the remaining assets of the CMI Entities.
41. The Monitor has reached an agreement in principle with respect to the sale of the CMI Entities' oil and gas interests and is currently negotiating the transaction documents with the purchaser. The Monitor expects to bring a motion to approve same in the short term.
42. The Monitor also engaged in discussions with counterparty to a contract with CTLP which had reduced its account receivable owing to CTLP for certain pre-filing invoices by claiming application of set-off rights. The Monitor disagrees with the party's ability to claim set-off with respect to its debt to CTLP and may be bringing a motion for the

recovery of the outstanding accounts receivable shortly.

43. The Monitor continues to explore realization strategies with respect to the remaining assets of the CMI Entities.

#### **REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS**

44. As stated above, by Order dated May 3, 2011, the Stay Period with respect to the Remaining CMI Entities was extended until September 30, 2011.
45. The Monitor requires additional time to administer and attend to distributions to Affected Creditors, as well as attend to other post-plan implementation matters as outlined in the Plan, the Plan Emergence Agreement and CCAA. The continuation of the stay of proceedings is necessary to provide the stability needed during that time.
46. Accordingly, the Monitor is seeking an extension of the Stay Period with respect to the Remaining CMI Entities until, and including, December 31, 2011.
47. All of the operating assets were transferred to the Plan Sponsor and the Remaining CMI Entities have ceased operations on the Plan Implementation Date. Accordingly, they do not have liquidity requirements that need to be satisfied during the requested extension of the Stay Period. The costs of administering the Plan and the estates of the Remaining CMI Entities will be paid out of the Plan Implementation Fund in accordance with the Plan Emergence Agreement.
48. Based on the information presently available, the Monitor believes that creditors will not be materially prejudiced by an extension of the Stay Period to December 31, 2011.

49. The Monitor believes that the Remaining CMI Entities have acted, and are continuing to act, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
50. Accordingly, the Monitor respectfully recommends that the Stay Period with respect to the Remaining CMI Entities be extended until December 31, 2011.

### **MONITOR'S ACTIVITIES**

51. Since its appointment, the Monitor has been involved with numerous aspects of the CCAA Proceedings with a view to fulfilling its statutory and court-ordered duties and obligations, as well as assisting the CMI Entities and their stakeholders in addressing restructuring issues. The Monitor described some of the more significant matters it was involved in since commencement of the CCAA Proceedings in its Ninth Report, Fourteenth Report, Eighteenth Report and Twenty-Second Report. Since then, the more significant matters the Monitor has been involved and/or assisted with included, but are not limited to, the following:
  - (a) continuing to respond to enquiries of creditors and other interested parties;
  - (b) engaging in the resolution of the various claims asserted in the Claims Procedure, including restructuring period claims;
  - (c) providing information updates on the status of the Claims Procedure to interested parties and the Court;
  - (d) responding to enquiries from creditors regarding the Claims Procedure;

- (e) negotiating and completing the sale of certain non-critical assets of the CMI Entities;
- (f) implementing the wind-up of the Remaining Canwest Subsidiaries;
- (g) facilitating the preparation and review of tax returns for certain Remaining CMI Entities;
- (h) reviewing, investigating and realizing on the remaining assets of the CMI Entities;
- (i) updating the Plan Sponsor on the status of the CCAA Proceedings and the Monitor's activities pursuant to the Plan and the Plan Emergence Agreement; and
- (j) preparing and mailing distributions to the Convenience Class Creditors.

## **PROFESSIONAL FEES**

52. The Monitor and its counsel have maintained detailed records of their professional costs and time during the course of the CCAA Proceedings (as detailed in the Affidavit of Greg Watson sworn September 22, 2011 and the Affidavit of Daphne MacKenzie sworn September 22, 2011 (collectively, the "**Fee Affidavits**"). Copies of the Fee Affidavits are attached to this report as **Appendix "C"** and **"D"**).

## **RECOMMENDATION AND CONCLUSIONS**

53. The Monitor recommends that the Stay Period with respect to the Remaining CMI Entities be extended until December 31, 2011.

54. The Monitor also respectfully requests that the Court approve its Twenty-Third Report

and the activities described therein, as well as the fees and disbursements of the Monitor and its counsel (as particularized in the Fee Affidavits).

All of which is respectfully submitted this 22<sup>nd</sup> of September, 2011.

**FTI Consulting Canada Inc.,**

in its capacity as the Monitor of Canwest Global Communications Corp. and the other Applicants listed in Schedule "A" and Partnerships listed in Schedule "B"

Per

A handwritten signature in black ink, appearing to read 'Greg Watson', with a long horizontal flourish extending to the right.

Greg Watson  
Senior Managing Director



## **Schedule "A"**

### **The Applicants**

1. Canwest Global Communications Corp.
2. Canwest Media Inc.
3. 30109, LLC
4. 4501063 Canada Inc.
5. 4501071 Canada Inc.
6. Canwest Finance Inc./Financiere Canwest Inc.
7. Canwest Global Broadcasting Inc./Radiodiffusion Canwest Global Inc.
8. Canwest International Communications Inc.
9. Canwest International Distribution Limited
10. Canwest International Management Inc.
11. Canwest Irish Holdings (Barbados) Inc.
12. Canwest MediaWorks Turkish Holdings (Netherlands) B.V.
13. Canwest MediaWorks (US) Holdings Corp.
14. Canwest Television GP Inc.
15. CGS Debenture Holding (Netherlands) B.V.
16. CGS International Holdings (Netherlands) B.V.
17. CGS NZ Radio Shareholding (Netherlands) B.V.
18. CGS Shareholding (Netherlands) B.V.
19. Fox Sports World Canada Holdco Inc.
20. Global Centre Inc.
21. MBS Productions Inc.
22. Multisound Publishers Ltd.
23. National Post Holdings Ltd.
24. Western Communications Inc.
25. Yellow Card Productions Inc.

