

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF 1484558 ONTARIO INC.,
TREKLOGIC INC., 4386396 CANADA INC., 4386370
CANADA INC. and PROTEC EMPLOYMENT
SERVICES LTD.

APPLICANTS

ELEVENTH REPORT OF THE MONITOR
DATED APRIL 21, 2011

INTRODUCTION

1. By Order of the Court dated December 2, 2009 (the "**Initial Order**"), Brainhunter Inc. (the "**Company**"), Brainhunter Canada Inc., Brainhunter (Ottawa) Inc., Protec Employment Services Ltd., and TrekLogic Inc. (collectively, the "**Applicants**" or "**Brainhunter**"), obtained protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The CCAA proceeding with respect to the Applicants is referred to herein as the "**CCAA Proceeding**".
2. Pursuant to the Initial Order, Deloitte & Touche Inc. ("**Deloitte**") was appointed monitor of the Applicants as part of the CCAA Proceeding (the "**Monitor**"). A copy of the Initial Order is attached as Exhibit "A".
3. Pursuant to the Order of the Court dated December 11, 2009, the Initial Order was amended (as amended, "**First Amended and Restated Initial Order**") to address, among other things, the scope of the Directors' Indemnity referenced in paragraph 20 of the Initial Order, a reduction in the KERP payable to Mr. Raj Singh (the former President and CEO of the Company), the scope of the Contractor's Charge referenced in paragraph

46 of the Initial Order and the creation of a charge in favour of the ad-hoc committee of noteholders (the “**Noteholders**”) in respect of reasonable legal costs and reasonable costs of any financial advisor retained by the committee. A copy of the First Amended and Restated Initial Order is attached as Exhibit “**B**”.

4. By Order of the Court dated February 1, 2010 (“**Zylog Approval and Vesting Order**”), the Agreement of Purchase and Sale between the Applicants, Vision2Hire Solutions Inc. and Brainhunter Recruiting (India) Private Limited (collectively, the “**Vendors**”) and Zylog Systems (Canada) Ltd. (“**Zylog Canada**”) and Zylog Systems (India) Ltd. as purchasers (together, the “**Purchaser**”) dated as of January 18, 2010 (the “**Zylog APA**”) was approved and the Purchased Assets (as defined in the Zylog APA) were vested in and to the Purchaser upon Closing of the transaction under the Zylog APA. A copy of the Zylog Approval and Vesting Order is attached as Exhibit “**C**”.
5. In accordance with the Zylog Approval and Vesting Order, the Applicants changed their names following closing of the transaction under the Zylog APA as follows:
 - (a) Brainhunter Inc. changed to 1484558 Ontario Inc.;
 - (b) Brainhunter Canada Inc. changed to 4386396 Canada Inc.; and
 - (c) Brainhunter (Ottawa) Inc. changed to 4386370 Canada Inc.

Also in accordance with the Zylog Approval and Vesting Order, the style of cause in this proceeding was amended to reflect the foregoing name changes.

6. By Order dated February 16, 2010 (the “**Distribution Order**”), the Court directed that certain of the proceeds of sale under the Zylog APA be distributed to TD Bank, Roynat and counsel to the Noteholders in accordance with the Noteholders’ Advisor Charge. A copy of the Distribution Order is attached as Exhibit “**D**”.
7. The transaction under the Zylog APA was largely completed on February 17, 2010 (the “**Closing Date**”) and was finalized on February 18, 2010. Concurrent with closing of the Zylog APA, each of the officers and directors of the Applicants resigned their positions.

