

**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 SEARS
CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM
COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741
CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

**MOTION RECORD OF EMPLOYEE REPRESENTATIVE COUNSEL
(returnable August 18, 2017)**

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Employee Representative Counsel

TO: SERVICE LIST

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TAB 1

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
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CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

NOTICE OF MOTION OF EMPLOYEE REPRESENTATIVE COUNSEL

Ursel Phillips Fellows Hopkinson LLP in its capacity as Employee Representative Counsel will make a motion before the Honourable Justice Hainey of the Superior Court of Justice (Commercial List), on August 18, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

- (1) an order, if necessary, abridging and validating the time for service of this motion;
- (2) an order authorizing and directing the Sears Canada Entities to establish and create an “Employee Hardship Fund” pursuant to and in accordance with the terms of the Employee Hardship Fund Term Sheet dated August 11, 2017, attached as Exhibit “C” to the Affidavit of Saneliso Moyo affirmed August 15, 2017;
- (3) an order approving the employee hardship application process, as described in the Employee Hardship Fund Term Sheet, and directing the utilization of the forms and procedures contained therein;

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- (4) an order authorizing and directing the Sears Canada Entities, the Monitor, Employee Representative Counsel and the Employee Representatives to implement the Employee Hardship Fund Term Sheet and to take all steps and do all acts necessary or desirable pursuant to and in accordance with the terms of the Employee Hardship Fund Term Sheet;
- (5) an order directing that the Sears Canada Entities, the Monitor, Employee Representative Counsel and the Employee Representatives shall incur no personal liability or obligation as a result of the performance of their duties in carrying out the provisions of the Employee Hardship Fund Term Sheet, save and except for liability arising out of gross negligence or wilful misconduct and, for greater certainty, an order directing that none of the Monitor or the Hardship Committee (as defined in the Employee Hardship Fund Term Sheet) shall have any personal liability under any circumstances in connection with any assessment or determination on an application by a Former Employee to receive Hardship Payments (as defined in the Employee Hardship Fund Term Sheet);
- (6) an order directing that to the extent that payment entitlements under the KERP are directed to the Employee Hardship Fund, the entitlements under the KERP and the KERP Priority Charge (as defined in the Amended and Restated Initial Order) shall be reduced accordingly; and
- (7) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the Court's endorsement dated June 22, 2017, and the Employee Representative Counsel Order issued by the Court dated July 13, 2017 (the "**Employee Representative Counsel Order**") in these *CCAA* proceedings, Ursel Phillips Fellows Hopkinson LLP was appointed as Employee Representative Counsel to represent the interests of the non-unionized Active Employees and Former Employees of the Sears Canada Entities (as each such term is defined in the Employee Representative Counsel Order) for the purposes set out in the Employee Representative Counsel Order.

2. The Former Employees of the Sears Canada Entities are among the most vulnerable stakeholders in these *CCAA* proceedings. Many have suffered significant hardships as a result of the Sears Canada Entities' insolvency. In addition to losing their continued employment, some of these employees have been deprived of access to notice, statutory severance and termination pay, and health benefits, as a result of the stay of proceedings and the financial position of the Sears Canada Entities. The insolvency of the Sears Canada Entities has had a material impact on the standard of living of many Former Employees and has created severe hardships for many of these individuals.

3. One of the potential mechanisms to relieve the hardships experienced by the Former Employees that the Employee Representatives (as defined in the Employee Representative Counsel Order), with the assistance of Employee Representative Counsel, have advocated for is the establishment of an "Employee Hardship Fund".

4. Employee Representative Counsel has been advocating for and negotiating the establishment of an Employee Hardship Fund, through discussions with the Sears Canada Entities and FTI Consulting Canada Inc., the Court-appointed monitor of the Sears Canada Entities (the "**Monitor**"), since early July, 2017. These discussions continued throughout July and into early August, 2017.

5. On August 11, 2017, Employee Representative Counsel and the Sears Canada Entities, in consultation with and with the assistance of the Monitor, were able to reach agreement on the Employee Hardship Fund Term Sheet dated August 11, 2017, which is attached as Exhibit "C" to the Affidavit of Saneliso Moyo affirmed August 15, 2017.

6. The Employee Hardship Fund Term Sheet establishes the details of the Employee Hardship Fund including, *inter alia*, the quantum of the fund, eligibility criteria, the application process, payment parameters, and the application period to the Employee Hardship Fund.

7. The Employee Hardship Fund will be available to Former Employees (including employees terminated after the date of the term sheet) of the Sears Canada Entities whose entitlement to receive certain payments from the Sears Canada Entities has been stayed or suspended as a result of these *CCAA* proceedings, provided that the Former Employee meets prescribed eligibility criteria. The Employee Hardship Fund will be solely funded by earned but

foregone executive payment entitlements under the Key Employee Retention Plan (the “KERP”) approved by the Court pursuant to the Amended and Restated Initial Order dated June 22, 2017 (the “Amended and Restated Initial Order”) in these *CCAA* proceedings and that are secured by the KERP Priority Charge (as defined in the Amended and Restated Initial Order). The Employee Hardship Fund shall be in a maximum amount of no more than \$500,000 without further order of the Court and unless certain specified criteria are met. Because the Employee Hardship Fund is funded through voluntary contributions by KERP beneficiaries of amounts otherwise owed to those KERP beneficiaries on a priority secured basis, no creditors of the Sears Canada Entities will be prejudiced by the Employee Hardship Fund. The funds that are to be contributed to the Employee Hardship Fund would not have been available for distribution to creditors other than the KERP beneficiaries.

8. If approved by the Court, certain Former Employees, upon completing an application and demonstrating hardship and meeting the prescribed eligibility criteria, could qualify for a distribution from the Employee Hardship Fund, subject to stipulated maximum amounts as set out in the Employee Hardship Fund Term Sheet. The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first payment from the Employee Hardship Fund will proceed within seven (7) business days following the date of such approval, subject to the payment parameters set out in the Employee Hardship Fund Term Sheet.

9. Any distributions to Former Employees from the Employee Hardship Fund shall be deducted from any payments on claims that may be allowed to each such Former Employee in any claims process conducted by the Sears Canada Entities in these *CCAA* proceedings.

10. The Employee Representatives agree with the terms of the Employee Hardship Fund Term Sheet and support the creation and implementation of the Employee Hardship Fund.

11. The Court has a broad discretion under s. 11 of the *CCAA* to make “any order that it considers appropriate in the circumstances”, which has been affirmed by the Supreme Court of Canada.¹

¹ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, at paras. 65-66 and 70.

12. The Order sought is appropriate and advances the policy objectives underlying the CCAA. It usefully advances the remedial purposes of the CCAA by avoiding or alleviating the social and economic losses resulting from the insolvency.

13. Additionally, the court also has broad inherent and equitable jurisdiction to grant the requested remedy.² The court's residual source of powers may be drawn upon as necessary whenever it is just and equitable to do so, in particular, to do justice between the parties.³

14. Courts have approved the creation of hardship funds to provide partial advance distributions to certain unsecured creditors in appropriate circumstances.

15. In *Earthfirst Canada Inc.*,⁴ the Alberta Court of Queens' Bench approved the establishment of a hardship fund for local contractors and suppliers to the Applicant, an insolvent wind farm enterprise. This fund provided an interim distribution of funds to certain local contractors who would otherwise face immediate financial difficulty, including inability to meet payroll and purchase supplies.

16. In *Nortel Networks Corp (Re)*,⁵ Justice Morawetz, in recognizing the severe impact of the cessation of payments to the former employees, and the importance of the timing of any distribution for the affected individuals in the circumstances, the Court issued an order similar to the relief being requested on this motion.

17. Section 11 of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (as amended);

18. Rule 37 of the *Rules of Civil Procedure*, RRO 1990, Reg 194;

19. Section 96 of the *Courts of Justice Act*, RSO 1990, c C-43;

² *Essar Steel Algoma Inc. (Re)*, 2016 ONSC 595 at para 27; *Nortel Networks Corp.(Re)*, 2015 ONSC 2987 at para. 206; *Marine Drive Properties Ltd, (Re)*, 2009 BCSC 1083, at para 24.

³ *Re Royal Oak Mines.*, [1999] O.J. No 864, 1999 CarswellOnt 792 (Ont. Gen. Div [Commercial List]) at para. 4.

⁴ *Earthfirst Canada Inc. (Re)*, 2009 ABQB 78, [2009] AJ No 102 at paras. 4-5.

⁵ *Nortel Networks Corp (Re)*, [2009] OJ No 2558, 55 CBR (5th) 68 [*Nortel*].

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THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (1) Affidavit of Saneliso Moyo, affirmed August 15, 2017;
- (2) Such further and other material as counsel may advise and this Honourable Court deems just.

August 15, 2017

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Employee Representative Counsel

TO: SERVICE LIST

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICERS INC., INITIUM LOGISTICS SERVICE INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "Applicant", and collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

NOTICE OF MOTION OF
EMPLOYEE REPRESENTATIVE COUNSEL
(Returnable August 18, 2017)

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Employee Representative Counsel

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
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CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

AFFIDAVIT OF SANELISO MOYO
(Affirmed August 15, 2017)

I, Saneliso Moyo, of the City of Toronto, in the Province of Ontario, solemnly affirm as follows:

1. I am an Associate at Ursel Phillips Fellows Hopkinson LLP, Employee Representative Counsel in the above-captioned matter, and I have assisted in the preparation of this motion. As such, I have personal knowledge of the matters to which I herein depose, or where my knowledge is based upon information and belief, I refer to the source of that information, and believe it to be true.

OVERVIEW

2. Pursuant to the Court’s endorsement dated June 22, 2017, and the Employee Representative Counsel Order issued by the Court dated July 13, 2017 (the “**Employee Representative Counsel Order**”) in these *CCAA* proceedings, our firm was appointed as Employee Representative Counsel to represent the interests of the non-unionized Active Employees and Former Employees of the Sears Canada Entities (as each such term is defined in the Employee Representative Counsel Order) for the purposes set out in the Employee Representative Counsel Order.

3. The Former Employees of the Sears Canada Entities are among the most vulnerable stakeholders in these CCAA proceedings. Many have suffered significant hardships as a result of the Sears Canada Entities' insolvency. In addition to losing their continued employment, some of these employees have been deprived of access to notice, statutory severance and termination pay, and health benefits, as a result of the stay of proceedings and the financial position of the Sears Canada Entities. The insolvency of the Sears Canada Entities has had a material impact on the standard of living of many Former Employees and has created severe hardships for many of these individuals.

4. One of the potential mechanisms to relieve the hardships experienced by the Former Employees that the Employee Representatives (as defined in the Employee Representative Counsel Order), with the assistance of Employee Representative Counsel, have advocated for is the establishment of an "Employee Hardship Fund".

5. It is my understanding that Courts have approved the creation of hardship funds to provide partial advance distributions to certain unsecured creditors in appropriate circumstances.

6. For example, in *Earthfirst Canada Inc.*,¹ the Alberta Court of Queens' Bench approved the establishment of a hardship fund for local contractors and suppliers to the Applicant, an insolvent wind farm enterprise. This fund, administered at the discretion of the chief restructuring officer and subject to the approval of the monitor, would provide an interim distribution of funds to certain local contractors who would otherwise face immediate financial difficulty, including inability to meet payroll and purchase supplies, and likely bankruptcy. All payments from the hardship fund would be credited as against any final distribution to creditors under a future plan of arrangement.

