



No. S-226773  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND

IN THE MATTER OF MEDIPURE PHARMACEUTICALS INC. AND MEDIPURE HOLDINGS INC.

PETITIONERS

O R D E R MADE AFTER APPLICATION

(SECOND AMENDED AND RESTATED INITIAL ORDER –

SALE POWERS AND EXTENSION OF STAY)

BEFORE THE HONOURABLE )  
MR. JUSTICE WALKER ) SEPTEMBER 1, 2022  
)

ON THE APPLICATION of the Deloitte Restructuring Inc. (“Deloitte”) in its capacity as monitor (the “Monitor”) coming on for hearing at Vancouver, British Columbia via MS Teams, on the 1st day of September, 2022; AND ON HEARING Christopher J. Ramsay and those counsel listed on Schedule "A" hereto; AND UPON READING the material filed, and the consent of Deloitte to act as Monitor; AND UPON BEING ADVISED that the secured creditors and others who are likely to be affected by the charges created herein were or will be given notice; AND pursuant to the Companies’ Creditors Arrangement Act, R.S.C. 1985 c. C-36 as amended (the “CCA”), the British Columbia Supreme Court Civil Rules and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

## **SERVICE**

1. The time for service of the Notice of Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof, except as otherwise expressly stated in this Order.

## **JURISDICTION AND CONTINUATION OF PROCEEDINGS**

2. This Amended and Restated Initial Order amends and restates the Order (the “**Initial Order**”) of this Court made in these proceedings on August 19, 2022 (the “**Order Date**”), as amended and restated by the Order of this Court made in these proceedings on August 22, 2022 (the “**ARIO**”).

3. The Petitioners are companies to which the CCAA applies.

4. The proceedings commenced by each of the Petitioners, Medipure Pharmaceuticals Inc. and Medipure Holdings Inc., under Part III of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) by filing notices of intention to file a proposal (the “**NOI Proceedings**”) on May 11, 2022 (the “**NOI Filing Date**”) under Court File Nos. B220220 and B220221, Estate Numbers 11-2829780 and 11-2829781, Vancouver Registry, are hereby procedurally consolidated and taken up and continued under the CCAA and Deloitte is hereby discharged as proposal trustee in each of the NOI Proceedings.

## **PLAN OF ARRANGEMENT**

5. The Petitioners or the CRO (as defined herein) shall, with the prior written approval of the Monitor, have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

## **POSSESSION OF PROPERTY AND OPERATIONS**

6. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), and continue to carry on its business (the “**Business**”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. Subject to the terms of this Order, the Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by it, and, subject to the

prior written approval of the Monitor, shall be able to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

#### **CHIEF RESTRUCTURING OFFICER**

7. Helmsman Management Ltd. (the “CRO”) is hereby appointed pursuant to the CCAA as the chief restructuring officer of each Petitioner to take such steps as needed to monitor the business and financial affairs of the Petitioners and facilitate the Petitioners’ restructuring under the CCAA and the Petitioners shall co-operate fully with the CRO in the exercise of its powers and discharge of its obligations and provide the CRO with the assistance that is necessary to enable the CRO to adequately carry out the CRO’s functions.

8. The CRO, with the prior consent of the Monitor, is hereby directed and empowered to:

- (a) take all actions and steps in the name of and on behalf of the Petitioners to facilitate the administration of the Petitioners' Business, Property, operations, affairs and estate as may be necessary, appropriate, or desirable;
- (b) to preserve and protect the Property, or any part or parts thereof, including, but not limited to, changing locks and security codes, relocation of Property, engaging independent security personnel, taking physical inventories and placing insurance coverage;
- (c) cause the Petitioners to take any action or make any disbursement pursuant to this Order or any other Order issued by the Court in these CCAA Proceedings;
- (d) market any and all of the Petitioners’ property in Croatia, with any proposed sale being subject to approval of the Court;
- (e) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of a single transaction for consideration up to \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and

- (ii) with the approval of this Court in respect of any transaction in which the individual or aggregate purchase price exceeds the limits set out in subparagraph (i) above.
  
