

November 18, 2009

Note: This Model Order has not yet been considered or approved by the Commercial List User's Committee **DRAFT: December 1, 2009**

Court File No. \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE \_\_\_\_\_ ) \_\_\_\_\_ DAY, THE \_\_\_\_\_  
JUSTICE \_\_\_\_\_ )  
\_\_\_\_\_ ) DAY OF  
DECEMBER, 20 2009

IN THE MATTER OF THE ~~COMPANIES' CREDITORS ARRANGEMENT ACT~~ **Companies' Creditors Arrangement Act**, R.S.C. 1985, c. C-36, AS AMENDED **as amended**

~~AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF [APPLICANT'S NAME] (the "Applicant")~~

**AND IN THE MATTER of a Plan of Compromise or Arrangement of Brainhunter Inc., TrekLogic Inc., Brainhunter Canada Inc., Brainhunter (Ottawa) Inc., and Protec Employment Services Limited (the "Applicants")**

**INITIAL ORDER  
(Long Form)**

THIS APPLICATION, made by the ~~Applicant~~ **Applicants**, 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 affidavit of ~~[NAME]~~ **Dennis Jewitt** sworn ~~[DATE]~~ **December 1, 2009** and the Exhibits thereto, **(the "Jewitt Affidavit")**, **on reading the report of Deloitte & Touche Inc. as proposed monitor in these proceedings (the "Monitor")** **dated December 1, 2009** and on being advised that the secured creditors who are

likely to be affected by the charges created herein were given notice<sup>†</sup>, and on hearing the submissions of counsel for ~~[NAMES]~~, **the Applicants, the Monitor, The Toronto-Dominion Bank ("TD Bank") and Roynat Capital Inc. ("Roynat")** and no one appearing for [NAME] although ~~duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~ and on reading the consent of ~~[MONITOR'S NAME]~~ **Deloitte & Touche Inc.** to act as the Monitor,

## SERVICE

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

## APPLICATION

2. THIS COURT ORDERS AND DECLARES that **each of the Applicant Applicants** is a company to which the CCAA applies.

## PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicant **Applicants** shall 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**") **in accordance with the CCAA.**

## POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant **Applicants** shall remain in possession and control of ~~its~~ **their** current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicant **Applicants** shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Applicant **Applicants** shall be authorized

<sup>†</sup> The CCAA now mandates notice to certain persons before certain relief may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

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, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. ~~[Note: This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies]~~ THIS COURT ORDERS that the Applicant **Applicants** shall be entitled to continue to utilize the central cash management system currently in place **with TD Bank** as described in the **Jewitt Affidavit** of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "**Cash Management System**") and that any present or future **TD Bank in its capacity as the** bank providing the Cash Management System **(i)** shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant **Applicants** of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, **(ii)** shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined **below**) other than the Applicant **Applicants**, pursuant to the terms of the documentation applicable to the Cash Management System, and **(iii)** shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that the Applicant **Applicants** shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) all outstanding and future amounts payable on or after the date of this Order to any persons who are not employees of the Applicants ("Contractors") that provides services to customers of the Applicants pursuant to a Statement of Work or similar arrangement (as described in the Jewitt Affidavit);

(c) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicant **Applicants** in respect of these proceedings, at their standard rates and charges.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, ~~the Applicant~~ **Applicants** shall be entitled but not required to pay all reasonable expenses incurred by the Applicant **Applicants** in carrying on the Business in the ordinary course ~~after~~ and as permitted by the Term Sheet (as defined below) on or after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably 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; and
- (b) payment for goods or services actually supplied to the Applicant ~~following~~ **Applicants on or after the date of this Order or with the prior consent of the Monitor and the DIP Lender, goods or services supplied to the Applicants before** the date of this Order.

8. THIS COURT ORDERS that the Applicant **Applicants** shall 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 employees' wages, including, without limitation, amounts

in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the ~~Applicant~~ **Applicants** in connection with the sale of goods and services by the ~~Applicant~~ **Applicants**, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, 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 realty, municipal business 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 and which are attributable to or in respect of the carrying on of the Business by the ~~Applicant~~ **Applicants**.

9. THIS COURT ORDERS that until a real property lease is disclaimed ~~{or resiliated}~~<sup>2</sup> in accordance with the CCAA, the ~~Applicant~~ **Applicants** 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 to the landlord under the lease) or as otherwise may be negotiated between the ~~Applicant~~ **Applicants** and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid.