7. In *Nortel Networks Corp (Re)*,² recognizing the severe impact of the cessation of payments to the former employees in that case, and the importance of the timing of any distribution for the affected individuals in the circumstances, the Court issued an order akin to the relief being requested on this motion.

8. Justice Morawetz accordingly directed as follows:

¹ *Earthfirst Canada Inc. (Re)*, 2009 ABQB 78, [2009] AJ No 102 at paras. 4-5.

² *Nortel Networks Corp (Re)*, [2009] OJ No 2558, 55 CBR (5th) 68.

In recognition of the circumstances that face certain retirees and Former Employees, the Monitor is directed to review the current financial circumstances of the Applicants and report back as to whether it is feasible to establish a process by which certain creditors, upon demonstrating hardship, could qualify for an unspecified partial distribution in advance of a general distribution to creditors. I would ask that the Monitor consider and report back to this court on this issue within 30 days.³

9. The Applicants in *Nortel* returned to Court to propose a hardship application process by which immediate payments could be made to former employees who were resident in Canada, who had no available source of income and who met one of the following two additional criteria: (i) the employee is unable to work due to illness or is incurring a defined high level of costs for treatment of illness or for healthcare; or (ii) the employee is not receiving either a Nortel pension or employment insurance.

10. Justice Morawetz approved the proposed Employee Hardship fund by order and endorsement dated July 30, 2009.⁴

11. I have reviewed the website of the Court-appointed Monitor in the Nortel insolvency and retrieved the motion record put before Justice Morawetz in respect of the hardship fund and his Order regarding the same dated July 30, 2009. Excerpts from that motion record, which I believe to be a true copy of the material put before the Court in that proceeding, are attached as **Exhibit "A"** to my affidavit. A copy of the Order of Justice Morawetz dated July 30, 2009, which I believe to be a true copy, is attached as **Exhibit "B"**.

12. Employee Representative Counsel has been advocating for and negotiating the establishment of an Employee Hardship Fund, through discussions with the Sears Canada Entities and FTI Consulting Canada Inc., the Court-appointed monitor of the Sears Canada Entities (the "**Monitor**"), since early July, 2017. These discussions continued throughout July and into early August, 2017.

13. On August 11, 2017, Employee Representative Counsel and the Sears Canada Entities, in consultation with and with the assistance of the Monitor, were able to reach agreement on the

³ *Ibid.* at para. 88.

⁴ *Nortel Networks Corp (Re)*, [2009] OJ No 3280, 53 CBR (5th) 196 at para. 9.

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Employee Hardship Fund Term Sheet dated August 11, 2017, which is attached as **Exhibit “C”** to my affidavit (the “**Employee Hardship Fund Term Sheet**”).

14. The Employee Hardship Fund Term Sheet establishes the details of the Employee Hardship Fund including, *inter alia*, the quantum of the fund, eligibility criteria, the application process, payment parameters, and the application period to the Employee Hardship Fund.

15. The Employee Hardship Fund will be available to Former Employees (including employees terminated after the date of the term sheet) of the Sears Canada Entities whose entitlement to receive certain payments from the Sears Canada Entities has been stayed or suspended as a result of these *CCAA* proceedings, provided that the Former Employee meets prescribed eligibility criteria. The Employee Hardship Fund will be solely funded by earned but foregone executive payment entitlements under the Key Employee Retention Plan (the “**KERP**”) approved by the Court pursuant to the Amended and Restated Initial Order dated June 22, 2017 (the “**Amended and Restated Initial Order**”) in these *CCAA* proceedings and that are secured by the KERP Priority Charge (as defined in the Amended and Restated Initial Order). The Employee Hardship Fund shall be in a maximum amount of no more than \$500,000 without further order of the Court and unless certain specified criteria are met. Because the Employee Hardship Fund is funded through voluntary contributions by KERP beneficiaries of amounts otherwise owed to those KERP beneficiaries on a priority secured basis, no creditors of the Sears Canada Entities will be prejudiced by the Employee Hardship Fund. The funds that are to be contributed to the Employee Hardship Fund would not have been available for distribution to creditors other than the KERP beneficiaries.

16. If approved by the Court, certain Former Employees, upon completing an application and demonstrating hardship and meeting the prescribed eligibility criteria, could qualify for a distribution from the Employee Hardship Fund, subject to stipulated maximum amounts as set out in the Employee Hardship Fund Term Sheet. The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first payment from the Employee Hardship Fund will proceed within seven (7) business days following the date of such approval, subject to the payment parameters set out in the Employee Hardship Fund Term Sheet.

17. Any distributions to Former Employees from the Employee Hardship Fund shall be deducted from any payments on claims that may be allowed to each such Former Employee in any claims process conducted by the Sears Canada Entities in these CCAA proceedings.


18. The Employee Representatives agree with the terms of the Employee Hardship Fund Term Sheet and support the creation and implementation of the Employee Hardship Fund.


CONCLUSION

19. Since early July, 2017, the Employee Representatives, with the assistance of our firm have advocated for the creation of an Employee Hardship Fund through discussions with the Sears Canada Entities and the Monitor. On August 11, 2017 we were able to reach an agreement with the Sears Canada Entities, in consultation with and with the assistance of the Monitor, on the Employee Hardship Fund Term Sheet.

20. I affirm this affidavit in support of Employee Representative Counsel's motion in these proceedings and for no other or improper purpose.

AFFIRMED BEFORE ME at the City of Toronto,
this 15th day of August, 2017.


A Commissioner for taking Affidavits (or as may
be)
K.O. Rowke
LSUC # 166420K


Saneliso Moyo

TAB A

This is Exhibit "A" referred to
in the Affidavit of Saneliso Moyo
Affirmed on this 15th day of August, 2017.

K. O'Rourke

A COMMISSIONER FOR TAKING AFFIDAVITS

K. O'Rourke

Case # 66420K

**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
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**MOTION RECORD
(Returnable July 30, 2009)**

July 24, 2009

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Lawyers for the Applicants

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**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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TAB 1

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INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

**NOTICE OF MOTION
(returnable July 30, 2009)**

Nortel Networks Corporation ("NNC"), Nortel Networks Limited ("NNL"), Nortel Networks Technology Corporation, Nortel Networks International Corporation and Nortel Networks Global Corporation (collectively, the "Applicants") will make a motion to Justice Morawetz of the Commercial List court on Thursday, July 30, 2009 at 10:00 a.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

- (a) an order in substantially the form of the draft Claims Procedure Order contained in the Applicants' Motion Record, establishing a process for the filing of claims against the

Applicants and their current and former officers and directors, and setting a Claims Bar Date of September 30, 2009;

- (b) an order in substantially the form of the second draft Order contained in the Applicants' Motion Record (i) establishing an employee hardship application and payment process, and approving the forms to be used in that process, (ii) approving the extension of the Canadian group supplier protocol agreement, and (iii) extending the Stay Period to October 30, 2009; and
- (c) such further and other relief as counsel may request and this Honourable Court deem just.

THE GROUNDS FOR THE MOTION ARE:

Claims Procedure Order

- (a) on January 14, 2009, the Applicants were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the Initial Order, and Ernst & Young Inc. was appointed as monitor (the "Monitor") in the CCAA proceedings;
- (b) also on January 14, 2009, certain of NNC's U.S. subsidiaries, including its principal U.S. operating subsidiary, Nortel Networks Inc. ("NNI" and together with the other U.S. filing entities, the "U.S. Debtors"), made voluntary filings under Chapter 11 of the United States Bankruptcy Code (the "U.S. Bankruptcy Code") with the United States Bankruptcy Court for the District of Delaware (the "U.S. Court"). On the same date, this Honourable Court granted an Order pursuant to Section 18.6(4) of the CCAA recognizing the Chapter 11 cases as "foreign proceedings" in Canada and giving effect in Canada to the automatic stay under the U.S. Bankruptcy Code;
- (c) the Applicants and the U.S. Debtors wish to implement a 'call for claims' procedure that will require most creditors of the Applicants and the U.S. Debtors to file their claims by a specified date, in this case September 30, 2009. Such a process will allow both the

Applicants and the U.S. Debtors to begin the process of reconciling these claims, and will also provide the Applicants and the U.S. Debtors with more definitive information with respect to claims, which information can be used to formulate a plan or plans of compromise and arrangement that may in the future be submitted for creditor and court approval;

- (d) the draft Canadian Claims Procedure Order has been prepared with a view to sharing certain essential elements with a claims order that is concurrently being sought in the U.S. Court, with respect to the U.S. Debtors;

Employee Hardship Application and Payment Process

- (e) pursuant to the endorsement released by this Court on June 18, 2009, the Monitor and the Applicants have considered the Court's concern regarding cases of hardship being experienced by certain former employees. As directed, a proposed hardship process is now being proposed to address those situations;
- (f) the Monitor has worked with Koskie Minsky LLP, in its capacity as representative counsel for former employees of the Applicants, to develop a mechanism for making immediate payment on account of the claims of those former employees who are experiencing financial hardship;

Approval of the Extension of the Canadian Group Supplier Protocol Agreement

- (g) on filing under these CCAA Proceeding and in the U.S. Chapter 11 cases, Nortel entered into two group supplier protocol agreements, one between the Applicants and the Joint Administrators (the "Canadian GSPA"), and the other between the U.S. Debtors and the Joint Administrators;
- (h) pursuant to previous orders of this Court, extensions of the Canadian GSPA have been previously approved, up to and including a seventh extension. The seventh extension expired on July 9, 2009;

- (i) the Applicants have entered into and seek approval of the eighth extension of the Canadian GSPA, which extension was completed by way of the eighth extension deed dated July 9, 2009, which extends the Canadian GSPA to September 9, 2009;

Extension of the Stay Period

- (j) NNC is the ultimate parent of the Nortel companies, which are numerous and which operate world-wide. In addition, the Applicants have significant business operations themselves. Accordingly, the restructuring of the Applicants will take a significant amount of time, particularly in view of the numerous companies, jurisdictions, and proceedings that ultimately impact on the business affairs of the Applicants;
- (k) on June 19, 2009, in connection with its announcement to sell certain of its CDMA and LTE assets, Nortel announced that it was in discussions to sell other parts of its business and to pursue such sales within these CCAA proceedings. Since that time, Nortel has announced that it has entered into another stalking horse sale agreement for the sale of its Enterprise Business Solutions business, subject to an auction process. In order to proceed with these and other transactions, Nortel requires the ongoing protection of this Court. The Applicants are proceeding with due diligence and in good faith;
- (l) as well, significant additional time is needed to run the claims process contemplated by the draft Claims Procedure Order, and subsequent processes contemplated by this draft Order, including a claims resolution process and a separate process with respect to Compensation Claims (as defined in the draft Claims Procedure Order);
- (m) accordingly, the Applicants request an extension of the Stay Period (as defined in the Initial Order) to October 30, 2009;

Miscellaneous

- (n) such other facts as are set out in the Affidavit of John Doolittle sworn on July 24, 2009, and in the Sixteenth Report of the Monitor dated July 24, 2009;
- (o) provisions of the CCAA;

- (p) such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Affidavit of John Doolittle sworn on July 24, 2009;
- (b) the Sixteenth Report of the Monitor dated July 24, 2009; and
- (c) such further and other relief as counsel may request and this Honourable Court deem just.