## **Schedule "B"**

### **Partnerships**

1. Canwest Television Limited Partnership
2. Fox Sports World Canada Partnership
3. The National Post Company/La Publication National Post

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# *APPENDIX "A"*

**PLAN EMERGENCY AGREEMENT**

**THIS AGREEMENT** made as of June 25, 2010

**BETWEEN:**

**Canwest Global Communications Corp. (“Canwest”)**

- and -

**Canwest Media Inc. (“CMI”)**

- and -

**Canwest Television GP Inc. for and on behalf of Canwest Television Limited Partnership (“CTLP”)**

- and -

**Shaw Communications Inc. (“Shaw”)**

- and -

**7509014 Canada Inc. (“New Canwest”)**

- and -

**7316712 Canada Inc.**, a corporation governed by the laws of Canada  
**(“7316712 Canada”)**

- and -

**FTI Consulting Canada Inc.**, in its capacity as Monitor of the CMI Entities and not in its personal or corporate capacity (the **“Monitor”**)

**RECITALS:**

- A. Canwest, CMI, Canwest Television Limited Partnership (“CTLP”), by its general partner Canwest Television GP Inc., certain other Canwest Subsidiaries, and certain holders of 8% senior subordinated notes due 2012 issued by CMI (collectively, the **“Consenting Noteholders”**), are parties to a support agreement dated October 5, 2009, as amended by an amendment agreement dated January 29, 2010, an amendment agreement dated February 11, 2010, an amendment agreement no. 3 dated April 15, 2010 and an amendment agreement no. 4 dated as of May 3, 2010 (the **“Noteholder Support Agreement”**) regarding the principal aspects of a recapitalization of the CMI Entities (the **“Recapitalization Transaction”**).
- B. Pursuant to the Noteholder Support Agreement and in furtherance of the Recapitalization Transaction, Canwest and certain of its subsidiaries, including CMI, (collectively, the

“CMI Entities”) filed for and received protection from their creditors under the *Companies’ Creditors Arrangement Act* (the “CCAA”) pursuant to an Initial Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made October 6, 2009.

- C. Shaw and Canwest are parties to a subscription agreement dated February 11, 2010, as amended May 3, 2010 (the “**Subscription Agreement**”) pursuant to which, subject to the terms and conditions thereof and the amended and restated term sheet attached as Schedule “A” thereto (the “**Amended and Restated Term Sheet**”), Shaw or its designated wholly-owned direct or indirect subsidiary has agreed to subscribe for, and Canwest, as restructured, or a newly incorporated company holding all of the properties and assets of Canwest, except for excluded assets and properties as may be agreed to by Canwest and Shaw, each acting reasonably (such restructured or newly incorporated company is referred to herein as “**Restructured Canwest**”), has agreed to issue shares of Restructured Canwest (collectively, the “**Subscription Transaction**”).
- D. The Amended and Restated Term Sheet contemplates that the Subscription Transaction may be effected under a Share Transaction (as defined therein), whereby Shaw and/or 7316712 Canada (collectively, and jointly and severally, the “**Plan Sponsor**”) will purchase all of the shares of New Canwest, a newly incorporated wholly-owned subsidiary of Canwest, and all of CMI’s equity and voting shares in CW Investments, all to be effected under a plan of compromise and arrangement under the CCAA (the “**Plan**”).
- E. Shaw, Canwest and the Consenting Noteholders are parties to a support agreement dated February 11, 2010, as amended May 3, 2010 (the “**Shaw Support Agreement**”), pursuant to which the Consenting Noteholders have agreed to support the Subscription Transaction subject to the terms and conditions contained therein and in the Noteholder Support Agreement.
- F. On June 23, 2010, the Applicants filed the Plan with the Court and are seeking approval of same by creditors and the Court in accordance with the CCAA.
- G. Pursuant to section 11 of the Amended and Restated Term Sheet, it is a condition of completion of the Subscription Transaction that Canwest, CMI and Shaw shall have entered into the Plan Emergence Agreement (as defined in section 11 of the Amended and Restated Term Sheet) on or prior to the date that is 23 days prior to the Meetings.
- H. Pursuant to section 6.3 of the Plan, it is a condition precedent to the implementation of the Plan that Canwest, CMI, the Plan Sponsor and the Monitor shall have entered into the Plan Emergence Agreement.
- I. In connection with the Plan and the transactions contemplated therein, Canwest, CMI, CTLP, New Canwest, the Plan Sponsor and the Monitor (collectively, the “**Parties**”) now wish to enter into this Agreement, which shall constitute the Plan Emergence Agreement as contemplated by the Amended and Restated Term Sheet and the Plan.

**THEREFORE**, in consideration of the mutual covenants and agreements of the Parties, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

### **1.1 Definitions**

All capitalized terms that are used and not defined in this Agreement (including in the Recitals) have the meanings given to them in the Plan. In addition, whenever used in this Agreement, the term “**Agreement**” means this Agreement, including the Recitals and all Schedules to this Agreement and any permitted amendments or restatements of this Agreement, and references to “**Article**”, “**Section**” or “**Schedule**” mean the specified Article, Section or Schedule of this Agreement.