8. As a result of the resignation of the officers and directors, the Monitor sought to expand its powers and duties in order to finalize the estates of the Applicants. By Order of the Court dated February 26, 2010 (the “**Expansion of Powers Order**”), the Monitor was empowered to take certain administrative steps for and in the name of any of the Applicants including, without limitation, preparation of income tax returns and employee statements and records of employment. A copy of the Expansion of Powers Order is attached as Exhibit “**E**”.
9. Pursuant to the Expansion of Powers Order, each of the KERP Charge, the DIP Charge, the Existing TD Security Charge, the Contractors’ Charge and the Noteholders’ Advisor Charge (each as defined in the Amended and Restated Initial Order) was released and discharged. Also pursuant to the Expansion of Powers Order, the Stay Period was extended to April 30, 2010.
10. By Orders of the Court dated April 29, June 29, August 27 and December 23, 2010 (the “**Stay Extension Orders**”), the Stay Period was extended to and including June 30, August 31, December 31, 2010 and April 30, 2011, respectively. Copies of the Stay Extension Orders are attached as Exhibits “**F**”, “**G**”, “**H**” and “**I**”.
11. The Orders in this proceeding, together with related Court documents, the Pre-Filing Report of Deloitte in its capacity as Proposed Monitor of the Applicants dated December 1, 2009, all subsequent reports of the Monitor to the Court and the Notice to Creditors dated December 2, 2009 have been posted on the Monitor’s website at www.deloitte.com/ca/brainhunter.
12. The purpose of this report (“**Eleventh Report**”) is to provide the Court with the following information regarding the Monitor’s motion for an order (i) terminating the CCAA Proceeding, discharging the Monitor from its role and duties and forever barring any Person from making any claim against the Monitor upon the filing of the Discharge Certificate (as defined below); (ii) authorizing the Monitor to return to Zylog Canada or as Zylog Canada may direct the Excess Escrow Funds (as defined below) less any holdback required by the Monitor to pay any remaining claims to which the Directors’ Indemnity responds, and declaring that payments by the Monitor from the Escrow Fund (as defined below) do not constitute a distribution within the meaning of section 159 of

the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada) or any other applicable legislation; (iii) approving the professional fees and disbursements of the Monitor's independent counsel Thornton Grout Finnigan LLP ("TGF") for the period from December 1, 2010 to March 31, 2011; (iv) approving the Monitor's Statement of Receipts and Disbursements for the CCAA Fund (as defined below) and the Escrow Fund for the period from December 16, 2010 to April 13, 2011; and (v) approving this Eleventh Report and the activities of the Monitor, including:

- (i) Steps taken by the Monitor to finalize the estates of the Applicants;
- (ii) The accounts rendered by TGF in this proceeding;
- (iii) The Monitor's Statement of Receipts and Disbursements for the CCAA Fund and the Escrow Fund for the period from December 16, 2010 to April 13, 2011;
- (iv) Outstanding matters to be completed to finalize the estates of the Applicants within the CCAA Proceeding; and
- (v) The Monitor's recommendations with respect to the relief sought.

13. Unless otherwise provided, capitalized terms not otherwise defined in this Eleventh Report are as defined in the First Amended and Restated Initial Order or the Zylog APA.

TERMS OF REFERENCE

14. In preparing the Eleventh Report and making the comments contained herein, Deloitte has been provided with and relied upon unaudited financial information, the Applicants' books and records, the financial information prepared by the Applicants and their advisors, and discussions with management of the Applicants and their successors. Deloitte has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, Deloitte expresses no opinion or other form of assurance on the information contained in the Eleventh Report. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information referred to or relied upon in the Eleventh Report is based on management's assumptions regarding future events and conditions that are not ascertainable. Accordingly, actual results achieved will vary from this information, and the variations may be material.

15. Unless otherwise stated, all dollar amounts contained in the Eleventh Report are expressed in Canadian dollars.

BACKGROUND

16. The Company is a Toronto-based corporation and was listed on the Toronto Stock Exchange with the ticker "BH." Brainhunter operated predominately in Toronto and Ottawa, Ontario, with limited affiliated operations in Hyderabad, India. By Order dated March 29, 2010 ("**Cease Trade Order**"), the Ontario Securities Commission directed that all trading in the securities of the Company, whether direct or indirect, shall cease until further order of the Director. No steps have been taken by any party to lift the Cease Trade Order. A copy of the Cease Trade Order is attached as Exhibit "J".
17. Brainhunter provided temporary staffing and related services, primarily in respect of information technology and engineering jobs, to a wide variety of industries. The largest sector served by Brainhunter was the public sector.