July 24, 2009

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**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
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL
NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL
CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION**

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R.S.C. 1985, c. C-36, AS AMENDED**

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**IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTEL
NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS
GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND
NORTEL NETWORKS TECHNOLOGY CORPORATION**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(returnable July 30, 2009)**

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TAB 2

**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
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL
NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL
CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

**AFFIDAVIT OF JOHN DOOLITTLE
(sworn July 24, 2009)**

I, John Doolittle, of the city of Oakville in the Province of Ontario, MAKE OATH AND
SAY:

1. I am the Treasurer of Nortel Networks Corporation ("NNC") and Nortel Networks Limited ("NNL") and have held those positions since June 23, 2008. From October 14, 2002 to June 12, 2006, I was the Vice-President, Tax for NNC and NNL. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.
2. I swear this affidavit in support of the motion to approve:

- (a) a Claims Procedure Order in substantially the form contained in the Motion Record of NNC and the other applicants noted above (collectively, with NNC, the "Applicants");
 - (b) to approve a mechanism for making immediate payment on account of the claims of those former employees who are experiencing financial hardship;
 - (c) to approve the eighth extension of the Canadian group supplier protocol agreements, which extension was completed by way of the eighth extension deed dated July 9, 2009; and
 - (d) the extension of the Stay Period, as defined in the Third Amended and Restated Order dated January 14, 2009 (the "Initial Order"), to October 30, 2009.
3. References to "Nortel" herein are references to the global enterprise as a whole.

BACKGROUND

4. On January 14, 2009 (the "Filing Date"), the Applicants were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") pursuant to the Initial Order, and Ernst & Young Inc. was appointed as monitor (the "Monitor") in the CCAA proceedings.
5. Also on January 14, 2009, certain of NNC's U.S. subsidiaries, including its principal U.S. operating subsidiary, Nortel Networks Inc. ("NNI" and together with the other U.S. filing entities, the "U.S. Debtors"), made voluntary filings under Chapter 11 of the United States Bankruptcy Code (the "U.S. Bankruptcy Code") with the United States Bankruptcy Court for the District of Delaware (the "U.S. Court"). On the same date, this Honourable

Court granted an Order pursuant to Section 18.6(4) of the CCAA recognizing the Chapter 11 cases as "foreign proceedings" in Canada and giving effect in Canada to the automatic stay under the U.S. Bankruptcy Code.

6. On July 14, 2009, Nortel Networks (CALA) Inc., an affiliate of NNI, filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code with the U.S. Court.
7. As disclosed in previous affidavits filed in these CCAA proceedings, certain Nortel entities are also subject to proceedings in the United Kingdom, France, and Israel. In addition, the U.S. Court has granted petitions recognizing these CCAA proceedings and the proceedings in the United Kingdom as "foreign main proceedings" pursuant to Chapter 15 of the U.S. Bankruptcy Code.

COORDINATION OF CANADIAN AND U.S. CLAIMS ORDERS

8. The Applicants and the U.S. Debtors wish to implement a 'call for claims' procedure that will require most creditors of the Applicants and the U.S. Debtors to file their claims by a specified date, in this case September 30, 2009 (the "Claims Bar Date")¹. Such a process will allow both the Applicants and the U.S. Debtors to begin the process of reconciling these claims, and will also provide the Applicants and the U.S. Debtors with more definitive information with respect to claims, which information can be used to formulate a plan or plans of compromise and arrangement that may in the future be submitted for creditor and court approval.

¹ As noted below, certain creditors are exempt from the requirement to file their claims at this time. In addition, and as also noted below, creditors making a "Restructuring Claim" against any Applicant are given additional time to file their claims, due to the "rolling" claims bar date that applies to Restructuring Claims.

9. As has been set out in more detail in previous affidavits filed in the CCAA proceedings, Nortel is a highly integrated business with significant distribution and research and development operations around the world. The Nortel businesses are integrated across international lines, including with respect to public debt issuances, and with respect to the supply of goods and services by third parties.

10. Due to the geographic proximity and the financial integration of the Applicants and the U.S. Debtors, the draft Canadian Claims Procedure Order has been prepared with a view to sharing certain essential elements with a claims order that is concurrently being sought in the U.S. Court, with respect to the U.S. Debtors (the "U.S. Claims Order"). As set out in more detail below, the draft Canadian Claims Procedure Order and the draft U.S. Claims Order each contemplate the September 30, 2009 Claims Bar Date, and efforts will be made to coordinate the timing of the publication and dissemination of notices and other material to creditors of the respective entities. It is our hope that this will help to avoid some confusion with respect to the different processes. As also noted below, the Applicants and the U.S. Debtors will be seeking a cross-border claims resolution protocol to deal with the cross-border issues that will inevitably arise in the consideration and resolution of claims.

11. There are, of course, inevitable distinctions in a claims process in each of Canada and the United States, due to the differing legal regimes. I am advised by Tony Reyes of Ogilvy Renault LLP, Canadian counsel to the Applicants, and by Lisa Schweitzer of Cleary Gottlieb Steen & Hamilton LLP ("Cleary"), U.S. Counsel to the U.S. Debtors, that although the draft Canadian Claims Procedure Order and the draft U.S. Claims Order were prepared with a view to coordinating timing and some substantive provisions, each

of the Canadian Claims Procedure Order and the U.S. Claims Order was prepared by the respective counsel from precedents available in their respective jurisdictions, and that each of Canadian counsel to the Applicants and U.S. counsel to the U.S. Debtors is satisfied that the draft orders comply with practice and procedure in their respective jurisdictions.

THE CANADIAN CLAIMS PROCEDURE ORDER

Introduction

12. The draft Claims Procedure Order deals mainly with (a) notice to creditors, (b) the completion and filing of claims by creditors, and (c) the setting of the Claims Bar Date. The draft Claims Procedure Order does not deal with mechanisms to dispute claims or to resolve any such disputes, and indeed stipulates (in paragraphs 16 and 17) that the proven claims of creditors shall be as allowed or as finally determined in accordance with the forms and claim procedures to be authorized by a further Order of this Court and a Cross Border Claims Protocol. The Cross Border Claims Protocol is defined in the Claims Procedure Order to be a protocol for the resolution of cross-border claims filed in these CCAA proceedings and/or in the U.S. Chapter 11 cases, once approved by the courts presiding in these CCAA proceedings and in the U.S. Chapter 11 cases.

13. The draft Claims Procedure Order also has a number of unique features that the Applicants and their counsel believe are appropriate in the circumstances of this case, as described more fully below.

Overview of the Claims Procedure Order

14. The provisions of the Claims Procedure Order may be summarized as follows:

- (a) The Claims Procedure Order defines in detail three types of claims (all three types are collectively defined in the Order as "Claims") that are subject to this Order, namely (i) claims arising prior to the Filing Date (defined in the Order as "Prefiling Claims"), (ii) claims arising on or after the Filing Date as a result of the restructuring, termination, repudiation or disclaimer of any lease, contract, or other agreement or obligation (defined in the Order as "Restructuring Claims"), and (iii) claims against the current or former directors or officers of the Applicants (defined in the Order as "Directors/Officers Claims"). As noted in paragraphs 17 to 19 below, certain claims are excluded from the "Claims" which must be filed in accordance with the Claims Procedure Order;
- (b) All Prefiling Claims must be received by the Monitor on or before the Claims Bar Date of September 30, 2009, after which any person is barred from making the claim, and such person cannot participate in the CCAA proceedings herein as a creditor, or vote or receive distributions as a creditor, in respect of that barred claim;
- (c) The claims bar date applicable to Restructuring Claims is a "rolling" date, in recognition that some of these claims might not arise until shortly before September 30, 2009, or after that date. Therefore, the claims bar date applicable to Restructuring Claims is the *later* of (i) September 30, 2009, and (ii) the date that is 30 days after the date on which the Monitor sends a Proof of Claim Document Package to a Person with respect to a Restructuring Claim that arose or that may have arisen by virtue of the restructuring, termination, repudiation or

disclaimer of any lease, contract, or other agreement or obligation on or after the Filing Date;

- (d) Directors/Officers Claims must generally be filed by the Claims Bar Date, except to the extent that they relate to a Restructuring Claim that, in accordance with the draft Claims Procedure Order, can be filed at a later date;
- (e) Paragraph 4 of the Claims Procedure Order deals with notice to creditors, which will occur by a combination of (i) posting of the "Proof of Claim Document Package" on the Monitor's website, (ii) a mailing to Bondholder Trustees (as defined in the Order), (iii) a mailing to all Known Creditors (as defined in the Order, but specifically excluding individual bondholders² and specifically excluding current and former employees³), (iv) publication of a notice to creditors, in *The Globe and Mail* and in *The Wall Street Journal*, (v) subsequent delivery of the Proof of Claim Document Package to creditors whose Restructuring Claims arise after the first mailing, and (vi) the delivery of the Proof of Claim Document Package to any person claiming to be a creditor and requesting such materials;
- (f) a form of proof of claim is attached to the Claims Procedure Order. The rules for completing the proof of claim are set out in the Order, in paragraphs 9 to 13, and are described for creditors in the Creditors' Guide to Completing the Proof of Claim form, attached as Schedule "C" to the Claims Procedure Order;

² For reasons described in paragraph 16 of this Affidavit.
³ For reasons described in paragraph 19(b) of this Affidavit.

(g) the Claims Procedure Order also contains provisions dealing with transfers and assignments of a creditor claim, and provides (among other things) that the Applicants and the Monitor are not required to give notice to or otherwise deal with a transferee or assignee of a claim until evidence of the transfer or assignment has been received by the Monitor, and the Monitor has acknowledged in writing such transfer or assignment. The Claims Procedure Order also contains provisions which attempt to prevent the splitting of claims, and which stipulate that any transferee or assignee takes any transferred or assigned claim subject to the rights and obligations of the transferor or assignor, and subject to the rights of the Applicants against such transferor or assignor.

15. The foregoing summary of the terms of the Claims Procedure Order is a general summary only, and should not be relied on by creditors and other affected parties in determining their rights and obligations. Such persons and their advisors should of course review the terms of the Claims Procedure Order itself.

Bondholder Trustees will file bondholder claims

16. As recognized by the draft Claims Procedure Order, and as described in prior affidavits filed in the CCAA proceedings, NNC and>NNL each issued and/or guaranteed certain public bonds that are governed by Bondholder Trust Indentures, as defined in the Claims Procedure Order. Since in each case there is a bondholder trustee acting on behalf of individual bondholders with respect to the aggregate debt represented by these bonds, the Order provides that the Monitor will give specific notice of the claims process to these bondholder trustees, but that the Monitor does not have to give notice to, or mail Proof of Claim Document Packages to, individual bondholders. The draft Claims Procedure

Order also allows the Applicants and the Monitor to disregard any proof of claim filed by an individual bondholder claiming the debt evidenced by the bonds, and provides that any such proof of claim is ineffective for all purposes.

Excluded Claims (where the filing of a Proof of Claim is not required)

17. Finally, the Claims Procedure Order provides that it does not apply to certain "Excluded Claims", and that the holders of such claims are therefore not required to file a proof of claim, with respect to those claims. Consistent with this, the Excluded Claims are not subject to or affected by the claims bar dates and are not subject to the consequences of not filing a claim by such claims bar dates.