- (f) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers, free and clear of any liens or encumbrances;
  
- (g) conduct, supervise and direct the continuation or commencement of any process or effort to recover Property or other assets (including any accounts receivable or cash) belonging or owing to the Petitioners;
  
- (h) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Petitioners in the name of and on behalf of the Petitioners;
  
- (i) claim or cause the Petitioners to claim any and all insurance refunds or tax refunds, including refunds of goods and services tax and harmonized sales taxes, to which the Petitioners may be entitled;
  
- (j) engage, retain, terminate the services of, or cause the Petitioners to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the CRO, as the CRO deems necessary or appropriate to assist with the exercise of its powers and duties;
  
- (k) cause the Petitioners to perform such other functions and duties as the CRO considers necessary or desirable in order to facilitate or assist the Petitioners in dealing with the Business or the Property;
  
- (l) monitor the Petitioners' receipts and disbursements;
  
- (m) report to this Court at such times and intervals as the CRO may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (n) advise the Petitioners in its preparation of the Petitioners' cash flow statements, which information shall be reviewed with the Monitor on a periodic basis, but not less than bi-weekly;
- (o) advise the Petitioners in its development of the Plan and any amendments to the Plan;
- (p) assist the Petitioner with the holding and administering of creditors' or shareholders' meeting for voting on the Plan;
- (q) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (r) be at liberty to engage independent legal counsel or such other persons as the CRO deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, or any other Order of this Court in the CCAA Proceedings, including for advice and directions with respect to any matter;
- (s) apply to this Court, on its own behalf or on behalf of the Petitioners, for any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order of this Court in the CCAA Proceedings, including for advice and directions with respect to any matter;
- (t) direct current management of the Petitioners and their advisors with respect to the carrying out of its powers and obligations under this Order or any other Order of this Court in the CCAA Proceedings;
- (u) meet with and direct management or employees of, and persons retained by or on behalf of the Petitioners with respect to any of the foregoing;
- (v) perform such other duties as are required by this Order or by this Court from time to time;

and in each case where the CRO takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Petitioners and its past or present directors and officers and shareholders, and without

interference from any other Person, provided, however, that the CRO shall comply with all applicable laws.

9. The CRO is authorized and empowered, but not required, to operate and control, on behalf of the Petitioners, all of the Petitioners' existing accounts at any financial institution (each an "**Account**", and collectively, the "**Accounts**") in such manner as the CRO, with the prior consent of the Monitor, deems necessary or appropriate, including without limitation to:

- (a) exercise control over funds creditor to or deposited into the Accounts;
- (b) effect any disbursement from the Accounts permitted by this Order or any other Order granted in these CCAA Proceedings;
- (c) give instructions from time to time with respect to the Accounts and the funds credited or deposited therein, including to transfer the funds credited or deposited in such Accounts to such other accounts as the CRO may direct; and
- (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account.

and the financial institutions maintaining such Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the CRO as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and such financial institutions shall be authorized to act in accordance with and in reliance upon the instructions of the CRO without any liability in respect thereof to any person.

10. The CRO is hereby authorized, but not required, to open one or more new accounts in its own name (the "**CRO's Accounts**") and receive third party funds into the CRO's Accounts or transfer into the CRO's Accounts such funds of the Petitioners as the CRO, with the prior consent of the Monitor, deems necessary or appropriate to assist with the exercise of the CRO's powers and duties set out herein, provided that the monies standing to the credit the CRO's Accounts from time to time shall be held by the CRO to be dealt with as permitted by this Order or by further Order of this Court, and further the CRO is hereby authorized to make use of the funds in the CRO's Accounts from time to time to make disbursements and pay amounts for and on behalf of the Petitioners or in connection with the CRO's exercise of its powers and duties in these proceedings, as the CRO may, with the prior consent of the Monitor, deem necessary or appropriate from time to time.

11. The CRO shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

12. The CRO's powers as set forth herein, the exercise by the CRO of any of its powers, the performance by the CRO of any of its duties, or the use or employment by the CRO of any person under the direction of the CRO in connection with the CRO's appointment and the exercise and performance of its powers and duties shall not constitute the CRO as the employer, successor employer or related employer of the employees of the Petitioners for any purpose whatsoever or expose the CRO to liability to any individuals arising from or relating to their employment by the CRO. In particular, the CRO shall not be liable to any of the Petitioners' employees for any wages, including severance pay, termination pay, and vacation pay except for such wages as the CRO may specifically agree in writing to pay.

13. Nothing in this order or any other Order granted in these proceedings shall constitute or be deemed to constitute the CRO as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Petitioners within the meaning of any relevant legislation, including subsection 159(2) of the Income Tax Act (Canada) (as amended, the "ITA"), and any distributions to creditors of the Petitioners by the CRO will be deemed to have been made by the Petitioners themselves. Nothing in this Order shall constitute or be deemed to constitute the CRO as a person subject to subsection 150(3) of the ITA, the CRO shall have no obligation to prepare or file any tax returns on behalf of the Petitioners with any taxing authority.

#### **CRO CHARGE**

14. The CRO shall be paid its reasonable fees and disbursements, in each case at its standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the CRO on a periodic basis and, in addition, the CRO is hereby authorized to receive a retainer in the amount of \$50,000 to be held by the CRO as security for payment of its respective fees and disbursements outstanding from time to time.

