

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

and

DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.

Respondents

MOTION RECORD

DATE: September 24, 2018

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6892639 Canada Inc.

**ONTARIO
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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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and

DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.

Respondents

NOTICE OF MOTION

Deloitte Restructuring Inc., in its capacity as receiver of all of the assets, undertakings and properties of Drytech International Inc. and 6892639 Canada Inc., (hereinafter the "Debtors") acquired for, or used in relation to the business carried on by the Debtors, will make a motion to the Court at 10:00 a.m. on Tuesday September 25, 2018, or as soon after that time as the motion can be heard at the Courthouse, 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

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

THE MOTION IS FOR:

- (a) If necessary, an Order dispensing with service of the Notice of Motion such that this motion is properly returnable on September 25, 2018;
- (b) an Order, that Deloitte Restructuring Inc. can use, instructing the Land Registrar in the Land Registry Office at the City of Ottawa to discharge and vacate a court order registered as Instrument No. OC1779776 against title of the following two properties:

(i) PIN 14530-0413 (LT)

PART OF LOT 29, CONCESSION 1 OS, CUMBERLAND, PART 2
PLAN 4R23578; CITY OF OTTAWA

1045 DAIRY DRIVE
OTTAWA

(ii) PIN 14530-0414 (LT)

PART OF LOT 29, CONCESSION 1 OS, CUMBERLAND, PART 1
PLAN 4R23578; CITY OF OTTAWA

DAIRY DRIVE
OTTAWA

(c) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

(a) On April 11, 2016, the Ontario Superior Court of Justice appointed Deloitte Restructuring Inc. as receiver of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to, the business carried on by the Debtors, including all proceeds thereof;

(b) the Order of the Ontario Superior Court of Justice appointing Deloitte Restructuring Inc. as receiver of the Debtors authorized Deloitte Restructuring Inc. to register a copy of the Order, and any other orders in respect of the Debtors' property, against title of any real property subject to the Order appointing Deloitte Restructuring Inc. as receiver;

(c) on April 18, 2016, the lawyers for Deloitte Restructuring Inc. successfully applied to the Land Registrar at the Land Registry Office at the City of Ottawa to register the Court Order appointing Deloitte Restructuring Inc.

receiver of the Debtors' property against title of four properties located in the City of Ottawa;

- (d) two of the four properties are located on Dairy Drive in the City of Ottawa, are owned by the Respondent 6892639 Canada Inc. and are subject to a first mortgage in favour of Business Development Bank of Canada (hereinafter "BDC");
- (e) on June 1, 2016, the Ontario Superior Court of Justice made an Order which amends the April 11, 2016 Court Order appointing Deloitte Restructuring Inc. as receiver of the Debtors' property and authorizes Deloitte Restructuring Inc. to sell real property whose ownership is registered in the name of one or both of the Debtors;
- (f) the June 1, 2016 Court Order also states that BDC's right to avail itself of its power of sale remedy provided for in its mortgage registered against title of the two Dairy Drive properties is not prejudiced by the authority the court granted Deloitte Restructuring Inc. to sell the Debtors' real property but is subject to certain conditions listed in the June 1, 2016 Court Order;
- (g) BDC subsequently advised Deloitte Restructuring Inc. that the bank wanted to avail itself of its power of sale remedy in its mortgage registered against the two Dairy Drive properties;
- (h) BDC has complied with the conditions listed in the June 1, 2016 court order that the bank was required to comply with in order for the bank to proceed with the sale of the two Dairy Drive properties by power of sale;
- (i) BDC has entered into an agreement of purchase and sale for the two Dairy Drive properties that is scheduled to close on October 1, 2018;

- (j) BDC has requested that Deloitte Restructuring Inc. remove the April 11, 2016 Court Order registered against title of the two Dairy Drive properties on April 18, 2016 in order to allow BDC's sale of the properties by power of sale to close;
- (k) Rules 2.01(1), 2.03, 3.02, 37.01 and 37.02(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- (l) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The Affidavit of John Saunders sworn September 24, 2018 and the Exhibits referred to therein; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

DATE: September 24, 2018

DOUGLAS LAW

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Receiver of Drytech International Inc. and
6892639 Canada Inc.