THE ZYLOG APA

18. Pursuant to sections 3.2 and 5.3 of the Zylog APA, the Purchaser assumed the obligation of the Applicants to indemnify the Applicants' directors and officers for claims subject to the Directors' Indemnity as defined in the First Amended and Restated Initial Order provided, however, that such assumption of liability was limited to the amount of the Directors' Charge (as defined in the First Amended and Restated Initial Order) to a maximum of \$1.7 million or such lesser amount as was outstanding in respect of the categories of indemnified obligations outlined in Schedule 12 to the Zylog APA as at the Closing Date. This indemnity does not apply if and to the extent the directors and officers are insured unless the insurer fails to provide coverage or fails to agree to insure the defence of any action within thirty (30) days of any claim against the directors and officers of the Applicants. A copy of the Zylog APA is attached as Exhibit "K".
19. Concurrent with closing of the Zylog APA, the Purchaser paid to the Monitor the sum of \$225,000 (the "**Escrow Fund**") which is held in escrow by the Monitor pursuant to the

terms of an Escrow Agreement between the Purchaser, the Vendors under the Zylog APA and the Monitor. A copy of the Escrow Agreement is attached as Exhibit "L".

20. Pursuant to section 3.01 of the Escrow Agreement and as authorized by the Expansion of Powers Order, the Monitor agreed that it would facilitate the preparation of interim filings and the calculation of amounts payable by the Applicants on account of statutory and employee-related tax remittances (defined in the Escrow Agreement as the "**Priority Claim Amount**") up to and including the date of closing of the Zylog APA. The Monitor agreed to pay from the Escrow Fund such amounts to the relevant boards and taxing authorities (collectively, "**Taxing Authorities**").
21. Pursuant to section 3.02 of the Escrow Agreement, the Monitor agreed that if the Priority Claim Amount is less than the amount of the Escrow Fund, the Monitor will return such excess to the Purchaser forthwith upon the Monitor's determination that the Priority Claim Amount has been properly calculated and paid and appropriate notices and statements of account have been received from the Taxing Authorities. Pursuant to section 3.03 of the Escrow Agreement, the Purchaser is obligated to pay to the Monitor the amount by which the Priority Claim Amount exceeds the amount of the Escrow Fund as determined by the Taxing Authorities.
22. As set out in the Monitor's Eighth and Ninth Reports to the Court, the Monitor has prepared and filed the Applicants' 2010 statutory returns and employee-related remittances for the period prior to the Closing Date under the Zylog APA, facilitated the preparation of the T4 Statements and Records of Employment for the Applicants' former employees and submitted the T4 Statements to Canada Revenue Agency ("**CRA**"). The Monitor has taken all steps within its control to identify claims against the Escrow Fund.
23. Based on information currently available to the Monitor, the Monitor has determined that the Priority Claim Amount is less than the balance of the Escrow Fund in the Monitor's possession. However, the Monitor will be unable to verify that there are no additional claims against the Escrow Fund and finalize the estates of the Applicants until such time as the various Taxing Authorities responsible for the statutory returns and employee-related remittances of the Applicants close the Applicants' accounts with such Taxing

Authorities (the “**Remittance Accounts**”) or provide to the Monitor the necessary assessments and / or clearance certificates (together, the “**Clearance Certificates**”) confirming that no further amounts are payable to the Taxing Authorities by the Applicants. As described in more detail below, the Monitor therefore proposes that it be authorized to pay to Zylog Canada or as Zylog Canada may direct the “**Excess Escrow Funds**”, being the balance of the Escrow Fund in the Monitor’s possession, less a holdback in the amount of \$10,000 to fully pay and satisfy any claims which form part of the Priority Claim Amount.

MONITOR’S ACTIVITIES

24. Since the date of the December 23, 2010 Stay Extension Order, the Monitor has undertaken the following activities to finalize the estates of the Applicants:
- (a) Maintained contact with the Taxing Authorities responsible for the Applicants’ statutory returns and employee-related remittances to obtain an audit of the Applicants’ Remittance Accounts or obtain Clearance Certificates to facilitate closing of the Remittance Accounts of each of the Applicants;
 - (b) instructed the Applicants’ former external tax accountant to file the Applicants’ 2010 corporate tax returns and to communicate with CRA to amend the assessment for 4386396 Canada Inc.; and
 - (c) responded to inquiries and claims from secured and other creditors, including former employees and shareholders.