### **1.2 Certain Rules of Interpretation**

In this Agreement:

- (a) **Consent** – Whenever a provision of this Agreement requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario. Each Party submits to the jurisdiction of the courts of the Province of Ontario in any action or proceeding arising out of or relating to this Agreement.
- (c) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (d) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (e) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (f) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (g) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, the provision shall, as to that jurisdiction, be ineffective only to the extent of the restriction, prohibition or unenforceability without invalidating the remaining

provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction, or without affecting its application to other Parties or circumstances.

- (h) **Statutory References** – A reference to a statute includes all regulations and rules made pursuant to the statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (i) **Time** – Time is of the essence in the performance of the Parties' respective obligations.
- (j) **Currency** – All references to dollar amounts or to the symbol \$ are references to Canadian dollars unless otherwise specified.

### 1.3 Paramountcy

In the event of any conflict or inconsistency between the terms, conditions and provisions of the Plan and of this Agreement, the terms, conditions and provisions of the Plan, together with the Sanction Order, shall govern and shall take precedence and priority.

### 1.4 Schedules

The Schedules listed below form an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 2.1	Non-Continuing Management Employees Schedule
Schedule 2.2	Non-Continuing Material Agreements Schedule
Schedule 5.1	PIF Schedule

## ARTICLE 2 DISCLAIMER OF AGREEMENTS

### 2.1 Continuing Management Employees

Section 11(ii) of the Amended and Restated Term Sheet referenced in the Amendment Agreement to the Subscription Agreement dated May 3, 2010 between Shaw and Canwest amending the Subscription Agreement dated February 11, 2010, refers to a list of all existing management employees of Canwest and the Canwest Subsidiaries who will not remain as employees of New Canwest or the CTLP Plan Entities following the Effective Time. That list is attached hereto as Schedule 2.1 (the "**Non-Continuing Management Employee Schedule**").

On or before the Plan Implementation Date, the CMI Entities will terminate the employment of the employees listed on the April 28 Severance Schedule. The termination and severance



obligations, together with accrued and unpaid vacation pay, salary and wages with respect to such employees will be paid in accordance with Section 5.1 hereof.

For greater certainty, any active or inactive employee of any CMI Entity (other than a CTLP Group Entity), including any such employees on maternity leave, paternity leave or disability leave or other such absence will not be employees of New Canwest or the CTLP Plan Entities following the Effective Time.

## 2.2 Non-Continuing Material Agreements

- (a) Schedule 2.2 (the “**Non-Continuing Material Agreements Schedule**”) sets forth a complete list of all material agreements (the “**Non-Continuing Material Agreements**”) to which any of the Plan Entities is a party or are parties that are to be disclaimed, subject to the consent of the Monitor, within the timeframe set out in the Claims Procedure Order as amended by the Meeting Order.
- (b) The Parties have agreed that the Non-Continuing Material Agreements Schedule shall not be attached to this Agreement, but shall be delivered to the Monitor under separate cover due to the confidential nature of the information contained therein. The Monitor shall hold the Non-Continuing Material Agreements Schedule on a confidential basis until after notice of disclaimer has been given to the applicable counterparty.
- (c) On or before the day that is twenty three (23) days before the date of the Meetings as scheduled in the Meeting Order, Canwest, CMI or the CTLP Group Entities, as applicable, shall notify all counterparties to such Non-Continuing Material Agreements of the proposed disclaimer of such Non-Continuing Material Agreements, in accordance with section 32(1) of the CCAA within the timeframe set out in the Claims Procedure Order as amended by the Meeting Order and at the same time shall deliver to each of such counterparties a CMI Notice of Claim, together with the applicable CMI Claims Package.

## 2.3 Restructuring Period Claims

Any Claims arising as a result of the disclaimer or renegotiation of the Non-Continuing Material Agreements set out in the Non-Continuing Material Agreements Schedule shall constitute Restructuring Period Claims, unless such Claims constitute Unaffected Claims under paragraphs (e) or (f) of the definition of Unaffected Claims set out in section 1.1 of the Plan.

# ARTICLE 3 PAYMENTS PRIOR TO PLAN IMPLEMENTATION DATE

## 3.1 Cash Management

Effective as of the Plan Implementation Date, the cash management services provided by The Bank of Nova Scotia (“BNS”) to Canwest and the Canwest Subsidiaries will be terminated and new arrangements will be entered into by Canwest and/or any Canwest Subsidiary other than the CTLP Group Entities (the “**Remaining Canwest Entities**”) after the Plan Implementation Date

on terms to be agreed prior to the Plan Implementation Date among and satisfactory to the Remaining Canwest Entities and BNS. Prior to the Plan Implementation Date, New Canwest and the CTLP Group Entities shall establish their own cash management system. All potential liabilities under the existing cash management system shall be dealt with in a manner agreeable to the parties and BNS and provided for in the Plan Implementation Fund.

### **3.2 CIT Facility**

On the day that is one (1) Business Day prior to the Plan Implementation Date, all “cash sweeps” under the CIT Facility and the CIT Credit Agreement shall cease to be effective as of the close of business on such date. Claims of CIBC Asset-Based Lending (formerly, CIT Business Credit Canada Inc. (“CIT”)) under the CIT Credit Agreement and the CIT Facility shall be provided for in the PIF Schedule (as hereinafter defined) and paid in accordance with this Agreement and the Plan.