THE TORONTO-DOMINION BANK
Applicant

and

DRYTECH INTERNATIONAL INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
OTTAWA

NOTICE OF MOTION

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Lawyers for Deloitte Restructuring Inc., Receiver of
Drytech International Inc. and 6892639 Canada Inc.

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

and

DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.

Respondents

AFFIDAVIT OF JOHN SAUNDERS

I, JOHN SAUNDERS, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Licensed Insolvency Trustee and a Senior Vice-President at Deloitte Restructuring Inc. (hereinafter "Deloitte") and, as such, have knowledge of the matters deposed herein.
2. By way of an Order made by this Court on April 11, 2016, Deloitte was appointed as receiver (hereinafter the "Receiver") without security of all of the assets, undertakings and properties of Drytech International Inc. and 6892639 Canada Inc. (hereinafter the "Debtors") acquired for, or used in relation to the business carried on by, the Debtors. Attached to my Affidavit and marked as **Exhibit "A"** is a true copy of the Order of this Court dated April 11, 2016 appointing Deloitte as Receiver.
3. Sub-paragraph 3(n) of the April 11, 2016 Court Order authorizes the Receiver to register a copy of the Order, and any other orders in respect

of the Debtors' property, against title of any real property subject to the Court Order appointing Deloitte as Receiver.

4. On April 18, 2016, the lawyers for the Receiver successfully applied to the Land Registrar at the Land Registry Office at the City of Ottawa to register the April 11, 2016 Court Order appointing Deloitte as Receiver of the Debtors' property against title of four properties located in the City of Ottawa. Attached to my Affidavit and marked as **Exhibit "B"** is a true copy of the Application to Register Court Order which has been registered as Land Registry document number OC1779776.

5. Two of the four properties owned by the Respondent 6892639 Canada Inc., and listed in the Application to Register Court Order, are located on Dairy Drive in the City of Ottawa. One is a property whose municipal address is 1045 Dairy Drive while the other property has no municipal address but is adjacent to 1045 Dairy Drive. The legal description of the two properties is as follows:

(a) PIN 14530-0413 (LT)

PART OF LOT 29, CONCESSION 1 OS, CUMBERLAND, PART 2
PLAN 4R23578; CITY OF OTTAWA

1045 DAIRY DRIVE
OTTAWA

(b) PIN 14530-0414 (LT)

PART OF LOT 29, CONCESSION 1 OS, CUMBERLAND, PART 1
PLAN 4R23578; CITY OF OTTAWA

DAIRY DRIVE
OTTAWA

6. Attached to my Affidavit and marked as **Exhibit "C"** is a true copy of the Parcel Register for PIN 14530-0413. Attached to my Affidavit and marked as **Exhibit "D"** is a true copy of the Parcel Register for PIN 14530-0414.

7. Business Development Bank of Canada (hereinafter "BDC") has a first mortgage registered against title of the two properties on Dairy Drive. The mortgage appears as a charge dated May 10, 2013 listed in both of the Parcel Registers for PINS 14530-0413 and 14530-0414 in the amount of \$7,500,000. The instrument number for the charge document is OC1475689.

8. On June 1, 2016, the Ontario Superior Court of Justice made an Order which amends the April 11, 2016 Court Order appointing Deloitte as Receiver of the Debtors' property. The amendment authorizes the Receiver to sell real property whose ownership is registered in the name of one or both of the Debtors. Attached to my Affidavit and marked as **Exhibit "E"** is a true copy of the Court Order dated June 1, 2016.

9. The June 1, 2016 Court Order also states that BDC's right to avail itself of its power of sale remedy provided for in its mortgage registered against the two Dairy Drive properties is not prejudiced by the authority the court grants the Receiver to sell the Debtors' real property but is subject to certain conditions listed in paragraph 12 of the June 1, 2016 Court Order.

10. Between June 1 and June 15, 2016, the BDC advised the Receiver, pursuant to sub-paragraph 12(a) of the June 1, 2016 Court Order, that BDC wanted to avail itself of its power of sale remedy in its mortgage registered against the two Dairy Drive properties. It proceeded to obtain two appraisals of the value of the two properties which the bank shared with the Receiver, retained commercial realtors and listed the properties for sale.