OUTSTANDING MATTERS TO FINALIZE APPLICANTS’ ESTATES

25. The following is an update on the steps taken by the Monitor to finalize the estates of the Applicants since the date of the Tenth Report:
- A. **WSIB Accounts**
 - i. The Monitor has received confirmation from the Ontario Workplace Safety and Insurance Board (“WSIB”) of account closure or zero balance for four of the Applicants’ five accounts. For the remaining account, the

Monitor received an Invoice for Audit Adjustment in the amount of \$1,227. The Monitor has delivered a cheque in full settlement of this invoice and expects the account to be closed shortly.

- ii. In the circumstances, the Monitor does not propose that any of the Escrow Fund be held back on account of WSIB claims.

B. CRA-Payroll and GST Account

- i. The audit of these accounts has been completed by CRA. The Monitor received a verbal confirmation that all of the payroll accounts and all but one of the GST accounts have a nil balance and have been closed. The remaining GST account has a balance owing of \$879 that was alleged to relate to the February 1, 2010 to February 17, 2010 reporting period. The Monitor is awaiting receipt of the invoice for the remaining GST account in order to review the account and pay the amount owing as appropriate.
- ii. Pending receipt of this invoice, the Monitor recommends that \$879 be held back from the Escrow Fund to fund this liability if necessary.

C. CRA-Income Tax Account

- i. The Applicants' income tax returns for the 2010 fiscal year were filed on November 12, 2010.
- ii. The Monitor has received the following Notices of Assessment (together, the "Notices of Assessment") from CRA: (a) with respect to 4386396 Canada Inc. (formerly Brainhunter Canada Inc.), an assessment in the total amount of \$644,685 that appears to relate to income tax for the year 2010; (b) an assessment in the amount of \$450 that appears to relate to a prior balance owed by Protec Employment Services Limited; and (c) an assessment in the amount of \$2,567 that appears to relate to a reassessment of Ontario tax payable by Treklogic Inc.
- iii. Based on the records of the Applicants available to the Monitor, the Monitor does not believe that any of the foregoing assessments are payable by the Applicants. However, the Monitor, with the assistance of the Applicants' former external tax accountant, has been unsuccessful to date in resolving these assessments with CRA and is continuing to communicate with CRA for the purpose of having these assessments corrected. In the Monitor's view, such claims do not form part of the Priority Claim Amount within the meaning of the Escrow Agreement. Accordingly, the Monitor does not propose that any amount be held back from the Escrow Fund to fund these claims against the Applicants.

D. Ontario Ministry of Revenue – Employer Health Tax

- i. The Monitor has contacted the Ontario Ministry of Revenue to obtain confirmation that the Applicants' EHT accounts may be closed and any remaining balances transferred to Zylog Canada's EHT accounts. While the Monitor has not yet received such confirmation, the current payroll manager for Zylog Canada has advised the Monitor that Zylog Canada's EHT accounts currently appear to be in order. As such, the Monitor does not propose holding back from the Escrow Fund any amount in respect of any claims under the Applicants' EHT accounts.

E. Revenu Quebec – Payroll Account

- i. The Monitor received an assessment from Revenu Quebec in the amount of \$11,665 which appeared to relate to employee payroll for prior years. The Monitor reviewed the support for this amount and discussed this assessment with the current VP, Finance and Controller of Zylog Canada. The Monitor has since delivered a cheque in full payment of this invoice to Revenu Quebec and will continue to seek confirmation from Revenu Quebec that the Applicants' other accounts have been closed.
- ii. In the circumstances, the Monitor does not propose that amounts be held back from the Escrow Fund in respect of any claims by Revenu Quebec.

F. La Commission de la santé et de la sécurité du travail du Québec – CSST Account

- iii. The Monitor received a CSST assessment for Brainhunter Canada Inc., dated December 28, 2010 in the amount of \$4,138. The Monitor continues to seek an explanation regarding this assessment. Given the uncertainty as to the nature and fiscal period to which this liability relates, the Monitor recommends that this amount be held back from the Escrow Fund pending payment or further clarification.