### **3.3 CH Plan Settlement Amount**

Prior to remitting the Cash to the Monitor to establish the Plan Implementation Fund as set out in Section 5.1, CTLP shall hold back from cash in its accounts an amount equal to the CH Plan Settlement Amount, on the day that is one (1) Business Day prior to the Plan Implementation Date. The CH Plan Settlement Amount shall be distributed by CTLP pursuant to the Plan on the Plan Implementation Date.

### **3.4 Continuing Payment of Professionals**

In furtherance of the Initial Order and this Agreement, the CMI Entities shall continue to pay up to and including the Plan Implementation Date (a) legal counsel and other advisors to the CMI Entities and other Canwest Subsidiaries, (b) the Monitor and its legal counsel, (c) legal counsel to the Ad Hoc Committee, (d) legal counsel and advisors to the Special Committee, (e) legal counsel to the Directors and Officers, (f) Houlihan Lokey Howard & Zukin Capital Inc. (“**Houlihan Lokey**”), and (g) Stonecrest Capital Inc. in accordance with existing practice and shall endeavour to have all such professionals’ accounts current so that as of the Plan Implementation Date such professionals are current to the date which is five (5) Business Days prior to the Plan Implementation Date.

Following execution of this Agreement and prior to the Plan Implementation Date, the CMI Entities shall request estimates of any outstanding fees and disbursements and the prospective fees and disbursements of such professionals for the period up to and including the Plan Implementation Date. These estimates shall then be incorporated in Section 1 of the PIF Schedule (as hereinafter defined) (a form of which will be attached hereto as Schedule 5.1 on the execution of this Agreement and will be replaced on or before the Plan Implementation Date with the PIF Schedule containing the estimates of any outstanding fees and disbursements and prospective fees and disbursements to the Plan Implementation Date).

**ARTICLE 4  
POST EMERGENCY ACTIVITIES**

**4.1 Retention of Legal Counsel and Advisors by the Monitor**

Following the Plan Implementation Date, the Monitor may, in its discretion, retain or continue to retain the services of legal counsel and such other advisors as it deems reasonable and may retain the services of any former Employees (excluding any former Employee who New Canwest or any of the CTLP Group Entities or CWI Group Entities have retained through employment or contract) or any other Person on an independent contract basis to assist the Monitor in performing its obligations under this Agreement, the Plan, the Sanction Order and the CCAA.

**4.2 Resolution of Unaffected Claims**

The Monitor shall determine and pay, on behalf of the CMI Entities, any unpaid Unaffected Claims (other than those claims described in subparagraphs (h), (i), (n) and (o) of the definition of Unaffected Claims under the Plan) outstanding after the Plan Implementation Date pursuant to this Agreement and the Plan.

Notwithstanding the foregoing, the Monitor shall determine and pay, in consultation with counsel to the Directors and Officers on behalf of the CMI Entities, from monies funded to the Monitor and deposited into Account 6 referred to in the PIF Schedule pursuant to Section 5.10 of this Agreement:

- a) any claims against the Directors and Officers (other than those claims described in sub-paragraphs (h) and (i) of the definition of Unaffected Claims under the Plan) that (a) arose after the Filing Date, (b) remain outstanding as at the Plan Implementation Date, and (c) are claims which would be covered by the indemnity provided by paragraph 21 in the Initial Order; and
- b) any claims against or liabilities of Directors and Officers (other than those claims described in sub-paragraphs (h) and (i) of the definition of Unaffected Claims under the Plan) incurred after the Plan Implementation Date if such Directors and Officers remain in office to facilitate the bankruptcy under the BIA, a liquidation, winding-up or dissolution of any Remaining Canwest Entities as provided for in section 4.4 hereof, provided that such claims would have otherwise been covered by the indemnity provided by paragraph 21 in the Initial Order if such indemnity applied.

The claims referred to in sub-paragraphs (a) and (b) above will be referred to collectively as the “**Post-Filing D&O Insured Claims**”.

**4.3 Resolution of Unresolved Claims**

Following the Plan Implementation Date, the Monitor shall complete the resolution of the Unresolved Claims of Affected Creditors in accordance with the Claims Procedure Order, the Meeting Order and the Plan and complete any remaining distributions to Affected Creditors holding Proven Distribution Claims pursuant to the Plan.

#### **4.4 Bankruptcies and Liquidations**

Following the Plan Implementation Date the Monitor may, in its discretion, assign into bankruptcy under the BIA or effect a liquidation, winding-up or dissolution of any Remaining Canwest Entities.

#### **4.5 Access to Past Employees and Records**

- (a) Following the Plan Implementation Date, New Canwest and CTLP shall make available to the Monitor on a reasonable basis up to five (5) management or other employees of New Canwest or the CTLP Group Entities, to be agreed upon between the Monitor and the Plan Sponsor in a side letter, in order to assist the Monitor in carrying out its duties as set forth in this Agreement, the Plan and the Sanction Order (including, for greater certainty, the determination, resolution, litigation and/or settlement of Unresolved Claims of Affected Creditors and the bankruptcy of any Remaining Canwest Entities) until the discharge of the Monitor.
- (b) Following the Plan Implementation Date, New Canwest and CTLP shall make available to the Monitor on a reasonable basis the books and records of the CTLP Plan Entities and CW Investments in its possession.
- (c) Following the Plan Implementation Date, the Monitor shall make available to New Canwest on a reasonable basis the books and records of the Remaining Canwest Entities in its possession until the discharge of the Monitor.

