

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

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3,
as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c. C43, as amended

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

Respondent

**APPLICATION RECORD
(Returnable August 1, 2023 at 11:00 a.m.)**

July 28, 2023

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West
Suite 3200
Toronto, ON M5K 1K7

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Alexander Soutter (LSO #72403T)
Email: asoutter@tgf.ca
Tel: (416) 304-0595

Lawyers for the Applicant, HSBC Bank Canada

**TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST**

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

**IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3,
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Court File No. CV-23-_____ -00CL

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

**IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3,
as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c. C43, as amended**

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference, the details of which will be made available in CaseLines,

before Hon. Justice Penny presiding over the Ontario Superior Court of Justice (Commercial List) on August 1, 2023 at 11:00 a.m., in Toronto, Ontario, in accordance with the regional and provincial Notices to the Profession effective April 19, 2022 and August 2, 2022, respectively. Please advise if you intend to join the hearing by emailing Alexander Soutter at asoutter@tgf.ca.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: _____, 2023

Issued by: _____

Local Registrar

Address of court office: 330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: THIS HONOURABLE COURT

**AND TO THE RESPONDENT: DMI EXIM LIMITED
c/o RECONSTRUCT LLP
200 Bay Street, Suite 2305
P.O. Box 120
Toronto, ON M5J 2J3**

Attention: R. Brendan Bissell
Tel: (416) 613-0066
Email: bbissell@reconllp.com

**AND TO: GRANT THORNTON LIMITED,
in its capacity as proposal trustee of the Respondent
(Estate No. 32-2956516)
200 King Street West, 11th floor
Toronto, ON M5H 3T4**

Attention: Robert Stelzer / Paul Kouadio
Tel: (416) 607-8849 / (416) 369-7004
Email: rob.stelzer@ca.gt.com
paul.kouadio@ca.gt.com

APPLICATION

1. **THE APPLICANT**, HSBC Bank Canada (the “**Lender**”) makes this application for an order, among other things:
 - (a) abridging the time for service of this Notice of Application and the Application Record, if required, authorizing service *via* electronic mail, and dispensing with further service thereof;
 - (b) lifting the stay of proceedings in respect of the Respondent, DMI Exim Limited (“**DMI**”), arising pursuant to its Notice of Intention to Make a Proposal (the “**NOI**”) and Proposal (the “**Proposal**”) filed pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), and any subsequent bankruptcy;
 - (c) appointing KPMG Inc. as the receiver and manager (in such capacity, the “**Receiver**”) of the property, assets and undertaking (the “**Property**”) of DMI;
 - (d) staying all rights and remedies against DMI, the Receiver, or affecting the Property; and
 - (e) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

2. DMI is an Ontario corporation. It carried on business as a commodities trader from its head office in Mississauga, located at 10 Falconer Drive, Unit 3, Mississauga, Ontario L5N 3L8 (the “**Office**”).
3. DMI’s assets comprise, primarily, the Office, accounts receivable of approximately CA\$47.7 million (though the accounts receivable are payable in US dollars).

4. DMI's customers are located all over the world, including Pakistan, India, Ethiopia, Turkey and the United Arab Emirates.
5. DMI has two employees, including its principal and sole director, Vinay Gupta.

The Facility Letters and Credit Facilities

6. Pursuant to an amended and restated Facility Letter dated February 7, 2022, as amended on July 11, 2022, the Lender made certain credit facilities (the "**Credit Facilities**") available to DMI.
7. The Credit Facilities principally relate to: (a) a capital loan used to purchase the Office; (b) operating facilities; and (c) facilities pursuant to which DMI would fund the purchase of commodities.
8. As at July 24, 2023 the amount outstanding to the Lender in respect of the Credit Facilities, including accrued interest, exceeds US\$21.6 million and CA\$520,000.

Security Held by the Lender

9. As security for all of its obligations to the Lender, DMI granted the Lender security over all of its present and after-acquired real and personal property pursuant to a General Security Agreement dated April 29, 2021 (the "**GSA**").
10. DMI also granted the Lender a first priority charge (the "**Charge**") over the real property comprising the Office.
11. The GSA provides that the Lender may appoint a receiver upon default by DMI of any of its obligations to the Lender.