10. THIS COURT ORDERS that, except as specifically permitted herein and the Term Sheet (as defined below), the ~~Applicant is~~ **Applicants are** hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or

<sup>2</sup> The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

otherwise on account of amounts owing by the Applicant **Applicants** to any of its **their** creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its **their** Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

11. THIS COURT ORDERS that ~~the Applicant shall~~, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), **below**, **the Applicants shall have the right to take action to proceed with an orderly restructuring of the Business (the "Restructuring")**, which includes but is not limited to:

- (a) permanently or temporarily cease, downsize or shut down any of its **their** business or operations, ~~{and to dispose of redundant or non-material assets not exceeding \$• in any one transaction or \$• in the aggregate}~~<sup>3</sup>;
- (b) ~~{subject to Section 32 of the CCAA, terminate the employment of such of its~~**subject to Section 32 of the CCAA, terminate the employment of such of** ~~its~~**their** employees or temporarily lay off such of ~~its~~**their** employees as ~~it deems~~**they deem** appropriate on such terms as may be agreed upon between the Applicant **Applicants** and such employee, or failing such agreement, to deal with the consequences thereof in the Plan};<sup>4</sup> and
- (c) pursue all avenues of refinancing of its ~~the~~ **the** Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,~~all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business (the "Restructuring").~~

<sup>3</sup> Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.

<sup>4</sup> It is not clear to the Model Order Subcommittee whether the termination of an employee's employment is a "disclaimer or resiliation" of the employment agreement within the meaning of Section 32 of the amended CCAA; the Subcommittee has left this provision in the Model Order, since the termination of employee's may not be a matter governed by Section 32 of the amended CCAA (except to the extent that collective agreements are exempted from the application of that Section).

12. THIS COURT ORDERS that the ~~Applicant~~ **Applicants** shall provide each of the relevant landlords with notice of the **relevant Applicant'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 Applicant'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 **relevant Applicant**, or by further Order of this Court upon application by the **relevant Applicant** on at least two (2) days notice to such landlord and any such secured creditors. If ~~the an~~ Applicant disclaims [or resiliates] 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 such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer [or resiliation] of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

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

**NO PROCEEDINGS AGAINST THE ~~APPLICANT~~ APPLICANTS OR THE PROPERTY**

14. THIS COURT ORDERS that until and including [~~DATE~~ ~~MAX. 30 DAYS~~], **December 31, 2009**, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in, **or before**, any court, **arbitration** or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the ~~Applicant~~ **Applicants** or the Monitor, or affecting the Business or the Property, except with the written consent of the ~~Applicant~~ **Applicants** and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the ~~Applicant~~ **Applicants** or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

15. THIS COURT ORDERS that 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 ~~Applicant~~ **Applicants** or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the ~~Applicant~~ **Applicants** and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the ~~Applicant~~ **Applicants** to carry on any business which the ~~Applicant~~ **Applicants** is 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 security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH RIGHTS**

16. THIS COURT ORDERS that 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 ~~Applicant~~ **Applicants**, except with the written consent of the ~~Applicant~~ **Applicants** and the Monitor, or leave of this Court.

## CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant **Applicants** 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 Business or the Applicant **Applicants**, 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 Applicant **Applicants**, and that each of the Applicant **Applicants** 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 date of this Order are paid by the Applicant **Applicants** in accordance with normal payment practices of the Applicant **Applicants** or such other practices as may be agreed upon by the supplier or service provider and each of the Applicant **Applicants** and the Monitor, or as may be ordered by this Court.

## NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, ~~notwithstanding anything else contained herein~~ **subject to paragraphs 48, 49 and 50 of this Order**, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant **Applicants**. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>5</sup>

<sup>5</sup> This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant **Applicants** with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant **Applicants** 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 Applicant **Applicants**, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant **Applicants** or this Court.

## DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. THIS COURT ORDERS that the Applicant **Applicants** shall indemnify its **their** directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant **Applicants** after the commencement of the within proceedings,<sup>6</sup> except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct. (the "Directors' Indemnity").

21. THIS COURT ORDERS that the directors and officers of the Applicant **Applicants** shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**")<sup>7</sup> on the Property, which charge shall not exceed an aggregate amount of ~~\$●~~ **1,700,000**, as security for the indemnity provided in paragraph ~~{20}~~ of this Order **Directors Indemnity**. The Directors' Charge shall have the priority set out in ~~out in paragraphs {38} and {40} herein~~ **47 and 49 of this Order. The Directors' Charge shall be automatically released and discharged if a purchaser of**

<sup>6</sup> The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The scope of the indemnity, if any, is a discretionary matter and should be addressed with the Court.