- 11. To date, the BDC has complied with the conditions listed in paragraph 12 of the June 1, 2016 Court Order that the BDC was required to comply with in order for the BDC to sell the two Dairy Drive properties by power of sale.
- 12. The BDC has entered into an agreement of purchase and sale for the two Dairy Drive properties that is scheduled to close on October 1, 2018.
- 13. The BDC has requested that the Receiver obtain a court order that will result in the removal of the April 18, 2016 Application to Register Court Order, being Land Registry document number OC1779776, from title of the two Dairy Drive properties before BDC's sale of the properties closes.
- 14. The Receiver has agreed to seek a court order that will allow it to remove the April 18, 2016 Application to Register Court Order from title of the two Dairy Drive properties because the Receiver believes, subject to the Receiver receiving and accepting the BDC's full accounting subsequent to the sale, that the sale of the two properties by the BDC is in the best interest of the creditors of 6892639 Canada Inc..
- 15. I make this Affidavit in support of a Motion for an order removing the April 16, 2018 Application to Register Court Order from title of the two Dairy Drive properties and for no other or improper purpose.

SWORN BEFORE ME at)
 the City of Ottawa, in)
 the Province of Ontario)
 this 24th day of September, 2018)
 _____)
 A Commissioner, etc.)



 JOHN SAUNDERS

TAB A

This is Exhibit "A" to the
Affidavit of John Saunders
sworn before me this
24th day of September, 2018.



A Commissioner for Taking Oaths, etc.

Court File No. 16-68152

**ONTARIO
SUPERIOR COURT OF JUSTICE**

| | | |
|------------------|---|----------------------|
| THE HONOURABLE |) | MONDAY, THE 11th DAY |
| |) | |
| JUSTICE HACKLAND |) | OF APRIL, 2016 |

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

DRYTECH INTERNATIONAL INC. AND 6892639 CANADA INC.

Respondent

ORDER

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte Restructuring Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Drytech International Inc. and 6892639 Canada Inc. (hereinafter the "Debtors") acquired for, or used in relation to the business carried on by the Debtors, was heard this day at the Courthouse, 161 Elgin Street, Ottawa, Ontario.

ON READING the affidavit of Vitaly Kormakov sworn on March 30, 2016 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for Drytech International Inc. and Philip Amyot, counsel for 6892639 Canada Inc. and Kevin Dooley and counsel for the Business Development Bank of Canada, no one else appearing from the Service List although duly served as appears from the affidavit of service of Maryiam Khoury sworn on April 7, 2016 and on reading the consent of Deloitte Restructuring Inc. dated March 29, 2016, to act as the Receiver in respect of the assets of the Debtors referred to herein,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the business carried on by the Debtors, including all proceeds thereof (the "Property").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

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

1) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and

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

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

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

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

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

(o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;

(p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the

foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor is hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current

telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to

whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and

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

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

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

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

SERVICE AND NOTICE

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

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by

forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

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

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

31. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis

to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32. THIS COURT ORDERS that the Receiver, its counsel and counsel for the Applicant are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

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

Hackel J.

| | |
|-----------------------|--------------------|
| ENTERED AT OTTAWA | |
| INSCRIT A OTTAWA | |
| ON/LE | AVR 12 2016 APR |
| DOCUMENT # | 0411 |
| IN BOOK NO. 73-13 | |
| AU REGISTRE NO. 73-13 | |

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc. the receiver (the "Receiver") of all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (the "Court") dated the _____ day of _____, 2016 (the "Order") made in an application having Court file number _____, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the ____ day of _____, 20____.

_____]

By:

Name:

Title:

Company/Firm:

THE TORONTO-DOMINION BANK
Applicant

-and- DRYTECH INTERNATIONAL INC. and 6892639 CANADA INC.
Respondents

APPLICATION UNDER s. 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C-43
and s. 243 (1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, ss.
67(1)(a) and (e) of the *Personal Property Security Act*, R.S.O. 1990, c. P.10 and
Rules 3.02, 14.05(2) and (3) (g) of the *Rules of Civil Procedure*

Court File No. 16-68152

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT OTTAWA

ORDER

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