18. Among the Excluded Claims enumerated in the Claims Procedure Order are three categories of claims that can be described in very general terms as (i) inter-company claims, (ii) Compensation Claims (as defined in the draft Order), and (iii) indemnity and contribution claims by current or former officers and directors.

19. The reason for the three exclusions noted in the preceding paragraph are:

- (a) Nortel is comprised of numerous companies worldwide, which are integrated across international lines, and certain of which allocate profits and losses, and certain costs, amongst themselves. As a result, there are significant inter-company claims that are complex, and are not yet quantified. The Applicants are aware of these inter-company claims, and making such claims subject to the Claims Procedure Order would neither provide additional information to the Applicants, nor advance the resolution of these claims. The draft Claims Procedure Order therefore does not require the filing of these inter-company

claims at this time. As noted in the Claims Procedure Order, there is an exception to this general rule. That is, claims by certain joint ventures do have to be filed, and are subject to the Claims Procedure Order. The Applicants and the Monitor are of the view that the filing of proofs of claim with respect to these claims will help to identify the quantum and nature of these claims;

- (b) in recent years, and since the Filing Date, Nortel has downsized its workforce. As a result of ongoing restructuring, business sales, and closures, Nortel (including the Applicants) will continue to terminate employees in some circumstances and, in other circumstances, employees will leave or take employment with the purchaser of one of the business units being sold by Nortel. As a result, many Compensation Claims have not yet crystallized. In addition, the claims of many employees (both current and former) would at this time be difficult or impossible to quantify. The Applicants are therefore of the view that requiring employees to submit claims at this time would not assist in providing additional information to the Applicants, and moreover that such a requirement could create confusion amongst current and former employees, since many of their potential claims are either contingent, or very difficult to quantify. I also note that Koskie Minsky LLP was appointed as representative counsel for former employees, and pensioners and surviving spouses, of the Applicants, by an order dated May 27, 2009, a copy of which is attached hereto as Exhibit "A". The Applicants are of the view that a separate claims procedure, relating specifically to Compensation Claims and specifically tailored for that purpose, can be prepared with the input of representative counsel, and that this separate claims procedure would be far more efficient and productive. The Applicants believe that such a separate claims

procedure for Compensation Claims will also allow for a more timely resolution of Compensation Claims. Accordingly, paragraph 6 of the draft Claims Procedure Order provides that "THIS COURT ORDERS that a separate process shall be established by further Order of this Court, to deal with Compensation Claims, and that this Order shall be without prejudice to any matter relating to any to Compensation Claims now existing or arising in the future, and without prejudice to any claims that now exist or that may in the future exist against the Ontario Pension Benefits Guarantee Fund";

- (c) claims by current and former officers and directors of the Applicants are also likely to be highly contingent at this time, and the Applicants wish to defer the requirement that such claims be filed.

THE U.S. CLAIMS ORDER

20. Attached as Exhibit "B" to this Affidavit are the U.S. Debtors' motion materials filed on July 15, 2009, including a draft "Order Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof", being the draft U.S. Claims Order that I have referred to in this Affidavit.

21. While the terms of these materials speak for themselves, I can make the following observations as to features of the draft U.S. Claims Order, namely:

- (a) the "General Bar Date", as defined in the draft U.S. Claims Order, is also September 30, 2009, intended to coincide with the Claims Bar Date in Canada;
- (b) paragraphs 3 and 4 of the draft U.S. Claims Order make it clear that there are two separate proceedings and two separate processes, being in the United States and

Canada, respectively, and that the claims against U.S. Debtors are to be filed in, and only in, the United States, and the claims against Applicants are to be filed in, and only in, Canada – in each case in accordance with the provisions of the applicable court order. These paragraphs are subject to the establishment of a cross-border claims protocol, referred to in paragraph 21 of the draft U.S. Claims Order;

- (c) subparagraph 6(f) also contains an exemption obviating the need to file proofs of claim with respect to inter-company claims;
- (d) subparagraph 6(i) contains an exemption for the filing of indemnity and contribution claims by officers and directors who are officers and/or directors of the U.S. Debtors as of August 1, 2009. The Canadian Claims Procedure Order uses similar terminology to describe the claims that are exempt, but applies to current and former officers and directors;
- (e) The U.S. Claims Order does not contain an exemption with respect to "Compensation Claims" as defined in the Canadian Claims Procedure Order. I am advised by Lisa Schweitzer of Cleary that the type of broad exemption found in the Canadian Claims Procedure Order, with respect to Compensation Claims, is not included in the U.S. Claims Order because of the differing legal regimes and/or practices and procedures;
- (f) paragraph 6(j) of the U.S. Claims Order also exempts individual bondholders from filing a claim for the debt evidenced by their bonds, and requires bondholder trustees to file an aggregate claim with respect to such bonds;

- (g) paragraph 7 of the draft U.S. Claims Order contains a concept similar to the Canadian Claims Procedure Order relating to the "rolling" bar date that applies to Restructuring Claims (as defined in the Canadian Claims Procedure Order);
- (h) the draft U.S. Claims Order provides for notice to creditors in accordance with the U.S. Bankruptcy Code, which is subject to the time periods and processes set out in that Code. The notice to creditors that is to be published, in accordance with paragraph 15 of the U.S. Claims Order, is also somewhat different from the Canadian equivalent. However, the Applicants and the U.S. Debtors have agreed to coordinate their efforts by publishing both the Canadian notice and the U.S. notice in the same publications (*The Globe and Mail* and *The Wall Street Journal*), on the same date, if possible. We will attempt a simultaneous publication in the hope of highlighting the fact that there are different proceedings and different processes, and perhaps prevent the confusion that would arise from different notices on different dates; and
- (i) paragraph 21 of the draft U.S. Claims Order refers to the establishment of a cross-border claims protocol.

FORMER EMPLOYEE HARDSHIP CASES

22. Pursuant to the endorsement released by this Court on June 18, 2009, the Monitor and the Applicants have considered the Court's concern regarding cases of hardship being experienced by certain former employees. As directed, a proposed hardship process is now being proposed to address those situations.

23. There may be cases in which former employees of one of the Applicants is experiencing financial hardship due to illness or healthcare costs, or due to ineligibility for pension or employment insurance benefits.
24. These same employees have or likely have claims against the Applicants. However, distributions under any plan of compromise or arrangement will not occur for some indefinite time, and therefore such distributions will not alleviate the financial hardship being experienced by these former employees, at least not in the near future.
25. I am aware that the Monitor has worked with Koskie Minsky LLP, in its capacity as representative counsel for former employees of the Applicants, to develop a mechanism for making immediate payment on account of the claims of those former employees who are experiencing financial hardship.
26. Attached collectively as Exhibit "C" are forms of (i) a Notice Respecting Hardship Payment Applications, and (ii) an Application for Hardship Payments, including a summary of eligibility requirements and a summary of the procedures for making an application. As noted in the Application for Hardship Payments:
- (a) a former employee resident in Canada is eligible if he or she has no available source of income, and (i) is unable to work due to illness, or is incurring certain levels of costs for treatment of illness or for healthcare, or (ii) is not receiving a Nortel pension or employment insurance;
 - (b) notice of the application process will be posted on the Monitor's website and on the website of the Nortel Retiree Protection Committee;

- (c) a person designated by the Monitor will review all Applications for Hardship Payments, and make an initial determination. That determination can be appealed to an informal committee, and ultimately to a Judge of this Court or a person designated by that Judge; and
- (d) the first of each hardship payments is to proceed within seven business days of the approval of the Application for Hardship Payments.;

27. As also noted in the Application for Hardship Payments, the maximum amount being made available for hardship payments is \$750,000. Further, any hardship payments are considered advances against future distributions based on the claims of these former employees.

28. The Application for Hardship Payments also provides that the Monitor will report to the Court on or before November 30, 2009 with respect to the processing and administration of the hardship payment applications.

29. The Applicants respectfully request the Court's approval of this mechanism and process relating to hardship cases, including the forms of Notice and Application for Hardship Payments attached hereto.

EXTENSION OF INTERIM NORTEL GROUP SUPPLIER PROTOCOL AGREEMENT

30. On filing under these CCAA Proceeding and in the U.S. Chapter 11 cases, Nortel entered into two group supplier protocol agreements, one between the Applicants and the Joint Administrators (the "Canadian GSPA"), and the other between the U.S. Debtors and the Joint Administrators.

31. Pursuant to previous orders of this Court, extensions of the Canadian GSPA have been previously approved, up to and including a seventh extension. The seventh extension expired on July 9, 2009.
32. The Applicants have entered into and seek approval of the eighth extension of the Canadian GSPA, which extension was completed by way of the eighth extension deed dated July 9, 2009, a copy of which is attached hereto as Exhibit "D". This eighth extension deed extends the Canadian GSPA to September 9, 2009.

EXTENSION OF THE STAY PERIOD

33. NNC is the ultimate parent of the Nortel companies, which are numerous and which operate world-wide. In addition, the Applicants have significant business operations themselves. Accordingly, the restructuring of the Applicants will take a significant amount of time, particularly in view of the numerous companies, jurisdictions, and proceedings that ultimately impact on the business affairs of the Applicants.
34. On June 19, 2009, in connection with its announcement to sell certain of its CDMA and LTE assets, Nortel announced that it was in discussions to sell other parts of its business and to pursue such sales within these CCAA proceedings. Since that time, Nortel has announced that it has entered into another stalking horse sale agreement for the sale of its Enterprise Business Solutions business, subject to an auction process. In order to proceed with these and other transactions, Nortel requires the ongoing protection of this Court. The Applicants are proceeding with due diligence and in good faith.
35. As well, significant additional time is needed to run the claims process contemplated by the draft Claims Procedure Order, and subsequent processes contemplated by this draft

Order, including a claims resolution process and a separate process with respect to Compensation Claims.

36. Accordingly, the Applicants request an extension of the Stay Period (as defined in the Initial Order) to October 30, 2009.

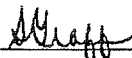
CONCLUSION

37. The Canadian Claims Procedure Order will allow the Applicants to advance the CCAA proceedings. Efforts have been made to coordinate the claims processes in Canada and the United States, to the extent possible, while still respecting the rules and processes applicable in the two jurisdictions.
38. While the Canadian Claims Procedure Order (i) does not contain dispute and dispute resolution mechanisms, and (ii) does not require certain claims to be filed at this time, the draft Claims Procedure Order will still assist the Applicants by requiring the filing of most claims, so that the nature and quantum of those claims can be identified.
39. The exclusion of Compensation Claims at this time will allow the Applicants to work with Koskie & Minsky LLP, as representative counsel to former employees, to develop a separate and tailored employee process. The Applicants do not believe that a separate process will cause any prejudice to employees or delay any distribution, but rather believe that a separate process will be more efficient and will result in a more timely resolution of Compensation Claims.
40. Some of the Applicants' former employees appear to be experiencing financial hardship due to illness or healthcare costs, or due to ineligibility for pension or employment insurance benefits. These same employees have or likely have claims against the

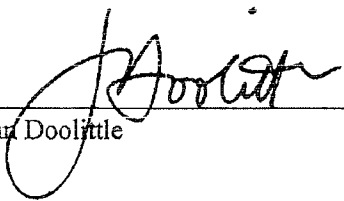
Applicants. However, distributions under any plan of compromise or arrangement will not occur for some indefinite time, and therefore such distributions will not alleviate the financial hardship being experienced by these former employees, at least not in the near future. The Monitor has worked with Koskie Minsky LLP, in its capacity as representative counsel for former employees of the Applicants, to develop a mechanism for making immediate payment on account of the claims of those former employees who are experiencing financial hardship.