#### **4.6 Reporting**

Following the Plan Implementation Date, the Monitor shall periodically (and at least once every three months) update Plan Sponsor and counsel to the Directors and Officers on the status of its activities pursuant to this Agreement and the amounts remaining in the Plan Implementation Fund.

#### **4.7 Obligation to Pay Only to the Extent Funds are Available**

Notwithstanding any other provision of this Agreement, and without in any way limiting the protections for the Monitor set forth in Section 4.8 of this Agreement, the Initial Order, the Plan or the CCAA, the Monitor shall have no obligation to make any payment contemplated by this Agreement, and nothing in this Agreement shall be construed as obligating the Monitor to make any such payment, unless and until the Monitor is in receipt of funds adequate to effect any such payment in full in the applicable Account (as defined below) referred to in the PIF Schedule. Funds adequate to pay such amounts will be deposited into the appropriate Accounts referenced in the PIF Schedule in accordance with the provisions of this Agreement.

#### **4.8 Monitor shall have no Personal Liability**

The Monitor shall not incur any liability whatsoever, including in respect of (a) any amount paid, required to be paid or not paid from the Plan Implementation Fund pursuant to this Agreement or the Plan, (b) any costs or expenses incurred in connection with, in relation to or as a result of any payment made, required to be made or not made from the Plan Implementation Fund, or (c) any

deficiency in the Plan Implementation Fund or any specific Account referenced in the PIF Schedule.

#### **4.9 Parties may seek Directions from Court**

Any party to this Agreement and counsel for the Directors and Officers may at any time apply to Court for advice and directions from the Court in respect of any matter arising from or under this Agreement or the discharge of their obligations under this Agreement.

### **ARTICLE 5 PAYMENTS ON OR AFTER THE PLAN IMPLEMENTATION DATE**

#### **5.1 Payment of Closing Costs**

On the Plan Implementation Date, the Monitor shall pay from the Cash, on behalf of the CMI Entities, or, in respect of the items referred to in sub-paragraphs q) and t) below may authorize and cause the CMI Entities to pay, the following costs and obligations in the amounts described below and detailed in Section 1 of Schedule 5.1 (which shall be finalized prior to the Plan Implementation Date and a form of which will be attached as Schedule 5.1 on the execution of this Agreement and until the date such schedule is finalized) (the “**PIF Schedule**”). To the extent that the amount of the Cash on the Plan Implementation Date is less than the aggregate amount required to pay the following obligations in full as set out in the PIF Schedule, then New Canwest and/or CTLP shall fund the difference on or before the Plan Implementation Date (as a payment to the Monitor for the benefit of CMI) necessary so that the following obligations are paid in full as set out in Section 1 of the PIF Schedule:

- a) the relevant government entities in respect of the amounts referred to in sections 6(3), 6(5) and 6(6) of the CCAA;
- b) Osler, Hoskin & Harcourt LLP as primary legal counsel to the CMI Entities in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- c) other legal counsel and professional advisors to the CMI Entities (to be listed in a schedule to be provided to New Canwest and the Plan Sponsor by the CMI Entities prior to Plan Implementation Date) in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- d) PricewaterhouseCoopers Canada LLP in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- e) KPMG LLP in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- f) the Monitor in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;

- g) Stikeman Elliott LLP as legal counsel to the Monitor in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- h) Goodmans LLP as legal counsel to the Ad Hoc Committee in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- i) Ogilvy Renault LLP as legal counsel to the Special Committee in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- j) Lenczner Slaght Royce Smith Griffin LLP as legal counsel to the Directors and Officers in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- k) Cavalluzzo Hayes Shilton McIntyre & Cornish LLP as Retiree Representative Counsel in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- l) Stonecrest Capital Inc. as the Chief Restructuring Advisor in respect of all payments due and unpaid under the Stonecrest Engagement Letter;
- m) Genuity Capital Markets in respect of all payments due and unpaid under the Genuity Engagement Letter;
- n) RBC in respect of all payments due and unpaid under the RBC Engagement Letter;
- o) Houlihan Lokey in respect of all payments due and unpaid under the Houlihan Engagement Letter;
- p) The Bank of New York Mellon, in its capacity as trustee under the Indenture in respect of all fees payable and unpaid to the trustee under the Indenture;
- q) the KERP Participants the amounts payable under the KERPs less any statutory source deductions which shall be remitted to the applicable governmental authority, on behalf of the CMI Entities, by the Monitor. The amounts paid to the KERP Participants under this subsection shall be paid in respect of Claims arising from or under the KERPs and shall not affect in any way any other monetary amounts to which the KERP Participants may be entitled from the KERP Trust or any non-monetary benefits or items to which the KERP Participants may be entitled pursuant to the KERP agreements;
- r) BNS in respect of potential liabilities under the existing cash management system arising from or under the cash management facility for the provision of cash management services to the CMI Entities;

- s) CIT in respect of any amounts or obligations outstanding under the CIT Facility;
- t) the amounts payable to those employees identified on the April 28 Severance Schedule in respect of the termination and severance obligations set forth on the April 28 Severance Schedule together with the accrued and unpaid wages, salary and vacation pay less any statutory source deductions which shall be remitted, on behalf of the CMI Entities, by the Monitor;
- u) the Fireworks Trustee in Bankruptcy in respect of professional fees and disbursements incurred and unpaid for the period to and including the Plan Implementation Date;
- v) any accrued and unpaid compensation to the Directors;
- w) Shaw in respect of the expense reimbursement obligation pursuant to Section 9.2 of the Subscription Agreement; and
- x) the Transfer Agent in respect of its fees, costs and disbursements incurred to effect the issuance and subsequent cancellation of the Canwest New Preferred Shares as contemplated by the Plan.