12. As of July 23, 2023, the following registrations exist against DMI pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”):
- (a) registration File No. 771636267 in favour of the Lender in respect of collateral categories *inventory, equipment, accounts, other* and *motor vehicle included*, made on April 16, 2021 for a period of 10 years;
 - (b) registration File No. 779943699 in favour of the Lender in respect of collateral categories *accounts* and *other*, made on January 26, 2022 for a period of 10 years;
and
 - (c) registration File No. 783716364 (joint against DMI and its principal, Vinay Gupta) in favour of BMW Canada Inc. (“**BMW**”) in respect of collateral categories *consumer goods, equipment, other*, and *motor vehicle included* being a 2018 BMW X1 XDRIVE28I, made on June 7, 2022, for a period of 3 years.
13. As noted above, other than the Lender, DMI’s only secured creditor is BMW.
14. As of July 25, 2023, the only charge registered on title to the Office is the Charge.

DMI’s Defaults and the Lender’s Demand

15. DMI defaulted under the Credit Facilities by failing to pay amounts due thereunder within the required time.
16. On June 8, 2023, the Lender demanded repayment of the amounts outstanding under the Credit Facilities and served Notices of Intention to Enforce Security pursuant to s.244 of the *BIA*.

DMI's NOI

17. On June 19, 2023, DMI filed its NOI pursuant to the *BIA*. Pursuant to DMI's Statement of Affairs, the Lender is DMI's most significant creditor. DMI's unsecured creditors were listed as being owed approximately CA\$2.4 million.
18. Grant Thornton Limited was appointed as DMI's proposal trustee (the "**Proposal Trustee**").
19. On July 19, 2023, DMI filed the Proposal.
20. Since shortly before it filed its NOI, the Lender and its advisors have been in discussions with DMI and its counsel regarding the manner in which DMI's accounts receivable can be collected and the indebtedness to the Lender can be repaid. There have been further discussions on this matter with the Proposal Trustee since the NOI was filed.
21. The Lender has determined that the appointment of a receiver would be the most effective means of realizing upon its security.

Need for a Receiver

22. The appointment of the Receiver is necessary and appropriate as a result of the following:
 - (a) the GSA expressly provides for the appointment of a receiver upon DMI's default thereunder;
 - (b) DMI defaulted under the Credit Facilities, and therefore the GSA, by failing to pay amounts outstanding under the Credit Facilities when due. Further, the amounts outstanding under the Credit Facilities are repayable upon demand, which demand was made; and

(c) the appointment of a Receiver will ensure that a court officer can take control of DMI's assets and determine the most appropriate means of recovering on same for the purpose of repaying the Lender in an efficient and timely manner.

23. KPMG Inc. has consented to act as the Receiver.

24. It is appropriate to lift the stay against DMI arising pursuant to the NOI and Proposal. The Proposal is not made to secured creditors. The Proposal will fail as the Lender does not support the Proposal. Claims of unsecured creditors can be dealt with in the context of a receivership proceeding, if and when appropriate.

Rules & Statutes

25. Rules 2.03, 3.02, 14.05(2), and 41 of the *Rules of Civil Procedure*, R.R.O. 1990.

26. Section 243(1) of the *BIA* and section 101 of the *Courts of Justice Act*, RSO 1990, c C34, and the inherent and equitable jurisdiction of this Court.

27. Such other grounds as this Honourable Court may permit.

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

28. the Affidavit of Brian Pettit, to be sworn;

29. the Consent of KPMG Inc. to act as Receiver; and

30. such other material as this Honourable Court may permit.