26. Based upon the records of the Applicants made available to the Monitor, the Monitor is not aware of any potential claims against the Escrow Fund, other than those claims described above and the contingent claim by Breakwall Financial Corp. (“Breakwall”) for indemnification under the Breakwall Agreement (as defined below). The Breakwall Agreement contains an indemnity from the Company in favour of Breakwall in connection with claims against Breakwall arising out of or in connection with its engagement as Chief Restructuring Advisor of the Applicants (“CRA”). As set out in the Monitor's Sixth Report to the Court, Breakwall previously advised the Monitor that it was Breakwall's position that it may rely upon the foregoing indemnity in the event that

any claims are made against Breakwall in its capacity as CRO. The Monitor does not propose to hold back any amount from the Escrow Fund on account of any claim for indemnification by Breakwall.

27. Prior to the commencement of the CCAA Proceeding, a former employee of the Company commenced an action against the Company claiming constructive dismissal. An arbitrator appointed in that proceeding ruled in favour of the former employee and, amongst other relief, awarded the employee salary and benefit continuation for a period of one (1) year. The former employee brought a motion within this proceeding returnable April 15, 2011 claiming that the unpaid amount of the salary and benefit continuance awarded by the arbitrator constituted "wages" within the meaning of section 131 of the *Business Corporations Act* (Ontario), with the result that the directors of the Applicants were liable to pay such amount. The Applicants' directors opposed the relief sought by the former employee. The former employee's motion was unsuccessful.
28. As set out in the Monitor's Ninth Report to the Court, the former employee previously took the position that he was entitled to vacation pay calculated with reference to the one year salary continuation awarded by the arbitrator and claimed that he was entitled to be paid the amount of such vacation pay as a statutory prior claim from the Escrow Fund. The Monitor disputed the former employee's claim on the basis that the arbitrator's reasons did not specifically award any vacation pay in connection with the one year salary continuance. The arbitrator confirmed the Monitor's interpretation of his reasons and, as set out in the Ninth Report, the Monitor confirmed that the former employee's claim against the Escrow Fund for unpaid vacation pay would not be allowed.
29. Notwithstanding the foregoing, the Monitor received on April 20, 2011 correspondence from counsel to the former employee claiming that he is entitled to be paid vacation pay calculated with reference to the eight weeks of statutory termination pay owing pursuant to the provisions of the *Employment Standards Act* (Ontario). Based on four weeks vacation per year, counsel to the former employee estimates that the vacation pay claim amounts to \$4,431.00 and has asked that such amount be paid to the former employee from the Escrow Fund.

30. The Monitor is reviewing the former employee's position that this claim forms part of the Priority Claim Amount and constitutes a claim against the Escrow Fund.

CCAA FUND

31. Pursuant to the terms of the Zylog APA, the Monitor was paid the sum of \$250,000 (the "CCAA Fund") to fund the fees and expenses of the Monitor and its legal counsel in connection with the CCAA Proceeding from and after closing of the Zylog APA. The funds remaining in the CCAA Fund will not be sufficient to pay all of the outstanding fees and disbursements of the Monitor and its legal counsel. Accordingly, there will be no excess to be returned to the Purchaser from the CCAA Fund.

FEE PAYABLE TO BREAKWALL FINANCIAL CORP.

32. Pursuant to the terms of the First Amended and Restated Initial Order, the Court appointed Breakwall as CRA in accordance with the terms of the Agreement dated October 3, 2009 between the Company and Breakwall (the "Breakwall Agreement").
33. The Breakwall Agreement provides for the payment to Breakwall of both a work fee in the amount of \$50,000 per month as well as a success fee ("Success Fee") based on the definition of "Transaction Value" contained therein. The Applicants brought a motion returnable February 11, 2010 for an Order declaring that the Transaction Value be calculated with reference not just to the proceeds of sale payable under the Zylog APA but with respect to certain consideration received by the Noteholders pursuant to the Lock-Up Agreement with Zylog. That motion was not successful.
34. Counsel to Zylog and the ad-hoc committee of Noteholders sought a cost order (the "Costs Motion") against Breakwall in connection with that motion. The Honourable Mr. Justice Wilton-Siegel directed that the sum of \$10,000 be deducted from the amount otherwise payable to Breakwall on account of the Success Fee and retained by the Monitor pending resolution of the foregoing claim for costs (the "Costs Fund"). The parties made submissions to the Court on this claim for costs. The Monitor continues to hold the Costs Fund in accordance with the foregoing direction. The Monitor requests

that it be authorized to pay the Costs Fund in accordance with the Court's reasons upon receipt of same.