The foregoing payments shall be paid by way of certified cheque, wire transfer or direct deposit. Any certified cheques effecting payment pursuant to sub-sections (q) and (t) hereof shall be sent by registered mail to the last known address for such Persons.

## **5.2 Establishment of the Plan Implementation Fund**

On the Plan Implementation Date, after the payment of the obligations set forth in Section 5.1 as set out in Section 1 of the PIF Schedule, the Plan Entities shall pay to the Monitor from any remaining Cash, the amount necessary to fund the Plan Implementation Fund as set out in the PIF Schedule. To the extent that the remaining Cash is inadequate to fully fund the requirements set forth in the PIF Schedule (including the inclusion of a contingency fund to secure the payment of the fees, disbursements, and costs of the Monitor, and those of its legal and other advisors as provided for in section 4.1 hereof) then New Canwest and/or CTLP shall pay to the Monitor the amount of any difference (as a payment to the Monitor for the benefit of CMI) which shall be deposited by the Monitor in the Plan Implementation Fund. To the extent that as of the Plan Implementation Date the amount of Cash is greater than the amount needed to fully fund the requirements set forth in the PIF Schedule, then the excess amount of remaining Cash after fully funding the Plan Implementation Fund shall be paid to New Canwest.

The Monitor shall deposit the amounts received pursuant to this Section 5.2 into one or more accounts in accordance with the PIF Schedule (the “**Accounts**”) and such amounts together shall constitute the Plan Implementation Fund.

### **5.3 Additional Deposits into the Fund**

The following amounts shall be paid to the Monitor from time to time and shall be deposited into Account 5 referenced in Section 2 of the PIF Schedule:

- (a) the net proceeds of sale realized from the sale of the Winnipeg Condo;
- (b) any and all dividends, distributions or other amounts payable to a Plan Entity (other than the CTLP Plan Entities) from any estate in bankruptcy, liquidation, winding up or dissolution of any Remaining Canwest Entity;
- (c) any amounts in respect of refunds of any Taxes payable to the Plan Entities other than the CTLP Plan Entities, National Post Holdings and National Post;
- (d) any net proceeds of realization from any assets or property of any of the Remaining Canwest Entities other than National Post Holdings and National Post; and
- (e) all Undeliverable Distributions from the Ordinary Creditors Pool or the Convenience Class Pool as contemplated in the Plan.

### **5.4 Plan Emergence Cost Schedule**

Prior to the Plan Implementation Date, the CMI Entities, the Plan Sponsor, New Canwest and the Monitor shall agree to and finalize the PIF Schedule (which shall be finalized prior to the Plan Implementation Date and a form of which will be attached as Schedule 5.1 between the date of the execution of this Agreement and the date such schedule is finalized).

### **5.5 Payment of Post-Filing Claims**

The Monitor shall conduct the process approved in the Sanction Order to solicit, identify and quantify Post-Filing Claims (other than Intercompany Claims) which are not assumed by New Canwest or any of the CTLP Plan Entities pursuant to the Plan. Following the Post-Filing Claims Bar Date (as defined in the Sanction Order) and the determination or resolution of all filed claims, the Monitor shall pay to each Post-Filing Creditor (to be defined in the Sanction Order in a manner acceptable to the parties) holding a Proven Post-Filing Claim (to be defined in the Sanction Order in a manner acceptable to the parties) the amount of its Proven Post-Filing Claim from Account 1 referred to in Section 2 of the PIF Schedule.

To the extent that the amount in Account 1 referred to in Section 2 of the PIF Schedule is inadequate to pay the full amount of all Proven Post-Filing Claims then New Canwest and/or CTLP shall pay to the Monitor for the benefit of CMI the funds necessary to pay such claims in full and such funds shall be deposited into Account 1 referred to in Section [2] of the PIF Schedule. If the payments contemplated in this Section [5.5] do not exhaust the amount held by the Monitor in Account 1 referred to in Section 2 of the PIF Schedule, then the Monitor shall return such excess funds to New Canwest.



## **5.6 Payment of Fees and Expenses of the Replacement Administrator**

After the Plan Implementation Date, the Monitor shall pay by way of certified cheque or wire transfer (in accordance with wire transfer instructions provided in writing by such Person to the Monitor) on behalf of CTLP to the replacement administrator for the CH Plan appointed by the Superintendent of Financial Institutions in respect of its fees and expenses incurred as contemplated in Section 5.3 of the Plan the amount held by the Monitor in Account 2 referenced in Section 2 of the PIF Schedule. For great certainty, the fees and expenses of the replacement administrator shall not include fees and expenses for the provision of services in relation to the administration of the CH Plan or the investment of the assets of the CH Plan where such fees and expenses have, in the normal course, been paid from the assets of the CH Plan, including fees payable to the CH Plan Trustee, the investment manager in respect of CH Plan assets, the actuary for the CH Plan and any pension consultant for pension plan administration services.