- 8 -

July 27, 2023

THORNTON GROUT FINNIGAN LLP
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100 Wellington Street West
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Tel: (416) 304-0595

Lawyers for the Applicant, HSBC Bank Canada

TO: THIS HONOURABLE COURT
AND TO: THE SERVICE LIST

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C46, as amended

HSBC BANK CANADA

- and -

DMI EXIM LIMITED

Applicant

Respondent

Court File No. CV-23-_____ -00CL

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

Proceedings commenced at Toronto, Ontario

NOTICE OF APPLICATION

THORNTON GROUT FINNIGAN LLP
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Lawyers for the Applicant, HSBC Bank Canada

SERVICE LIST
(as at July 27, 2023)

TO:	<p>THORNTON GROUT FINNIGAN LLP TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7 Fax: (416) 304-1313</p> <p>D.J. Miller Tel: (416) 304-0559 Email: djmiller@tgf.ca</p> <p>Alexander Soutter Tel: (416) 304-0595 Email: asoutter@tgf.ca</p> <p>Lawyers for the Applicant</p>
AND TO:	<p>RECONSTRUCT LLP 200 Bay Street, Suite 2305 P.O. Box 120 Toronto, ON M5J 2J3</p> <p>R. Brendan Bissell Tel: (416) 613-0066 Email: bbissell@reconllp.com</p> <p>Lawyers for the Respondent</p>
AND TO:	<p>GRANT THORNTON LIMITED 200 King Street West, 11th floor Toronto, ON M5H 3T4</p> <p>Robert Stelzer Tel: (416) 607-8849 Email: rob.stelzer@ca.gt.com</p> <p>Paul Kouadio Tel: (416) 369-7004 Email: paul.kouadio@ca.gt.com</p> <p>Trustee with respect to Respondent's Proposal (Estate No. 32-2956516)</p>

AND TO:	<p>KPMG INC. Bay Adelaide Centre 333 Bay Street, Suite 4600 Toronto, ON M5H 2S5</p> <p>Anamika Gadia Tel: (416) 777-3842 Email: agadia@kpmg.ca</p> <p>George Bourikas Tel: (416) 777-8500 Email: gbourikas@kpmg.ca</p> <p>Cameron Rodrigues Email: cameronrodrigues@kpmg.ca</p> <p>Proposed Receiver</p>
AND TO:	<p>BMW CANADA INC. 50 Ultimate Drive Richmond Hill, ON L4S 0C8</p> <p>Maria Susana Diaz <i>Corporate Counsel</i> Tel: (905) 428-5388 Email: sue.diaz@bmwgroup.ca</p> <p>PPSA registrant</p>
AND TO:	<p>DEPARTMENT OF JUSTICE (CANADA) Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p> <p>Diane Winters Email: diane.winters@justice.gc.ca</p> <p>Edward Park Email: edward.park@justice.gc.ca</p>

AND TO:	MINISTER OF FINANCE INSOLVENCY UNIT 6th Floor, 33 King Street West Oshawa, ON L1H 8H5 Insolvency Unit Email: insolvency.unit@ontario.ca
AND TO:	CANADA REVENUE AGENCY 1 Front Street West Toronto, ON M5J 2X6 Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

EMAIL SERVICE LIST

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insolvency.unit@ontario.ca; AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca

TAB 2

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

**IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3,
as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c. C43, as amended**

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

Respondent

**AFFIDAVIT OF BRIAN PETTIT
(Appointment of a Receiver)**

I, Brian Pettit, of the Town of Aurora, in York Region, in the Province of Ontario, make oath and say as follows:

1. I am an Assistant Vice President in the Special Credit department of the Applicant HSBC Bank Canada (the “**Lender**”) and I have primary responsibility for the credit facilities made available by the Lender to the Respondent DMI Exim Limited (“**DMI**”) since those facilities were transferred to the Special Credit department of the Lender. As such, I have knowledge of the matters to which I hereinafter depose, which knowledge is either personal to me, obtained from a review of the documents to which I refer, or, where indicated, based on information and belief, in which case I verily believe such information to be true. Where

I have indicated that I have obtained facts from other sources, I have identified the sources and I believe those facts to be true.

2. This affidavit is sworn in support of an application by the Lender for an order appointing KPMG Inc. as the receiver and manager (the “**Receiver**”), without security, of DMI’s property, assets and undertaking (the “**Property**”) pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, RSO 1990, c C43, as amended.