- 41. The eighth extension of the Canadian GSPA will enable the continuation of the group supplier protocol agreements that have been in place since the Filing Date.
- 42. The extension of the Stay Period is both necessary and desirable.
- 43. I am aware that the Monitor will be filing with its report an extended cash flow forecast in respect of the proposed extension period.

SWORN before me at the City of Toronto in the Province of Ontario, on the 24th day of July, 2009.



 A Commissioner for taking affidavits
 Samantha Graff
 Commissioner



 John Doolittle

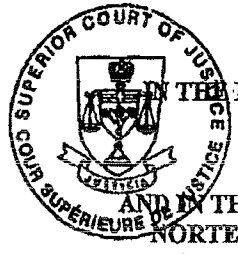
Exhibit "A"

This is Exhibit "A" referred to in the affidavit of JOHN DOOLITTLE sworn before me, this 24TH day of JULY 2009

Court File No. 09-CL-7950

M. Hoff
ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
A COMMISSIONER, ETC.

THE HONOURABLE MR. JUSTICE MORAWETZ) WEDNESDAY, THE 27TH DAY OF)
))
) MAY, 2009



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
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION (the "Applicants")

APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36 AS AMENDED

ORDER

THIS MOTION, made by Donald Sproule, David Archibald and Michael Campbell (collectively, the "Representatives") on behalf of former employees, including pensioners, of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International and/or Nortel Networks Technology Corporation (collectively "Nortel") or any person claiming an interest under or on behalf of such former employees or pensioners and surviving spouses in receipt of a Nortel pension, or group or class of them (collectively the "Former Employees") was heard Monday, April 20, 2009, on the Commercial List at the courthouse at 330 University Avenue, Toronto, Ontario, Reasons for Decision having been reserved to May 27, 2009,

ON READING the Motion Record of the Representatives and on hearing the submissions of counsel for the Representatives, Nortel, the Monitor and other parties,

1. **THIS COURT ORDERS** that further service of the Notice of Motion and Motion Record on any party not already served is hereby dispensed with, such that this motion was properly returnable April 20, 2009.
2. **THIS COURT ORDERS** that, subject to paragraphs 8-9 hereof, Donald Sproule, David Archibald and Michael Campbell are hereby appointed as representatives of all Former Employees in the proceedings under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA"), the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (the "Proceedings"), including, without limitation, for the purpose of settling or compromising claims by the Former Employees in the Proceedings.
3. **THIS COURT ORDERS** that, subject to paragraphs 8-9 hereof, Koskie Minsky LLP is hereby appointed as counsel for all Former Employees in the Proceedings for any issues affecting the Former Employees in the Proceedings.
4. **THIS COURT ORDERS** that Nortel shall provide to the Representatives and their counsel, without charge:
 - (a) the names, last known addresses and last known e-mail addresses (if any) of all the Former Employees, whom they represent, as well as applicable data regarding their entitlements, subject to a confidentiality agreement and to only be used for the purposes of the Proceedings; and
 - (b) upon request of the Representatives and their counsel, such documents and data, as may be relevant to matters relating to the issues in the Proceedings, including documents and data, pertaining to the various pension, benefit, supplementary pension, termination allowance plans, severance and termination payments and other arrangements for group health, life insurance, retirement and severance payments, including up to date financial information regarding the funding and investments of any of these arrangements.
5. **THIS COURT ORDERS** that all reasonable legal, actuarial and financial expert and advisory fees and all other incidental fees and disbursements, as may have been or shall be

incurred by the Representatives and their counsel, shall be paid by Nortel on a bi-weekly basis, forthwith upon the rendering of accounts to Nortel. In the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

6. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the Former Employees by advertisement in the national edition of the Globe and Mail, La Presse, the Ottawa Citizen and the Calgary Herald under such terms and conditions as to be agreed upon by the Representatives, the Applicants and the Monitor.

7. **THIS COURT ORDERS** that the Representatives, or their counsel on their behalf, are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

8. **THIS COURT ORDERS** that, subject to paragraph 9 hereof, any individual Former Employee who does not wish to be bound by this Order and all other related Orders which may subsequently be made in these proceedings shall, within 30 days of publication of notice of this Order, notify the Monitor, in writing, by facsimile, mail or delivery, and in the form attached as Schedule "A" hereto and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in these Proceedings.

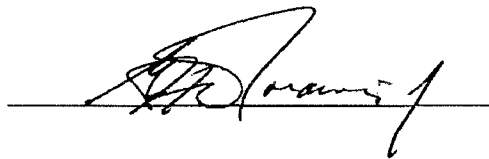
9. **THIS COURT ORDERS** that notwithstanding paragraph 8 hereof any Former Employee already represented by Lewis Gottheil, counsel to the National Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW-Canada") ("CAW Counsel") are not bound by this Order and CAW Counsel shall deliver to Koskie Minsky LLP, the Monitor and Nortel a listing of each Former Employee so represented within 30 days of the issuance of this Order.

10. **THIS COURT ORDERS** that Former Employees bound by this Order specifically exclude any former chief executive officer or chairman of the board of directors, any non-employee member of the board of directors, or such former employees or officers that are

subject to investigation and charges by the Ontario Securities Commission or the United States Securities and Exchange Commission, and that the Representatives have no obligation to represent such persons.

11. **THIS COURT ORDERS** that the Representatives and Koskie Minsky LLP shall have no liability as a result of their respective appointment or the fulfilment of their duties in carrying out the provisions of this Order from and after January 14, 2009 save and except for any gross negligence or unlawful misconduct on their part.

12. **THIS COURT ORDERS** that the Representatives shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 3 0 2009

PER / PAR: TV

SCHEDULE "A"

Court File No.: 09-CL-7950

**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
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL
NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL
CORPORATION and NORTEL NETWORKS TECHNOLOGY CORPORATION

APPLICATION UNDER THE *COMPANIES CREDITORS' ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

OPT-OUT LETTER

Ernst & Young Inc.
Ernst & Young Tower
222 Bay Street
P.O. Box 251
Toronto, Ontario M5K 1J7

Attention: Lee K. Close
Tel: 1.866.942.7177
Fax: 416.943.3300

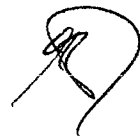
I, _____, am a former employee of the Nortel companies, as
[Insert Name]
defined in the Order of Mr. Justice Morawetz dated April 20, 2009.

Under Paragraph 8 of that Order, former employees who do not wish Koskie Minsky LLP to act as their representative counsel may opt out.

I hereby notify the Monitor that I do not wish to be bound by the Order and will be represented as an independent individual party to the extent I wish to appear in these proceedings.

Date

Signature



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 NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION

Court File No: 09-CL-7950

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

OGILVY RENAULT LLP

Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
Toronto, Ontario M5J 2Z4

Derrick Tay LSUC#: 21152A

Tel: (416) 216-4832
Email: dtay@ogilvyrenault.com

Mario Forte LSUC#: 27293F

Tel: (416) 216-4870
Email: mforte@ogilvyrenault.com

Jennifer Stam LSUC #46735J

Tel: (416) 216-2327
Email: islam@ogilvyrenault.com
Fax: (416) 216-3930

Lawyers for the Applicants

067

080

Exhibit "C"

Court File No. 09-CL-7950

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

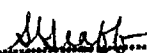
**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION**

NOTICE RESPECTING HARDSHIP PAYMENT APPLICATIONS

On ●, 2009, the Honourable Mr. Justice Morawetz approved a process for former employees of Nortel who are experiencing financial hardship to apply for immediate payment on account of their future distributions. The eligibility requirements and application that have been approved by the Court are attached.

Please note that you do not have to be represented by counsel to apply. If you have questions, you may call ● (E&Y) or ● (K.M.).

This is Exhibit "C" referred to in the
affidavit of JOHN DOOLITTLE
sworn before me, this 24TH
day of JULY 2009

A COMMISSIONER, ETC.

**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 NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION**

APPLICATION FOR HARDSHIP PAYMENTS

Applicant Information

- 1. Name: _____
- 2. Address: _____

- 3. Telephone Number(s): _____
- 4. Email Address: _____
- 5. Nortel Global Identification Number: _____

Nortel Employment Information

- 1. Date Started Nortel Employment: _____
- 2. Date Left Nortel Employment: _____
- 3. Gross Monthly Pay: \$ _____
- 4. Nortel Canadian Entity
Which Employed You _____
- 5. Severance Received \$ _____
- 6. Date Eligible to Receive
Nortel Pension _____

Name: _____

Current Sources of Income

1. Employment Insurance: (a) Amount: _____
- (b) Actual/Expected
End Date: _____
- (c) If NO EI or EI terminated, reason:

2. Other Sources of Income
(including income of a spouse
living with the Applicant): (a) _____
- (b) _____
- (c) _____

Personal Circumstances Requiring Hardship Payment

- (a) Medical expenses for self or dependant (including nature of expense, amount, whether can be reimbursed from another source):

- (b) Other reason for immediate or urgent need for funds:
- _____
- _____
- _____

I certify the contents hereof to be true.

Witness

Signature

Submit this form
by fax to: _____

by e-mail to: _____

by mail to: _____

Eligibility Requirements and Procedure with Respect to Hardship Payment Applications

1. **Eligibility** – A former employee would be eligible for hardship payments if he or she is resident in Canada and has no available source of income, being all monies receivable by the former employee including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension or disability payments or income replacement payments (“Income”), or Income of a spouse, as of the date of the application and has no reasonable expectation of being in receipt of Income during the Application Period (referred to below) and:
 - a. The former employee is unable to work due to illness or is incurring costs in excess of 25% of his or her EI payments as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
 - b. During the Application Period the former employee is not receiving a Nortel pension or employment insurance (EI) as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.
2. **Application Process** – Notice of the application process will be posted on the Monitor’s website and the website of the Nortel Retiree Protection Committee (NRPC) in a form approved by the Court. An applicant would be required to complete an application form (to be approved by the Court) to be submitted to a person designated by the Monitor. The person so designated would be expected to deal with completed applications within 14 to 21 days and to make an initial determination to approve or reject the application. The first payment will proceed within seven business days subject to the payment parameters set out below. If not approved, the application is to be reviewed by an informal committee and the applicant will be given the right to be heard by the committee. The committee will be composed of one company appointee, one appointee of the Monitor and one appointee chosen by the NRPC, who will be compensated for his time on an hourly basis. A further appeal may be brought to the Court or an officer of the Court designated by the presiding judge, costs to be determined by the Court on the application.
3. **Payment Parameters** – Any successful applicant may be approved for a maximum payment of up to 8 weeks salary based on a maximum weekly salary of up to \$1,200 per week payable in monthly instalments. The hardship committee will also have discretion to approve additional amounts in cases of medical and other emergencies in an amount up to \$2,500.
4. **Application Period** – From the date of court approval to November 30, 2009.
5. **Miscellaneous**
 - a. Hardship Payments are advances against distributions on claims, and will be deducted from any payments on claims that may be allowed in the ultimate claims process in these proceedings.
 - b. The Monitor shall report to the Court on or before November 30, 2009 with respect to the processing and administration of hardship payment applications.
 - c. The aggregate maximum amount available for hardship payments on applications approved during the Application Period is \$750,000.