<sup>7</sup> Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

**substantially all of the assets of the Applicants agrees to assume the Directors Indemnity on terms approved by this Court.**

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's **Applicants'** directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph {20} of this Order.

**APPOINTMENT OF MONITOR**

23. THIS COURT ORDERS that ~~{MONITOR'S NAME}~~ **Deloitte & Touche Inc.** is hereby appointed pursuant to the CCAA as the Monitor of the Applicants, an officer of this Court, to monitor the business and financial affairs of the Applicant **Applicants** with the powers and obligations set out in the CCAA ~~or~~ **and** set forth herein and that the Applicant **Applicants** and its **their** shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant **Applicants** 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.

24. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's **Applicants'** receipts and disbursements;
- (b) 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;
- (c) assist the Applicant **Applicants**, to the extent required by the Applicant **Applicants**, in its **their** dissemination, to the DIP Lender (**as defined**

**below)** and its counsel on a ~~[TIME INTERVAL]~~ basis of financial and other information as **no less frequently than on a weekly basis or as otherwise** agreed to between the Applicant **Applicants** and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (d) advise the Applicant **Applicants** in its **their** preparation of the Applicant's **Applicants'** cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, but not less than ~~[TIME INTERVAL]~~ **weekly**, or as otherwise agreed to by the DIP Lender;
- (e) advise the Applicant **Applicants** in its **their** development of the Plan and any amendments to the Plan;
- (f) assist the Applicant **Applicants**, to the extent required by the Applicant **Applicants**, with the holding and administering of creditors' or shareholders' meetings 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 Applicant **Applicants**, to the extent that is necessary to adequately assess the Applicant's **Applicants'** 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; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

25. THIS COURT ORDERS that 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, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

27. THIS COURT ORDERS that that the Monitor shall provide any creditor of the ~~Applicant~~**Applicants** and the DIP Lender with information provided by the ~~Applicant~~**Applicants** 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 ~~Applicant~~**Applicants** is 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 ~~Applicant~~**Applicants** may agree.

28. THIS COURT ORDERS that, 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 protections afforded the Monitor by the CCAA or any applicable legislation.

29. THIS COURT ORDERS that the Monitor, counsel to the Monitor and counsel to the Applicant **Applicants** shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant **Applicants** as part of the costs of these proceedings. The Applicant is **Applicants are** hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and, counsel for the Applicant on a [TIME INTERVAL] **Applicants and EYO (as defined below) on a weekly** basis and, in addition, the Applicant **Applicants** is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant **Applicants**, retainers in the amount[s] **amounts** of \$ ~~0~~ **85,000, \$100,000 and \$50,000**, respectively, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time **in addition to the Administration Charge (as defined below)**.

30. THIS COURT ORDERS that 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 Commercial List of the Ontario Superior Court of Justice.

31. THIS COURT ORDERS that the Monitor, counsel to the Monitor, ~~if any, and the Applicant's counsel~~ **the Applicants' counsel, Breakwall Financial Corp. ("Breakwall") and Ernst & Young Orenda Corporate Finance Inc. and Ernst & Young Corporate Finance (Canada) Inc. (collectively, "EYO")** 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 \$ ~~0~~ **1,000,000** as security for ~~their~~: **(i) the professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, (ii) counsel to the Monitor and the Applicants' counsel, (iii) the obligations of the Applicants under the Breakwall Agreement (as defined below), and (iii) the obligations of the Applicants under the EYO Agreement (as**

defined below), both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs ~~{38}~~**47** and ~~{40}~~ ~~hereof~~ **49 of this Order**.

## DIP FINANCING

32. THIS COURT ORDERS that the ~~Applicant is~~ **Applicants are** hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ **(TD Bank (in that capacity, the "DIP Lender"))** in order to finance the ~~Applicant's~~ **Applicants'** working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility **(the "DIP Facility")** shall not exceed **\$7 million** unless permitted by further Order of this Court.

33. THIS COURT ORDERS ~~THAT such credit facility~~ **that the DIP Facility** shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~ **term sheet** between the ~~Applicant~~ **Applicants** and the DIP Lender dated ~~as of [DATE]~~ (the ~~"Commitment Letter"~~), filed **attached as Exhibit "J" to the Jewitt Affidavit (the "Term Sheet")**.