PROFESSIONAL FEES

35. The Monitor and TGF have maintained detailed records of their professional time and costs since the issuance of the Initial Order. Pursuant to paragraph 30 of the Initial Order, the Monitor and TGF were directed to pass their accounts from time to time before this Honourable Court. Pursuant to the December 23, 2010 Stay Extension Order, the Court authorized and approved the fees and disbursements of the Monitor for the period July 1, 2010 to November 26, 2010 and for TGF for the period August 1, 2010 to November 30, 2010.
36. The total legal fees incurred by the Monitor during the period December 1, 2010 to March 31, 2011 for services provided by TGF as the Monitor's independent legal counsel amount to \$11,277.50, together with disbursements in the sum of \$385.73 and HST in the amount of \$1,499.71, totalling \$13,162.94. The time spent by TGF personnel is more particularly described in the Affidavit of Grant Moffat, a partner of TGF, sworn April 20, 2011 (the "Moffat Affidavit") sworn in support hereof and attached hereto as Exhibit "M".
37. In accordance with the terms of paragraph 29 of the First Amended and Restated Initial Order, all invoices rendered by the Monitor and TGF to the Closing Date have been paid by the Applicants. The Monitor has periodically paid fees and disbursements incurred by the Monitor and TGF after the Closing Date from the CCAA Fund, subject to approval of such accounts by the Court.
38. Attached as Exhibit "N" is the Statement of Receipts and Disbursements for the CCAA Fund the period from December 16, 2010 to April 13, 2011.
39. Attached as Exhibit "O" is the Statement of Receipts and Disbursements for the Escrow Fund for the period from December 16, 2010 to April 13, 2011.

DISCHARGE OF THE MONITOR

40. Notwithstanding the outstanding matters outlined in paragraph 25 above, the Monitor believes that it is appropriate to seek its discharge at this time. Based on the current information available to the Monitor, there does not appear to be any necessity for the continuation of the CCAA Proceeding with respect to the Applicants.
41. The Monitor requests that its discharge only become effective upon filing of a certificate (the "**Discharge Certificate**") with the Court evidencing that the Monitor has either completed its administration of the Applicants' estates in accordance with the Expansion of Powers Order, the Escrow Agreement and the Order sought herein or that it will be unable to do so within a reasonable period of time.
42. In order to complete the administration of the Applicants' estates in accordance with the Expansion of Powers Order and the Escrow Agreement, the Monitor will retain \$10,000 (the "**Holdback**") from the Escrow Fund to be used to settle the amounts it estimates are likely required to be paid for GST and CSST, as outlined above. The balance of the Escrow Fund will be returned to Zylog Canada. Upon the completion by the Monitor of its administration of the Applicants' estates, including closure of the Remittance Accounts and receipt by the Monitor of any remaining Clearance Certificates from the Taxing Authorities, the Monitor will pay to Zylog Canada any remaining part of the Holdback in its possession and, thereafter, will file the Discharge Certificate with the Court. If, however, the Monitor determines that it will be unable to complete its administration of the Applicants' estates in accordance with the Expansion of Powers Order, including closing the Remittance Accounts and obtaining any remaining Clearance Certificates within a reasonable period of time, the Monitor requests that it be authorized to pay to Zylog Canada the remaining amount of the Holdback in its possession and file the Discharge Certificate with the Court. Thereafter, the Monitor will take no further steps with respect to resolution of any claims which may form part of the Priority Claim Amount or any other claims which may be subject to the Directors' Indemnity.