15. The CRO shall be entitled to the benefit of and is hereby granted a charge (the "CRO Charge") on the Property, which charge shall not exceed an aggregate amount of \$50,000, as security for its fees and disbursements incurred at the standard rates and charges of the CRO, both before and after the making of this Order which are related to the Petitioners' restructuring. The CRO Charge shall have the priority set out in paragraphs 42 and 44 hereof.

## CASH MANAGEMENT SYSTEM

16. Subject to the prior approval of the Monitor and the terms of this Order, the CRO shall be entitled, but not required, to pay the following expenses which may have been incurred prior to the NOI Filing Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the NOI Filing Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “Wages”); and
- (b) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
  - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
  - (ii) any litigation in which the Petitioners are named as a party or is otherwise involved, whether commenced before or after the NOI Filing Date; and
  - (iii) any related corporate matters.

17. Except as otherwise provided herein, subject in all cases to the prior approval of the Monitor, the CRO shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the NOI Filing Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services;
- (b) all obligations incurred by the Petitioners after the NOI Filing Date, including without limitation, with respect to goods and services actually supplied to the



Petitioners following the NOI Filing Date (including those under purchase orders outstanding at the NOI Filing Date but excluding any interest on the Petitioners' obligations incurred prior to the NOI Filing Date, and including, for clarity, the outstanding fees and disbursements of the Petitioners' counsel, the Monitor, and the Monitor's counsel incurred following the NOI Filing Date); and

- (c) fees and disbursements of the kind referred to in paragraph 16(b) which may be incurred after the NOI Filing Date.

18. With the prior consent of the Monitor, the Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the NOI Filing Date, or where such Sales Taxes accrued or were collected prior to the NOI Filing Date but not required to be remitted until on or after the NOI Filing Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

19. Until such time as a real property lease is disclaimed in accordance with the CCAA, the Petitioners shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time ("Rent"), for the period commencing from and including the NOI Filing Date, twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including NOI Filing Date shall also be paid.

20. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of its creditors as of the NOI Filing Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of its Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to its customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the NOI Filing Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

## **RESTRUCTURING**

21. Subject to such requirements as are imposed by the CCAA, the CRO shall, with the prior consent of the Monitor, to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of the Business or operations and commence marketing efforts in respect of any of its redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$100,000 in the aggregate;
- (b) terminate the employment of such of the Petitioners' employees or temporarily lay off such of its employees as it deems appropriate;
- (c) pursue all avenues of refinancing for the Business or Property, in whole or part; and
- (d) pursue all avenues of raising fresh capital for the Petitioners;

all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the "**Restructuring**").

22. The CRO shall provide each of the relevant landlords with notice of the Petitioners' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days' notice to the other parties. If the Petitioners disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners' claim to the fixtures in dispute.

23. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioners of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

24. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the "**Relevant Enactment**"), the Petitioners, in the course of these proceedings, is permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, its advisors, prospective investors, financiers, buyers or strategic partners (collectively, "**Third Parties**"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or

to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioners or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

#### **STAY OF PROCEEDINGS, RIGHTS AND REMEDIES**

25. Until and including October 17, 2022, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

26. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Petitioners or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

27. Nothing in this Order, including paragraphs 25 and 26, shall: (i) empower the Petitioners to carry on any business which the Petitioners are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

#### **NO INTERFERENCE WITH RIGHTS**

28. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence

or permit in favour of or held by the Petitioners, except with the written consent of the Petitioners and the Monitor or leave of this Court.

#### **CONTINUATION OF SERVICES**

29. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioners, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners, and that the Petitioners shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the NOI Filing Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

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

30. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the NOI Filing Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the NOI Filing Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

31. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the

Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

#### **APPOINTMENT OF MONITOR**

32. Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

33. The Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered, to:

- (a) give recommendations and instructions to the CRO in relation to the CRO's duties and powers as set out in this Order, as deemed necessary by the Monitor;
- (b) monitor the Petitioners' receipts and disbursements;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (d) advise the Petitioners in its preparation of the Petitioners' cash flow statements , which information shall be reviewed with the Monitor on a periodic basis, but not less than bi-weekly;
- (e) advise the Petitioners on their development of the Plan and any amendments to the Plan;

- (f) assist the Petitioners, to the extent required by the Petitioners, with the holding and administering of the creditors' or shareholders' meeting for voting on the Plan;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order, or any other Order of this Court in the CCAA Proceedings, including for advice and directions with respect to any matter;
- (i) perform such other duties as are required by this Order or by this Court from time to time.