## **5.7 Payment of Fees and Expenses of Counsel to Directors and Officers**

After the Plan Implementation Date, the Monitor shall from time to time pay by way of certified cheque or wire transfer (in accordance with wire transfer instructions provided in writing by such Person to the Monitor) on behalf of the Remaining Canwest Entities from Account 3 referred to in Section 2 of the PIF Schedule the reasonable fees and disbursements of counsel to the Directors and Officers in connection with:

- a) determining the Affected Claims that are Unresolved Claims against the Directors and Officers, consulting with the Monitor with respect thereto and providing advice and reporting to the Directors and Officers with respect thereto;
- b) determining any Post-Filing D&O Insured Claims and addressing any matters of insurance coverage and related issues; and
- c) providing assistance with any issues regarding the Directors and Officers that may arise after the Plan Implementation Date relating to the wind-up, bankruptcies, dissolution or liquidation of the Remaining Canwest Entities and issues regarding indemnification, insurance and other matters in respect of any Directors and Officers who remain in office after the Plan Implementation Date as provide for in section 4.2(b) hereof.

To the extent that the amount held by the Monitor in Account [3] referred to in Section 2 of the PIF Schedule is inadequate to pay the full amount of the reasonable fees and disbursements of counsel to the Directors and Officers pursuant to this Section 5.7 then New Canwest and/or CTLP shall pay to the Monitor for the benefit of CMI the funds necessary to pay such reasonable fees and disbursements and such funds shall be deposited into Account 3 referred to in Section 2 of the PIF Schedule. If the payments contemplated in this Section 5.7 do not exhaust the amount held by the Monitor in Account 3 referred to in Section 2 of the PIF Schedule, then the Monitor shall return such excess funds to New Canwest.

## **5.8 Professionals Associated with Remaining Canwest Entities**

After the Plan Implementation Date, the Monitor shall from time to time pay by way of certified cheque or wire transfer (in accordance with wire transfer instructions provided in writing by such Person to the Monitor) on behalf of the Remaining Canwest Entities from Account 4 referred to

in Section 2 of the PIF Schedule to legal counsel and professional advisors (to be listed in a schedule to be provided to New Canwest and the Plan Sponsor by the CMI Entities prior to Plan Implementation Date) in respect of professional fees and disbursements incurred for services provided in connection with the bankruptcy, liquidation or winding up or dissolution of any Remaining Canwest Entities (other than National Post Holdings and National Post).

To the extent that the amount in Account 4 referred to in Section 2 of the PIF Schedule is inadequate to pay the full amount of the reasonable fees and disbursements of foreign professionals pursuant to this Section 5.8 then New Canwest and/or CTLP shall pay to the Monitor for the benefit of CMI (other than National Post Holdings and National Post) the funds necessary to pay such reasonable fees and disbursements and such funds shall be deposited into Account 4 referred to in Section 2 of the PIF Schedule. If the payments contemplated in this Section 5.8 do not exhaust the amount held by the Monitor in Account 4 referred to in Section 2 of the PIF Schedule, then the Monitor shall return such excess funds to New Canwest.

#### **5.9 Payment of Fees and Expenses of the Monitor**

All of the fees and disbursements incurred by the Monitor, its legal counsel and any other advisors retained by the Monitor, in connection with fulfilling the Monitor's duties and obligations under the Plan and this Agreement, including, without limitation, those fees, disbursements, costs and expenses incurred in connection with:

- (a) resolving any Unresolved Claims of the Affected Creditors;
- (b) making distributions under the Plan, including the costs of wire transfers and the issuance of cheques (provided, for greater certainty, that the Monitor shall not fund the actual distributions from the Plan Implementation Fund);
- (c) determining any Unaffected Claims, including Post-Filing Claims, but excluding those claims described in subparagraphs (h), (i) and (o) of the definition of Unaffected Claims in the Plan;
- (d) making distributions under this Agreement; and
- (e) bankrupting and acting as trustee in bankruptcy or liquidating, winding up or dissolving any Remaining Canwest Entities (other than National Post and National Post Holdings), including the bankruptcies of the Fireworks entities and acting as the Fireworks Trustee in Bankruptcy,

shall be paid from the Plan Implementation Fund and the Monitor shall have exclusive access to the funds referenced in Account 5 referred to in Section 2 of the PIF Schedule.

If at any time the Plan Implementation Fund is insufficient to fund the activities of the Monitor pursuant to the Plan or this Agreement, then New Canwest and/or CTLP shall pay additional funds satisfactory to the Monitor for the benefit of CMI and such funds shall be deposited into Account 5 referred to in Section 2 of the PIF Schedule. If the payments contemplated in this Section 5.9 do not exhaust the amount held by the Monitor in Account 5 referred to in Section 2

of the PIF Schedule, then the Monitor shall return such excess funds to New Canwest in accordance with section 5.12 of this Agreement.

#### **5.10 Payment of Post-Filing D&O Insured Claims**

The Monitor shall pay any Post-Filing D&O Insured Claims pursuant to section 4.2 of this Agreement from Account 6 referred to in Section 2 of the PIF Schedule. To the extent that the amount in Account 6 referred to in Section 2 of the PIF Schedule is inadequate to pay the full amount of Post-Filing D&O Insured Claims pursuant to this Section 5.10 then New Canwest and/or CTLP shall pay to the Monitor for the benefit of CMI the funds necessary to pay such claims in full and such funds shall be deposited into Account 6 referred to in Section 2 of the PIF Schedule. If the payments contemplated in this Section 5.10 do not exhaust the amount held by the Monitor in Account 6 referred to in Section 2 of the PIF Schedule, then the Monitor shall return such excess funds to New Canwest.