Exhibit "D"

TAB B

This is Exhibit "B" referred to
in the Affidavit of Saneliso Moyo
Affirmed this 15th day of August, 2017.

K. O'Rourke

A COMMISSIONER FOR TAKING AFFIDAVITS

K. O'Rourke

LSUC# 66420 | C

Court File No.: 09-CL-7950

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	THURSDAY, THE 30 th
)	
JUSTICE MORAWETZ)	DAY OF JULY, 2009



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
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED

ORDER
(Employee Hardship, Canadian GSPA, Stay Extension)


THIS MOTION, made by Nortel Networks Corporation, Nortel Networks Limited (“NNL”), Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation (collectively, the “Applicants”) for, *inter alia*, the approval of an employee hardship application process, and the other relief set out in the Applicants’ notice of motion dated July 24, 2009 was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Doolittle sworn July 24, 2009 (the "Doolittle Affidavit") and the Sixteenth report of Ernst & Young Inc. dated July 24, 2009 (the "Sixteenth Report") in its capacity as monitor (the "Monitor") and on hearing submissions of counsel for the Applicants, the Monitor and those other parties present, no one appearing for any other person on the service list, although served as appears from the Affidavit of Service of Marna McGeorge sworn July 24, 2009, filed.

1. **THIS COURT ORDERS** that the time for the service of the Notice of Motion, the Applicants' Motion Record, and the Sixteenth Report is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Doolittle Affidavit.
3. **THIS COURT ORDERS** that the employee hardship application process, as described in the Doolittle Affidavit and in the Sixteenth Report, and utilizing the forms and procedures contained therein, is hereby approved, and that the Monitor and the Applicants are authorized and directed to comply with their obligations thereunder.
4. **THIS COURT ORDERS** that the Eighth Extension Deed dated July 9, 2009 with respect to the Canadian GSPA is hereby approved.
5. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 14 of the Third Amended and Restated Initial Order of this Court dated January 14, 2009, is hereby extended to and including October 30, 2009.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or elsewhere, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be 'A. H. [unclear]', written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 30 2009

PER / PAR: 

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION

Court File No: 09-CL-7950

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

Proceeding commenced at Toronto

**ORDER
(Employee Hardship, Canadian GSPA,
Stay Extension)**

OGILVY RENAULT LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
P.O. Box 84
Toronto, Ontario M5J 2Z4, Canada

Derrick Tay LSUC#: 21152A
Tel: (416) 216-4832
Email: dtay@ogilvyrenault.com

Jennifer Stam LSUC #46735J
Tel: (416) 216-2327
Email: jstam@ogilvyrenault.com
Fax: (416) 216-3930
Lawyers for the Applicants

TAB C

This is Exhibit "C" referred to
in the Affidavit of Saneliso Moyo
Affirmed this 15th day of August, 2017.

K. O' Rourke

A COMMISSIONER FOR TAKING AFFIDAVITS

K. O' Rourke

CSUC# 664201C

SEARS CANADA / EMPLOYEE REPRESENTATIVES AND COUNSEL**EMPLOYEE HARDSHIP FUND TERM SHEET**

Subject to the terms and conditions set out below, Ursel Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**") and the Employee Representatives (as defined in the Employee Representative Counsel Order issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on July 13, 2017 in the proceedings (the "**CCAA Proceedings**") of Sears Canada Inc. ("**SCI**") and certain of its subsidiaries (collectively, and together with SCI, the "**Sears Canada Entities**") under the *Companies' Creditors Arrangement Act*) agree not to oppose: (i) the Key Employee Retention Plan (the "**KERP**") approved by the Court in the CCAA Proceedings pursuant to the Amended and Restated Initial Order dated June 22, 2017 (the "**Initial Order**"), and to withdraw with prejudice their responding motion record returnable July 13, 2017, including the Notice of Motion contained therein dated July 12, 2017, to the extent that it deals with the KERP; and (ii) the stay of payment of termination and severance to any former employees of the Sears Canada Entities.¹

- | | | |
|----|---------------------------------------|--|
| 1. | Creation of an Employee Hardship Fund | The Sears Canada Entities, in consultation with FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the " Monitor ") and Employee Representative Counsel, and with the approval of the Court, shall establish and fund the creation of an "Employee Hardship Fund", in accordance with the terms and conditions set out below. |
| 2. | Notice | Notice of the "Eligibility Criteria" and the "Application Process" set forth below shall be posted on the Monitor's website and the website of Employee Representative Counsel, in the form attached as Appendix "A" to this Term Sheet, subject to any modifications approved by the Court. |
| 3. | Eligibility Criteria | <p>A former employee of any of the Sears Canada Entities (including, for greater certainty, an employee of any of the Sears Canada Entities whose employment is terminated after the date of this Term Sheet) whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the CCAA Proceedings may be eligible to receive hardship payments from the Employee Hardship Fund (the "Hardship Payments") if:</p> <p style="margin-left: 40px;">(a) he or she is resident in Canada;</p> <p style="margin-left: 40px;">(b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("EI") and limited disability payments) (collectively, "Income"), as of the date of their application to the Employee</p> |

¹ Notwithstanding (ii), Employee Representative Counsel shall be permitted, with the consent of the Sears Canada Entities, to pursue recoveries for former employees of the Sears Canada Entities under the *Wage Earner Protection Program Act*, and nothing in this Term Sheet shall prevent Employee Representative Counsel and/or individual active and former employees of the Sears Canada Entities from making claims for termination and severance in any claims process which may be instituted in the CCAA Proceedings.

Hardship Fund;

- (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
- (d) he or she:
 - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
 - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

4. Application Process

In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete an application form in the form attached as Appendix "B" to this Term Sheet, subject to any modifications approved by the Court (the "**Application Form**"), and shall be required to submit such Application Form to the Monitor.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the payment parameters set out below. If not approved, the application is to be reviewed by an informal committee (the "**Hardship Committee**") and the applicant will be given the right to be heard by such committee. The Hardship Committee shall be composed of one appointee of the Sears Canada Entities, one appointee of Employee Representative Counsel and one appointee of the Monitor, and shall convene meetings (whether in person, by phone or other means) as necessary, but no more than weekly, to review and determine any applications not approved by the Monitor. All decisions of the Hardship Committee shall be final and binding and there shall be no right of appeal, review or recourse to the Court from any of the Hardship Committee's decisions.

5. Payment Parameters

Any successful applicant may be approved for a maximum payment of up to eight (8) weeks' of the applicant's regular wages (as determined by applicable employment standards legislation) up to a

maximum weekly amount of \$1,200 per week, payable in monthly installments. The Hardship Committee shall have the discretion to approve additional amounts in cases of medical and other emergencies in an amount up to \$2,500.

In determining the amount to be paid, the Monitor and, if applicable, the Hardship Committee, shall consider the amount payable to the applicant from a Sears Canada Entity which has been stayed or suspended under the CCAA Proceedings (the "**Stayed Amount Owing**"). Payment to an applicant shall only exceed the Stayed Amount Owing in exceptional circumstances.

All Hardship Payments are subject to all applicable tax and other withholdings, which shall not be incremental obligations of the Sears Canada Entities.

6. Maximum Employee Hardship Fund Amount

The Sears Canada Entities shall contribute to the Employee Hardship Fund an aggregate, maximum amount of no more than \$500,000, as follows:

- (a) upon Court approval of this Term Sheet², \$300,000 from otherwise earned but foregone executive payment entitlements under the KERP; and
- (b) following the second installment payment date under the KERP, up to \$200,000 from otherwise earned but foregone executive payment entitlements under the KERP.

No additional contributions to the Employee Hardship Fund shall be made by the Sears Canada Entities for the duration of the CCAA Proceedings without further order of the Court and unless: (i) the DIP Facilities (as defined in the Initial Order) have been repaid in full and have been terminated; (ii) the DIP ABL Agent and the DIP Term Agent (as each such term is defined in the Initial Order) have consented to such contribution; or (iii) such contribution is made from further otherwise earned but foregone payment entitlements to the first installment payment and/or the second installment payment under the KERP. For greater certainty, there is no obligation to increase the Maximum Employee Hardship Fund Amount without Court approval, even if (i), (ii) or (iii) above occur.

Any amounts remaining in the Employee Hardship Fund upon the termination of the CCAA Proceedings shall be forthwith returned to the Sears Canada Entities with no further claims thereon.

7. Application Period

From the date of Court approval of the Employee Hardship Fund to October 4, 2017, or in the event of the extension of the stay of proceedings, such further date as determined by the Court.

² The order of the Court approving this Term Sheet shall provide that any foregone executive payment entitlements under the KERP directed to fund the Employee Hardship Fund shall correspondingly reduce the KERP entitlements and the KERP Priority Charge (as defined in the Initial Order).

8. Terms and Conditions Any Hardship Payments made to any former employee of the Sears Canada Entities shall be deducted from any payments on claims that may be allowed in any claims process conducted by the Sears Canada Entities in the CCAA Proceedings or any related bankruptcy, receivership or insolvency proceeding, but in no case shall any recipient be required to return any Hardship Payments received.
9. Reporting The Monitor shall report to the Court on or before October 4, 2017, with respect to the processing and administration of Hardship Payment applications.

Appendix "A"

Court File No.: CV-17-11846-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

NOTICE RESPECTING HARDSHIP PAYMENT APPLICATIONS

On August 1, 2017, the Honourable Mr. Justice Hainey approved a process for former employees of Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc. and SearsConnect, who are experiencing financial hardship to apply to receive payment from the Employee Hardship Fund. The eligibility requirements and application process that have been approved by the Court are attached to this notice.

Eligibility Requirements and Procedure with Respect to Hardship Payment Application

1. **Eligibility** – A former employee of any of the Sears Canada Entities¹ whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the proceedings of the Sears Canada Entities under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") may be eligible to receive hardship payments from the Employee Hardship Fund (the "**Hardship Payments**") if:
 - (a) he or she is resident in Canada;
 - (b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("**EI**") and limited disability payments) (collectively, "**Income**"), as of the date of their application to the Employee Hardship Fund;
 - (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
 - (d) he or she:
 - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
 - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

2. **Application Process** – In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete the application form for hardship payments (the "**Application Form**") found on the websites of FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the "**Monitor**") or Ursei Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**"), and shall be required to submit the Application Form to the Monitor at the address set forth therein.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the

¹ The "Sears Canada Entities" are Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc. and SearsConnect.

payment parameters set out below. If not approved, the application is to be reviewed by an informal committee (the "**Hardship Committee**") and the applicant will be given the right to be heard by such committee. The Hardship Committee shall be composed of one appointee of the Sears Canada Entities, one appointee of Employee Representative Counsel and one appointee of the Monitor, and shall convene meetings (whether in person, by phone or other means) as necessary, but no more than weekly, to review and determine any applications not approved by the Monitor. All decisions of the Hardship Committee shall be final and binding and there shall be no right of appeal, review or recourse to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") from any of the Hardship Committee's decisions.