34. Subject to the terms of this Order, the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

35. Nothing herein contained shall require or allow the Monitor or the CRO to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act*, the *Controlled Drug and Substances Act*, and the *Cannabis Act*, and regulations thereunder (the "**Regulatory Legislation**"), provided however that nothing herein shall exempt the Monitor and the CRO from any duty to report or make disclosure imposed by applicable Regulatory Legislation. For greater certainty, the

Monitor and the CRO shall not, as a result of this Order or anything done in pursuance of the Monitor and the CRO's respective duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Regulatory Legislation, unless they are actually in possession.

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

37. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

#### **ADMINISTRATION CHARGE**

38. The Monitor, counsel to the Monitor, and counsel to the Petitioners, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis and in addition, the Monitor is hereby authorized to receive a retainer in the amount of \$325,000 to be held by it as security for payment of its fees and disbursements from time to time.

39. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.



40. The Monitor, counsel to the Monitor, counsel to the Petitioners, and counsel to SHP Capital LLC (with respect to the fees and disbursements incurred in the hearing of the Initial Order) shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$300,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners' restructuring. The Administration Charge shall have the priority set out in paragraphs 42 and 44 hereof.

#### **LIQUIDATION CHARGE**

41. The Monitor, counsel to the Monitor and the CRO shall be entitled to the benefit of and are hereby granted an additional charge (the "**Liquidation Charge**") on the Property, which charge shall not exceed an aggregate amount of \$200,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor, counsel to the Monitor and the CRO, after the making of this Order which are related to the Petitioners' restructuring and liquidation. The Liquidation Charge shall have the priority set out in paragraphs 42 and 44 hereof.

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

42. The priorities of the Charges (as hereinafter defined), as among them shall be as follows:

First – Liquidation Charge (to the maximum amount of \$200,000);

Second – Administration Charge (to the maximum amount of \$300,000), Administration Charge granted pursuant to Orders granted by this Court (but not entered) on June 17, 2022 in File Nos. B220220 and B220221 ("**NOI Admin Charge**") (to the maximum amount of \$200,000), and CRO Charge (to the maximum amount of \$50,000), *pari passu*;

Third – Interim Lender Charge in favour of HFS Management Inc. (the "**NOI Lender Charge**") granted pursuant to Orders granted by this Court in File Nos. B220220 and B220221; and

Fourth – Charge in favour of the Petitioners' directors and officers granted pursuant to Orders granted by this Court (but not entered) on June 17, 2022 in File Nos. B220220 and B220221 (to the maximum amount of \$65,000).

43. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, NOI Admin Charge and NOI Lender's Charge, and the CRO's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

44. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA.

45. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtains the prior written consent of the Monitor and the beneficiaries of the Charges.

46. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the charges entitled to the benefit of the Charges (collectively, the "**Charges**") by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Petitioners of any Agreement to which it is a party;
- (b) none of the Charges shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and

- (c) the payments made by the Petitioners pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

47. Any Charges created by this Order over leases of real property in Canada shall only be a Charges in the Petitioners' interest in such real property leases.

## EMPLOYEES

48. The Petitioners are a former employer pursuant to subsection 5(5) of the *Wage Earner Protection Act*, S.C. 2005, c. 47, s. 1 and meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222.

## SERVICE AND NOTICE

48. The Monitor shall (i) without delay, publish in the Vancouver Sun a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

49. The Monitor is at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

50. Any person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the Service List on its website at: [www.insolvencies.deloitte.ca/en-ca/Pages/Medipure](http://www.insolvencies.deloitte.ca/en-ca/Pages/Medipure) (the "**Monitor's Website**").

51. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's Website.

52. Service of this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

## **GENERAL**

53. The CRO or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

54. The Petitioners, and its advisors, and current and former officers, directors, agents and representatives shall reasonably co-operate with the CRO and the Monitor in the exercise of their powers pursuant to this Order or any other Order of this Court in these proceedings, and shall provide the CRO and the Monitor with such reasonable assistance as the CRO and the Monitor may request from time to time to enable the CRO and the Monitor to carry out and discharge their powers and duties as set out in this Order or any other Order of this Court in these proceedings.

55. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

56. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners 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 Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

57. The Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

58. In respect of the Petitioners, the Monitor may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Monitor determines that such a filing is appropriate.

59. The Monitor and the CRO are hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

60. Leave is hereby granted to hear any application in these proceedings on one (1) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

61. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

62. Endorsement of this Order by counsel appearing on this application is hereby dispensed with.

63. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of

Party  Lawyer for the

\_\_\_\_\_  
<Print Name>

BY THE COURT



\_\_\_\_\_  
REGISTRAR



**Schedule "A"**

<b>Martin Sennott</b>	<b>Petitioners</b>
<b>David Gruber</b>	<b>SHP Capital, LLC</b>
<b>Aminollah Sabzevari</b>	<b>Department of Justice - CRA</b>