#### **5.11 Use of Cash to Plan Implementation Date**

The CMI Entities hereby covenant and agree that, from the date hereof to the Plan Implementation Date, they will only use the Cash and will only effect any draw under the CIT Facility for working capital purposes related to the Business or for the expenditures of the CMI Entities as approved by the Court and/or as may be contemplated by the Weekly Cash Flow Projections (as defined in the CIT Facility). The CMI Entities hereby further covenant and agree to notify the Plan Sponsor in writing of any planned draw to be effected under the CIT Facility between the date hereof and the Plan Implementation Date five (5) Business Days prior to effecting such a draw.

#### **5.12 Residual Funds**

Upon completing its duties under the CCAA, the Sanction Order and this Agreement and obtaining an order discharging the Monitor, the Monitor shall (after satisfying all fees and disbursements of the Monitor) remit to New Canwest any residual funds remaining in the Plan Implementation Fund.

#### **5.13 Payment of Legal Costs of the *Ad Hoc* Group of Shareholders**

On the Plan Implementation Date, concurrently with acquiring the Canwest New Preferred Shares, and in accordance with the Minutes of Settlement dated June 23, 2010, 7316712 Canada shall pay Bennett Jones LLP in trust for the benefit of the *ad hoc* group of shareholders the documented costs of their advisors in connection with the motion brought by Canwest and certain of its subsidiaries returnable June 22, 2010 seeking, *inter alia*, a Meeting Order.

### **ARTICLE 6 GENERAL**

#### **6.1 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a "Notice") shall be in writing and shall be sufficiently

given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

(a) if to Canwest or CMI, or to both, at:

c/o Osler, Hoskin & Harcourt LLP  
Box 50  
1 First Canadian Place  
Toronto, Ontario M5X 1B8

Attention: Edward Sellers  
Email: esellers@osler.com  
Facsimile: 416-862-6666

With a required copy by email or fax (which shall not be deemed Notice) to:

Osler, Hoskin & Harcourt LLP  
Box 50  
1 First Canadian Place  
Toronto, Ontario M5X 1B8

Attention: Tracy Sandler  
Email: tsandler@osler.com  
Facsimile: 416-862-6666

With a required copy by email or fax (which shall not be deemed Notice) to:

Lenczner Slaght Royce Smith Griffin, LLP  
130 Adelaide Street West, Suite 2600  
Toronto, Ontario M5H 3P5

Attention: Peter Osborne  
Email: posborne@litigate.com  
Facsimile: 416-865-3094

With a required copy by email or fax (which shall not be deemed Notice) to:

Ogilvy Renault LLP  
Suite 3800, Royal Bank Plaza, South Tower,  
200 Bay St.  
PO Box 84  
Toronto, ON M5J 2Z4

Attention: Mario Forte  
Email: mforte@ogilvyrenault.com  
Facsimile: 416-216-4870

(b) if to the Shaw or 7316712 Canada, or to both, at:

c/o Shaw Communications Inc.  
Suite 900, 630-3<sup>rd</sup> Avenue SW  
Calgary, Alberta T2P 4L4

Attention: Steve Wilson/Peter Johnson  
Email: steve.wilson@sjrb.ca / peter.johnson@sjrb.ca  
Facsimile: 403-750-7469 / 403-716-6544

With a required copy by email or fax (which shall not be deemed Notice) to:

Davies Ward Phillips and Vineberg LLP  
Box 63, One First Canadian Place  
Toronto, Ontario M5X 1B1

Attention: Robin Schwill  
Email: rschwill@dwpv.com  
Facsimile: 416-863-0871

(c) if to the Monitor, at:

FTI Consulting Canada Inc.  
TD Canada Trust Tower  
79 Wellington Street West  
Suite 2100  
Toronto, Ontario M5K 1G8

Attention: Greg Watson  
Email: greg.watson@fticonsulting.com  
Facsimile: 416-649-8101

With a required copy by email or fax (which shall not be deemed Notice) to:

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9

Attention: David Byers  
Email: dbyers@stikeman.com  
Facsimile: 416-947-0866

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. If the Notice is delivered or transmitted after 5:00 p.m. local time or if the day is not a Business Day, then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section.

**6.2 Amendment**

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound.

**6.3 Termination**

This Agreement shall terminate automatically with respect to all of the Parties in the event that the Shaw Support Agreement is terminated in accordance with its terms.

**6.4 Assignment**

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and each of their respective successors (including any successor by reason of amalgamation of any Party), permitted assigns, heirs and personal representatives. No Party may assign, delegate or otherwise transfer any of its rights, interests or obligations under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

**6.5 Further Assurances**

The Parties shall, with reasonable diligence, do all things and provide all such reasonable assurances as may be required to give effect to this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Plan Implementation Date.

**6.6 Execution and Delivery**

This Agreement may be signed in counterparts, each of which, when taken together, shall be deemed an original. Execution of this Agreement is effective if a signature is delivered by facsimile transmission or electronic (*e.g.*, pdf) transmission.

*[Remainder of page intentionally left blank; signature pages follow]*