3. **Payment Parameters** – Any successful applicant may be approved for a maximum payment of up to eight (8) weeks' of the applicant's regular wages (as determined by applicable employment standards legislation) up to a maximum weekly amount of \$1,200 per week, payable in monthly installments. The Hardship Committee shall have the discretion to approve additional amounts in cases of medical and other emergencies in an amount up to \$2,500.

In determining the amount to be paid, the Monitor and, if applicable, the Hardship Committee, shall consider the amount payable to the applicant from a Sears Canada Entity which has been stayed or suspended under the CCAA Proceedings (the "**Stayed Amount Owing**"). Payment to an applicant shall only exceed the Stayed Amount Owing in exceptional circumstances.

All Hardship Payments are subject to all applicable tax and other withholdings, which shall not be incremental obligations of the Sears Canada Entities.

4. **Application Period** – From the date of Court approval of the Employee Hardship Fund to October 4, 2017, or in the event of the extension of the stay of proceedings, such further date as determined by the Court.

5. **Miscellaneous**

- (a) Any Hardship Payments made to any former employee of the Sears Canada Entities shall be deducted from any payments on claims that may be allowed in any claims process conducted by the Sears Canada Entities in the CCAA Proceedings or any related bankruptcy, receivership or insolvency proceeding, but in no case shall any recipient be required to return any Hardship Payments received.
- (b) The Sears Canada Entities shall contribute to the Employee Hardship Fund an aggregate, maximum amount of no more than \$500,000, as follows:
 - (i) upon Court approval of the Employee Hardship Fund, \$300,000 from otherwise earned but foregone executive payment entitlements under the Key Employee Retention Plan (the "**KERP**") approved by the Court in the CCAA Proceedings; and
 - (ii) following the second installment payment date under the KERP, up to \$200,000 from otherwise earned but foregone executive payment entitlements under the KERP.

Appendix "B"

Court File No.: CV-17-11846-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC.,
CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

APPLICATION FORM FOR HARDSHIP PAYMENTS

APPLICANT INFORMATION

1. Name: _____
2. Address: _____

3. Telephone Number(s): _____
4. Email Address: _____
5. Social Insurance Number: _____
6. Sears Canada Employee Number: _____

SEARS CANADA EMPLOYMENT INFORMATION

1. Date Employment with Sears Canada Began: _____
2. Date Employment with Sears Canada Terminated: _____
3. Province or Region employed in: _____
4. Store or Head Office: _____ Store No.: _____
5. Position: _____
6. Gross Monthly Income: \$ _____
7. If any, amount of severance received: _____
8. If eligible, date of eligibility to receive Sears Canada pension: _____

CURRENT SOURCES OF INCOME

1. Employment Insurance:

- a. Amount: _____
- b. Actual/Expected End Date: _____
- c. If no EI, or EI terminated, reason(s):

2. Social Assistance:

- a. Type of Social Assistance: _____
- b. Commencement Date: _____
- c. Amount: _____
- d. Actual/Expected End Date:

- e. If social assistance is being terminated, reason(s) why:

3. Other Sources of Income (including LTD, other disability payments, other employment, pension, workers' compensation, etc.):

- _____
- a. Amount: _____
 - b. Actual/Expected End Date: _____

4. Provincial Drug Benefit Programs:

- a. Have you applied for, or been granted, any provincial drug benefit program? If so, which program?

- b. What are the conditions of your receiving this benefit?

- c. Why does this benefit not cover your needs?

5. Other Extended Health and Dental Benefits:

a. Do you have access to other extended health and dental benefits through a family member (i.e. a spouse)?

b. If so, please explain how those benefits do not cover your needs:

6. Other Sources of Income:

a. Gross yearly income of your spouse? _____

PERSONAL CIRCUMSTANCES REQUIRING HARDSHIP PAYMENT

Medical expenses for self or dependent (including nature of expense, amount, whether can be reimbursed from another source):

Other reason for immediate or urgent need for funds (for example, risk of loss of housing in the next 30 days):

I certify the contents hereof to be true and that I have obtained all necessary consents for the disclosures set forth herein.

Witness

Signature

Date

Please deliver your completed application form to the Monitor at the following address:

FTI Consulting Canada Inc., in its capacity as Court Appointed Monitor of Sears Canada Inc. et al.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M4K 1G8
Fax: (416) 649-8101
Email: searscanada@fticonsulting.com

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICERS INC., INITIUM LOGISTICS SERVICE INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "Applicant", and collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

AFFIDAVIT OF SANELISO MOYO
(Affirmed August 15, 2017)

Ursel Phillips Fellows Hopkinson LLP
555 Richmond St. W., Suite 1200
Toronto, Ontario M5V 3B1

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Email: sursel@upflaw.ca
Tel: (416) 969-3515

Ashley Schuitema LS#: 68257G
Email: ashuitema@upflaw.ca
Tel: (416) 969-3062

Fax: (416) 968-0325

Employee Representative Counsel

TAB 3

Court File No. CV-17-11846-00CL

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

THE HONOURABLE MR.)	FRIDAY, THE 18 TH
)	
JUSTICE HAINEY)	DAY OF AUGUST, 2017

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 SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.
(each, an “**Applicant**”, and collectively, the “**Applicants**”)

EMPLOYEE HARDSHIP FUND ORDER

THIS MOTION, made by the Employee Representative Counsel, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of Employee Representative Counsel and the Affidavit of Saneliso Moyo, Affirmed August 15, 2017 (the “**Moyo Affidavit**”), and on hearing the submissions of Employee Representative Counsel, counsel for the Applicants (and together with SearsConnect, the “**Sears Canada Entities**”), counsel to the Monitor, and those other parties present:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Moyo Affidavit.
3. **THIS COURT ORDERS** that the Sears Canada Entities are hereby authorized and directed to establish and create an "Employee Hardship Fund" pursuant to and in accordance with the terms of the Employee Hardship Fund Term Sheet dated August 11, 2017, attached as Schedule "A" to this Order which is hereby approved (the "**Employee Hardship Fund Term Sheet**").
4. **THIS COURT ORDERS** that the employee hardship application process, as described in the Employee Hardship Fund Term Sheet, and utilizing the forms and procedures contained therein, is hereby approved.
5. **THIS COURT ORDERS** that the Sears Canada Entities, the Monitor, Employee Representative Counsel and the Employee Representatives are hereby authorized and directed to implement the Employee Hardship Fund Term Sheet and to take all steps and do all acts necessary or desirable pursuant to and in accordance with the terms of the Employee Hardship Fund Term Sheet.
6. **THIS COURT ORDERS** that the Sears Canada Entities, the Monitor, Employee Representative Counsel and the Employee Representatives shall incur no personal liability or obligation as a result of the performance of their duties in carrying out the provisions of the Employee Hardship Fund Term Sheet or this Order, save and except for liability arising out of

gross negligence or wilful misconduct and, for greater certainty, none of the Monitor or the Hardship Committee (as defined in the Employee Hardship Fund Term Sheet) shall have any personal liability under any circumstances in connection with any assessment or determination on an application by a Former Employee to receive Hardship Payments (as defined in the Employee Hardship Fund Term Sheet).

7. **THIS COURT ORDERS** that, to the extent that payment entitlements under the KERP are directed to the Employee Hardship Fund, the entitlements under the KERP and the KERP Priority Charge (as defined in the Amended and Restated Initial Order) shall be reduced accordingly.

8. **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 Sears Canada Entities, the Monitor, Employee Representative Counsel and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Sears Canada Entities, Employee Representative Counsel, and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Sears Canada Entities, Employee Representative Counsel, and the Monitor and their respective agents in carrying out the terms of this Order.

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 SEARS CANADA INC., CORBEL ELECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 163886 CANADA INC., AND 3339611 CANADA INC. (collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

EMPLOYEE HARDSHIP FUND ORDER

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Tel: (416) 969-3062

Fax: (416) 968-0325

Employee Representative Counsel

SCHEDULE A

SEARS CANADA / EMPLOYEE REPRESENTATIVES AND COUNSEL

EMPLOYEE HARDSHIP FUND TERM SHEET

Subject to the terms and conditions set out below, Ursel Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**") and the Employee Representatives (as defined in the Employee Representative Counsel Order issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on July 13, 2017 in the proceedings (the "**CCAA Proceedings**") of Sears Canada Inc. ("**SCI**") and certain of its subsidiaries (collectively, and together with SCI, the "**Sears Canada Entities**") under the *Companies' Creditors Arrangement Act*) agree not to oppose: (i) the Key Employee Retention Plan (the "**KERP**") approved by the Court in the CCAA Proceedings pursuant to the Amended and Restated Initial Order dated June 22, 2017 (the "**Initial Order**"), and to withdraw with prejudice their responding motion record returnable July 13, 2017, including the Notice of Motion contained therein dated July 12, 2017, to the extent that it deals with the KERP; and (ii) the stay of payment of termination and severance to any former employees of the Sears Canada Entities.¹

1. Creation of an Employee Hardship Fund The Sears Canada Entities, in consultation with FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the "**Monitor**") and Employee Representative Counsel, and with the approval of the Court, shall establish and fund the creation of an "Employee Hardship Fund", in accordance with the terms and conditions set out below.

2. Notice Notice of the "Eligibility Criteria" and the "Application Process" set forth below shall be posted on the Monitor's website and the website of Employee Representative Counsel, in the form attached as Appendix "A" to this Term Sheet, subject to any modifications approved by the Court.

3. Eligibility Criteria A former employee of any of the Sears Canada Entities (including, for greater certainty, an employee of any of the Sears Canada Entities whose employment is terminated after the date of this Term Sheet) whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the CCAA Proceedings may be eligible to receive hardship payments from the Employee Hardship Fund (the "**Hardship Payments**") if:
 - (a) he or she is resident in Canada;

 - (b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("**EI**") and limited disability payments) (collectively, "**Income**"), as of the date of their application to the Employee

¹ Notwithstanding (ii), Employee Representative Counsel shall be permitted, with the consent of the Sears Canada Entities, to pursue recoveries for former employees of the Sears Canada Entities under the *Wage Earner Protection Program Act*, and nothing in this Term Sheet shall prevent Employee Representative Counsel and/or individual active and former employees of the Sears Canada Entities from making claims for termination and severance in any claims process which may be instituted in the CCAA Proceedings.

Hardship Fund;

- (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
- (d) he or she:
 - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
 - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

4. Application Process

In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete an application form in the form attached as Appendix "B" to this Term Sheet, subject to any modifications approved by the Court (the "**Application Form**"), and shall be required to submit such Application Form to the Monitor.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the payment parameters set out below. If not approved, the application is to be reviewed by an informal committee (the "**Hardship Committee**") and the applicant will be given the right to be heard by such committee. The Hardship Committee shall be composed of one appointee of the Sears Canada Entities, one appointee of Employee Representative Counsel and one appointee of the Monitor, and shall convene meetings (whether in person, by phone or other means) as necessary, but no more than weekly, to review and determine any applications not approved by the Monitor. All decisions of the Hardship Committee shall be final and binding and there shall be no right of appeal, review or recourse to the Court from any of the Hardship Committee's decisions.