34. THIS COURT ORDERS that the ~~Applicant is~~ **Applicants are** hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the **"Definitive Documents"**), as are contemplated by the ~~Commitment Letter~~ **Term Sheet** or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the ~~Applicant is~~ **Applicants are** hereby authorized and directed to pay and perform all of ~~its~~ **their** indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~ **Term Sheet** and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the **"DIP Lender's Charge"**) on the Property, which DIP-

~~Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's~~ **as security for all indebtedness and obligations of the Applicants to the DIP Lender under the Term Sheet and the Definitive Documents. The DIP Charge shall have the priority set out in paragraphs ~~{38}47 and ~~{40} hereof49 of this Order.~~~~**

36. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the ~~DIP Lender's Charge~~ or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the ~~DIP Lender's Charge~~, the DIP Lender, upon ~~●~~ days **may without further notice to the Applicant and the Monitor Applicants, including, without limitation, statutory notice (which is hereby dispensed with),** may exercise any and all of its rights and remedies against the ~~Applicant~~ **Applicants** or the Property under or pursuant to the ~~Commitment Letter~~ **Term Sheet**, Definitive Documents and the ~~DIP Lender's Charge~~ **(as defined below)**, including without limitation, to cease making advances to the ~~Applicant~~ **Applicants** and set off and/or consolidate any amounts owing by the DIP Lender to the ~~Applicant~~ **Applicants** against the obligations of the ~~Applicant~~ **Applicants** to the DIP Lender under the ~~Commitment Letter~~ **Term Sheet**, the Definitive Documents or the ~~DIP Lender's Charge~~, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the ~~Applicant~~ **Applicants** and for the appointment of a trustee in bankruptcy of the ~~Applicant~~ **Applicants**, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall, **in addition to its existing rights under any and all assignments granted by the Applicants under the Financial Administration Act (Canada) to Morrison Financial Services Limited, as agent on behalf of TD Bank, the DIP Lender and Roynat,** be entitled to

seize and retain proceeds from the sale of the Property and the cash flow of the Applicant **Applicants** to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs ~~{38}~~**47** and ~~{40}~~**49** of this Order; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant **Applicants** or the Property.

**37. THIS COURT ORDERS that the DIP Charge is in addition to the existing security (the "Existing TD Security") in favour of The Toronto-Dominion Bank pursuant to the credit agreement made as of November 14, 2005, as amended and restated on September 22, 2006. All liabilities and obligations of the Applicants under the Term Sheet and the Definitive Documents shall be secured by the Existing TD Security and the DIP Charge.**

**38. THIS COURT ORDERS that, upon reasonable notice to the Applicants, the DIP Lender and its advisors shall, subject to claims of privilege, have clear and unfettered access to the books and records of the Applicants and such other information as the DIP Lender or its advisors reasonably requests.**

**39. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant **Applicants** under the CCAA, or any proposal filed by the Applicant **Applicants** under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Term Sheet or the Definitive Documents. Further, the stays of proceeding provided for herein shall not apply to the DIP Lender or its rights under or in respect of the DIP Facility or the Definitive Documents.**

KEY EMPLOYEE RETENTION PLAN

40. THIS COURT ORDERS that the key employee retention plan (the "KERP"), as described in the Jewitt Affidavit, be and is hereby approved and the Applicants are authorized to make payments in accordance with the terms and conditions of the KERP.

41. THIS COURT ORDERS that the obligations of the Applicants under the KERP up to a maximum of \$290,000 are hereby secured by a charge on the Property (the "KERP Charge") and the KERP Charge shall have the priority set out in out in paragraphs 47 and 49 of this Order.

CHIEF RESTRUCTURING ADVISOR

42. THIS COURT ORDERS that Breakwall be and is hereby appointed as Chief Restructuring Advisor of the Applicants in accordance with the terms and conditions of the agreement dated October 13, 2009 between Brainhunter Inc. and Breakwall (the "Breakwall Agreement"), effective as of the date of this Order.

43. THIS COURT ORDERS that the Breakwall Agreement is hereby approved and the Applicants are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Breakwall Agreement.

FINANCIAL ADVISOR

44. THIS COURT ORDERS that the agreement entered into between Brainhunter Inc. and EYO dated February 6, 2009, as amended August 21, 2009 and as further amended on October 13, 2009, attached as Exhibit "L" to the Jewitt Affidavit (the "EYO Agreement") is hereby approved and the Applicants are authorized and directed to make the payments contemplated thereunder in accordance with the terms of the EYO Agreement.