43. The Monitor also wishes to confirm that payments by the Monitor from the Escrow Fund, including the Excess Escrow Funds and any amount of the Holdback, will not constitute a distribution of the Applicants' Property by the Monitor as a legal representative of any of the Applicants pursuant to section 159 of the ITA, section 270 of the ETA or any other similar statute. An extract of the relevant provisions of section 159 of the ITA and section 270 of the ETA is included in the motion record filed with the Eleventh Report. As described above, the Escrow Fund was paid to the Monitor pursuant to the terms of the Zylog APA as a means to efficiently fund the Purchaser's obligation to assume the Directors' Indemnity in the manner described in the Zylog APA. The Escrow Fund has been utilized by the Monitor to pay claims which form part of the Priority Claim Amount, with the balance of the Escrow Fund to be paid only to the Purchaser. The Escrow Fund does not constitute Property of any of the Applicants and section 159 of the ITA, section 270 of the ETA and similar statutes should not apply to payments from the Escrow Fund. In addition, paragraph 7 of the Expansion of Powers Order confirms that the Monitor shall not be deemed to be in possession and/or control of the Property of the Applicants or any part thereof. Paragraph 10 of the Expansion of Powers Order confirms that nothing in that Order shall constitute or be deemed to constitute the Monitor a legal representative of any of the Applicants within the meaning of any relevant legislation.

MONITOR'S RECOMMENDATIONS

44. For the reasons set out above, the Monitor recommends that the Court grant an Order:
- (a) approving the activities of the Monitor as described in the Eleventh Report;
 - (b) approving the professional fees and disbursements of TGF and authorizing the Monitor to partially pay all such fees and disbursements from the balance remaining in the CCAA Fund;
 - (c) approving the Monitor's Statement of Receipts and Disbursements for each of the Escrow Fund and the CCAA Fund for the period December 16, 2010 to April 13, 2011;
 - (d) authorizing the Monitor to pay to Zylog Canada the sum of \$146,628, being the amount of the Excess Escrow Funds, and declaring that payments by the Monitor

from the Escrow Fund do not constitute a distribution within the meaning of section 159 of the *Income Tax Act*, section 270 of the *Excise Tax Act* or any other applicable legislation;


- (e) authorizing the Monitor to retain the Holdback in the amount of \$10,000 to satisfy any claims which may form part of the Priority Claim Amount;
- (f) authorizing the Monitor to pay the Costs Fund in accordance with the Court's reasons upon receipt of same;
- (g) authorizing the Monitor to pay to Zylog Canada any remaining part of the Holdback in the Monitor's possession upon the earlier of, (i) the date the Monitor completes the administration of the Applicants' estates in accordance with the Expansion of Powers Order, including resolving the Notices of Assessment, closing the Remittance Accounts and receipt by the Monitor of any and all Clearance Certificates; and (ii) the date the Monitor determines that it will be unable within a reasonable period of time to finalize the estates of the Applicants in accordance with the Expansion of Powers Order;
- (h) confirming that from and after payment to Zylog Canada of the balance, if any, of the Holdback, the Monitor shall have no obligation to pay from the Holdback any Priority Claim Amount referenced in the Escrow Agreement or any other amounts subject to the Directors' Indemnity;
- (i) authorizing the Monitor to file the Discharge Certificate with the Court upon the earlier of, (i) the date the Monitor completes to its satisfaction the administration of the estates of the Applicants in accordance with the Expansion of Powers Order; and (ii) the date the Monitor determines in its sole opinion that it will be unable within a reasonable period of time to complete the administration of the estates of the Applicants in accordance with the Expansion of Powers Order, including resolving the Notices of Assessment, closing the Remittance Accounts and obtaining the Clearance Certificates; and

- (j) terminating the CCAA Proceeding and discharging the Monitor from its role and duties and ordering that all Persons are forever barred from making any claim against the Monitor upon the filing of the Discharge Certificate.

All of which is respectfully submitted at Toronto, Ontario this 21st day of April, 2011.

DELOITTE & TOUCHE INC.
in its capacity as Monitor
of 1484558 Ontario Inc. (formerly
Brainhunter Inc.) and the other Applicants

Per:



Paul M. Casey, CA-CIRP
Senior Vice-President