5. Payment Parameters

Any successful applicant may be approved for a maximum payment of up to eight (8) weeks' of the applicant's regular wages (as determined by applicable employment standards legislation) up to a

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maximum weekly amount of \$1,200 per week, payable in monthly installments. The Hardship Committee shall have the discretion to approve additional amounts in cases of medical and other emergencies in an amount up to \$2,500.

In determining the amount to be paid, the Monitor and, if applicable, the Hardship Committee, shall consider the amount payable to the applicant from a Sears Canada Entity which has been stayed or suspended under the CCAA Proceedings (the "**Stayed Amount Owing**"). Payment to an applicant shall only exceed the Stayed Amount Owing in exceptional circumstances.

All Hardship Payments are subject to all applicable tax and other withholdings, which shall not be incremental obligations of the Sears Canada Entities.

6. Maximum Employee Hardship Fund Amount

The Sears Canada Entities shall contribute to the Employee Hardship Fund an aggregate, maximum amount of no more than \$500,000, as follows:

- (a) upon Court approval of this Term Sheet², \$300,000 from otherwise earned but foregone executive payment entitlements under the KERP; and
- (b) following the second installment payment date under the KERP, up to \$200,000 from otherwise earned but foregone executive payment entitlements under the KERP.

No additional contributions to the Employee Hardship Fund shall be made by the Sears Canada Entities for the duration of the CCAA Proceedings without further order of the Court and unless: (i) the DIP Facilities (as defined in the Initial Order) have been repaid in full and have been terminated; (ii) the DIP ABL Agent and the DIP Term Agent (as each such term is defined in the Initial Order) have consented to such contribution; or (iii) such contribution is made from further otherwise earned but foregone payment entitlements to the first installment payment and/or the second installment payment under the KERP. For greater certainty, there is no obligation to increase the Maximum Employee Hardship Fund Amount without Court approval, even if (i), (ii) or (iii) above occur.

Any amounts remaining in the Employee Hardship Fund upon the termination of the CCAA Proceedings shall be forthwith returned to the Sears Canada Entities with no further claims thereon.

7. Application Period

From the date of Court approval of the Employee Hardship Fund to October 4, 2017, or in the event of the extension of the stay of proceedings, such further date as determined by the Court.

² The order of the Court approving this Term Sheet shall provide that any foregone executive payment entitlements under the KERP directed to fund the Employee Hardship Fund shall correspondingly reduce the KERP entitlements and the KERP Priority Charge (as defined in the Initial Order).

8. Terms and Conditions Any Hardship Payments made to any former employee of the Sears Canada Entities shall be deducted from any payments on claims that may be allowed in any claims process conducted by the Sears Canada Entities in the CCAA Proceedings or any related bankruptcy, receivership or insolvency proceeding, but in no case shall any recipient be required to return any Hardship Payments received.
9. Reporting The Monitor shall report to the Court on or before October 4, 2017, with respect to the processing and administration of Hardship Payment applications.

Appendix "A"

Court File No.: CV-17-11846-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC.,
CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

NOTICE RESPECTING HARDSHIP PAYMENT APPLICATIONS

On August 9, 2017, the Honourable Mr. Justice Hainey approved a process for former employees of Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc. and SearsConnect, who are experiencing financial hardship to apply to receive payment from the Employee Hardship Fund. The eligibility requirements and application process that have been approved by the Court are attached to this notice.

Eligibility Requirements and Procedure with Respect to Hardship Payment Application

1. **Eligibility** – A former employee of any of the Sears Canada Entities¹ whose entitlement to receive a payment from a Sears Canada Entity has been stayed or suspended pursuant to the proceedings of the Sears Canada Entities under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") may be eligible to receive hardship payments from the Employee Hardship Fund (the "**Hardship Payments**") if:
 - (a) he or she is resident in Canada;
 - (b) he or she has no available source of income, being all monies receivable by the former employee, including, without limitation, employment income such as wages, salary or bonuses, consulting income, or pension income, or unless otherwise determined by the Monitor or, if applicable, the Hardship Committee (as defined below), disability payments or income replacement payments (other than employment insurance ("**EI**") and limited disability payments) (collectively, "**Income**"), as of the date of their application to the Employee Hardship Fund;
 - (c) he or she has no reasonable expectation of being in receipt of Income during the "Application Period" set forth below; and
 - (d) he or she:
 - (i) is unable to work due to illness and is incurring costs in excess of 20% of his or her limited disability payments where he or she has no access to any program which would cover such costs, or is incurring costs in excess of 20% of his or her EI, such costs, in either case, being incurred as a result of treatment for illness or healthcare costs, or as a result of the illness of a family member who is dependent on the former employee for support; or
 - (ii) is not receiving EI as a result of ineligibility for EI or exhaustion of EI benefits, and demonstrates some other significant hardship in dealing with financial obligations.

In all cases, the former employee must demonstrate urgent or immediate hardship in dealing with their financial obligations and funds must not be available to such former employee from any alternative sources to satisfy the obligations for which the Employee Hardship Fund has been established.

2. **Application Process** – In order to receive Hardship Payments from the Employee Hardship Fund, a former employee shall be required to complete the application form for hardship payments (the "**Application Form**") found on the websites of FTI Consulting Canada Inc. in its capacity as Court-appointed monitor of the Sears Canada Entities (the "**Monitor**") or Ursel Phillips Fellows Hopkinson LLP, as employee representative counsel ("**Employee Representative Counsel**"), and shall be required to submit the Application Form to the Monitor at the address set forth therein.

The Monitor shall assess completed applications within 14 calendar days and make an initial determination to approve or reject each such application. If approved, the first Hardship Payment will proceed within seven (7) business days following the date of such approval, subject to the

¹ The "Sears Canada Entities" are Sears Canada Inc., Corbeil Électrique Inc., S.L.H. Transport Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., Initium Commerce Labs Inc., Initium Trading and Sourcing Corp., Sears Floor Covering Centres Inc., 173470 Canada Inc., 2497089 Ontario Inc., 6988741 Canada Inc., 10011711 Canada Inc., 1592580 Ontario Limited, 955041 Alberta Ltd., 4201531 Canada Inc., 168886 Canada Inc., 3339611 Canada Inc. and SearsConnect.

payment parameters set out below. If not approved, the application is to be reviewed by an informal committee (the "**Hardship Committee**") and the applicant will be given the right to be heard by such committee. The Hardship Committee shall be composed of one appointee of the Sears Canada Entities, one appointee of Employee Representative Counsel and one appointee of the Monitor, and shall convene meetings (whether in person, by phone or other means) as necessary, but no more than weekly, to review and determine any applications not approved by the Monitor. All decisions of the Hardship Committee shall be final and binding and there shall be no right of appeal, review or recourse to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") from any of the Hardship Committee's decisions.

3. **Payment Parameters** – Any successful applicant may be approved for a maximum payment of up to eight (8) weeks' of the applicant's regular wages (as determined by applicable employment standards legislation) up to a maximum weekly amount of \$1,200 per week, payable in monthly installments. The Hardship Committee shall have the discretion to approve additional amounts in cases of medical and other emergencies in an amount up to \$2,500.

In determining the amount to be paid, the Monitor and, if applicable, the Hardship Committee, shall consider the amount payable to the applicant from a Sears Canada Entity which has been stayed or suspended under the CCAA Proceedings (the "**Stayed Amount Owing**"). Payment to an applicant shall only exceed the Stayed Amount Owing in exceptional circumstances.

All Hardship Payments are subject to all applicable tax and other withholdings, which shall not be incremental obligations of the Sears Canada Entities.

4. **Application Period** – From the date of Court approval of the Employee Hardship Fund to October 4, 2017, or in the event of the extension of the stay of proceedings, such further date as determined by the Court.

5. **Miscellaneous**

- (a) Any Hardship Payments made to any former employee of the Sears Canada Entities shall be deducted from any payments on claims that may be allowed in any claims process conducted by the Sears Canada Entities in the CCAA Proceedings or any related bankruptcy, receivership or insolvency proceeding, but in no case shall any recipient be required to return any Hardship Payments received.
- (b) The Sears Canada Entities shall contribute to the Employee Hardship Fund an aggregate, maximum amount of no more than \$500,000, as follows:
 - (i) upon Court approval of the Employee Hardship Fund, \$300,000 from otherwise earned but foregone executive payment entitlements under the Key Employee Retention Plan (the "**KERP**") approved by the Court in the CCAA Proceedings; and
 - (ii) following the second installment payment date under the KERP, up to \$200,000 from otherwise earned but foregone executive payment entitlements under the KERP.

Appendix "B"

Court File No.: CV-17-11846-00CL

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC.,
CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO
LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

APPLICATION FORM FOR HARDSHIP PAYMENTS

APPLICANT INFORMATION

1. Name: _____
2. Address: _____

3. Telephone Number(s): _____
4. Email Address: _____
5. Social Insurance Number: _____
6. Sears Canada Employee Number: _____

SEARS CANADA EMPLOYMENT INFORMATION

1. Date Employment with Sears Canada Began: _____
2. Date Employment with Sears Canada Terminated: _____
3. Province or Region employed in: _____
4. Store or Head Office: _____ Store No.: _____
5. Position: _____
6. Gross Monthly Income: \$ _____
7. If any, amount of severance received: _____
8. If eligible, date of eligibility to receive Sears Canada pension: _____

CURRENT SOURCES OF INCOME

1. Employment Insurance:

- a. Amount: _____
- b. Actual/Expected End Date: _____
- c. If no EI, or EI terminated, reason(s):

2. Social Assistance:

- a. Type of Social Assistance: _____
- b. Commencement Date: _____
- c. Amount: _____
- d. Actual/Expected End Date:

- e. If social assistance is being terminated, reason(s) why:

3. Other Sources of Income (including LTD, other disability payments, other employment, pension, workers' compensation, etc.):

- _____
- a. Amount: _____
 - b. Actual/Expected End Date: _____

4. Provincial Drug Benefit Programs:

- a. Have you applied for, or been granted, any provincial drug benefit program? If so, which program?

- b. What are the conditions of your receiving this benefit?

- c. Why does this benefit not cover your needs?

5. Other Extended Health and Dental Benefits:

a. Do you have access to other extended health and dental benefits through a family member (i.e. a spouse)?

b. If so, please explain how those benefits do not cover your needs:

6. Other Sources of Income:

a. Gross yearly income of your spouse? _____

PERSONAL CIRCUMSTANCES REQUIRING HARDSHIP PAYMENT

Medical expenses for self or dependent (including nature of expense, amount, whether can be reimbursed from another source):

Other reason for immediate or urgent need for funds (for example, risk of loss of housing in the next 30 days):

I certify the contents hereof to be true and that I have obtained all necessary consents for the disclosures set forth herein.

Witness Signature Date

Please deliver your completed application form to the Monitor at the following address:

FTI Consulting Canada Inc., in its capacity as Court Appointed Monitor of Sears Canada Inc. et al.
TD Waterhouse Tower
79 Wellington Street West
Suite 2010, P.O. Box 104
Toronto, Ontario M4K 1G8
Fax: (416) 649-8101
Email: searscanada@fticonsulting.com

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICERS INC., INITIUM LOGISTICS SERVICE INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an "Applicant", and collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

MOTION RECORD OF
EMPLOYEE REPRESENTATIVE COUNSEL
(Returnable August 18, 2017)

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