**CRITICAL CONTRACTORS**

**45. THIS COURT ORDERS that the Contractors are hereby declared to be suppliers whose services are critical to the Applicants' operations.**

**46. THIS COURT ORDERS that to obligations of the Applicants to the Contractors up to a maximum of \$15,000,000 hereby secured by a charge or the Property (the "Contractors' Charge") and the Contractors' Charge shall have the priority set out in paragraphs 47 and 49 hereof. The Contractors' Charge shall be automatically released and discharged if a purchaser of substantially all of the assets of the Applicants agrees to assume all of the Applicants' obligations of the Contractors on terms approved by this Court.**

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

**47. ~~38.~~ THIS COURT ORDERS that the priorities of the Directors' Charge, the Administration Charge, the DIP Charge, the KERP Charge, the Existing TD Security and the DIP Lender's Contractors' Charge, as among them, shall be as follows<sup>8</sup>:**

**First – Administration Charge (to the maximum in an amount of up to \$700,000);**

**Second – DIP Lender's KERP Charge; and**

**Third – DIP Charge;**

**Fourth – Administration Charge for amounts in excess of \$700,000 up to \$1,000,000;**

**Fifth - the Existing TD Security;**

**Sixth – Directors' Charge (to the maximum amount of \$700,000); and**

<sup>8</sup> The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits a Charge in favour of critical suppliers (Section 11.4(3)), which should also be incorporated into this Order (and the rankings, above), where appropriate.

**Seventh – Contractors' Charge.**

48. 39.—THIS COURT ORDERS that the filing, registration or perfection of the **priorities of the Directors' Charge, the Administration Charge, the DIP Lender's Charge, the KERP Charge, the Existing TD Security and the Contractors' Charge** (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

49. 40.—THIS COURT ORDERS that each of the ~~the~~ **Directors' Charge, the Administration Charge and the DIP Lender's, the DIP Charge and the documents delivered pursuant to the Term Sheet, the KERP Charge and the Contractors' Charge** (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, **other than any charge, encumbrance or security given priority over the Charges by operation of law or pursuant to this Order.**

50. 41.—THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant **Applicants** shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge, the Administration Charge, **the DIP Charge, the KERP Charge,** or the DIP Lender's **Contractors' Charge**, unless the Applicant **Applicants** also obtains **obtain** the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Directors' Charge ~~and,~~ the Administration Charge, **the KERP Charge, or the Contractors' Charge,** or further Order of this Court.

51. 42.—THIS COURT ORDERS that the ~~the~~ Directors' Charge, the Administration Charge, the ~~Commitment Letter~~ **Term Sheet**, the Definitive Documents and the DIP Lender's **Charge, the KERP Charge and the Contractors' Charge** shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender

thereunder shall not otherwise be limited or impaired in any way 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 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, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the ~~Applicant~~, and **Applicants**.

**52. THIS COURT ORDERS that** notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~ **Term Sheet** or the Definitive Documents shall create or be deemed to constitute a breach by the ~~Applicant~~ **Applicants** of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the ~~Applicant~~ **Applicants** entering into the ~~Commitment Letter~~ **Term Sheet**, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the ~~Applicant~~ **Applicants** pursuant to this Order, the ~~Commitment Letter~~ **Term Sheet** or the Definitive Documents, 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.

**53. 43. THIS COURT ORDERS that** any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~ **Applicants'** interest in such real property leases.

## SERVICE AND NOTICE

**54.** 44. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in ~~[newspapers specified by the Court]~~ **The Globe & Mail (National Edition)** a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (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 Applicant **Applicants** 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 **provided, however, that the Monitor shall not make the names and addresses of individuals who are creditors or Contractors publicly available.**

**55.** 45. THIS COURT ORDERS that the Applicant **Applicants** and the Monitor be 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 Applicant's **Applicants'** creditors or other interested parties at their respective addresses as last shown on the records of the Applicant **Applicants** 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.

**56.** 46. THIS COURT ORDERS that the Applicant **Applicants**, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the ~~Service List~~ **service list** from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at ~~[INSERT WEBSITE ADDRESS]~~ **www.deloitte.com/ca/brainhunter.**

**GENERAL**

**57.** ~~47.~~ THIS COURT ORDERS that the ~~Applicant~~ **Applicants** or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

**58.** ~~48.~~ THIS COURT ORDERS that 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 ~~Applicant~~ **Applicants**, the Business or the Property.

**59.** ~~49.~~ 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 ~~Applicant~~ **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 ~~Applicant~~ **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 ~~Applicant~~ **Applicants** and the Monitor and their respective agents in carrying out the terms of this Order.

**60.** ~~50.~~ THIS COURT ORDERS that each of the ~~Applicant~~ **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, and that 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.

**61.** ~~51.~~ THIS COURT ORDERS that any interested party (including the ~~Applicant~~ **Applicants** and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice 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.** ~~52.~~ THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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