The Respondent

3. DMI is an Ontario corporation. A corporation search for DMI is attached as **Exhibit “A”**.
4. DMI carried on business as a commodities trader. It primarily deals in chickpeas, lentils, soybeans and some chemicals. Its customers include importers in Pakistan, India, Ethiopia, Turkey and the United Arab Emirates.
5. DMI operated from premises located at 10 Falconer Drive, Unit 3, Mississauga, Ontario L5N 3L8 (the “**Office**”), which it owns. A parcel abstract for the Office is attached as **Exhibit “B”**.
6. DMI has two employees, including its principal and sole director, Vinay Gupta.
7. DMI’s accounts with the Lender are located in Ontario.

DMI’s Assets

8. DMI owns the Office.

9. DMI's largest asset is its accounts receivable. It has reported to the Lender that it has accounts receivable of approximately CA\$47.7 million (although the accounts receivable are payable in US dollars).

The Facility Letter

10. Pursuant to an amended and restated facility letter dated February 7, 2022 (the "**Facility Letter**"), between DMI and the Lender, as amended by an amending agreement dated July 11, 2022 (the "**Facility Letter Amendment**"), the Lender made the following credit facilities (collectively, the "**Credit Facilities**") available to DMI:
 - (a) a demand operating revolving loan facility with a maximum principal limit of US\$5 million;
 - (b) a capital loan facility in the principal amount of CA\$555,833.36;
 - (c) a letter of guarantee facility with a maximum principal limit of US\$2.2 million;
 - (d) a demand revolving foreign exchange facility up to a permitted maximum of US\$27,777,777;
 - (e) a draft/bill discounting facility (the "**Discounting Facility**") with a maximum principal limit of US\$21 million; and
 - (f) a pre-shipment seller loan facility (the "**Pre-Shipment Facility**") with a maximum principal limit of US\$15 million (provided that the maximum principal limit of the Discounting Facility and Pre-Shipment Facility would not together exceed US\$21 million).

A copy of the Facility Letter is attached as **Exhibit “C”**. A copy of the Facility Letter Amendment is attached as **Exhibit “D”**. A copy of the Standard Trade Terms incorporated by reference to the Facility Letter, and applicable to the Discounting Facility, is attached as **Exhibit “E”**.

11. As at July 24, 2023, DMI is indebted to the Lender:
 - (a) under the demand operating revolving loan facility in the amount of US\$4,830,724.53 together with interest, costs and fees, including legal fees and disbursements, incurred by the Lender to the date of payment;
 - (b) under the capital loan facility in the amount of CA\$520,412.64 together with interest, costs and fees, including legal fees and disbursements, incurred by the Lender to the date of payment;
 - (c) under the Pre-Shipment Facility in the amount of US\$7,515,911.60 together with interest, costs and fees, including legal fees and disbursements, incurred by the Lender to the date of payment; and
 - (d) under the Discounting Facility in the amount of US\$9,306,095.70 together with interest, costs and fees, including legal fees and disbursements, incurred by the Lender to the date of payment.

12. Further, as at July 24, 2023, the face value of foreign exchange forward contracts entered into pursuant to the demand revolving foreign exchange facility is in the amount of US\$21,927,152.

Security Held by the Lender

13. As security for all of its obligations to the Lender, DMI granted to the Lender security upon all of its present and after-acquired real and personal property pursuant to, among other things, a General Security Agreement dated April 29, 2021 (the “**GSA**”). The GSA provides that the Lender may appoint a receiver upon default by DMI of any of its obligations to the Lender. A copy of the GSA is attached as **Exhibit “F”**.
14. Further, DMI granted to the Lender a first-ranking charge/mortgage of land (the “**Charge**”) over the Office in the principal amount of CA\$575,000 as security for all of its obligations to the Lender. A copy of the Charge is attached as **Exhibit “G”**.
15. The Lender also holds a guarantee from DMI’s principal, Mr. Gupta.

Registrations of the Lender’s Security

16. As of July 23, 2023, the following registrations exist against DMI pursuant to the *Personal Property Security Act* (Ontario):
 - (a) registration File No. 771636267 in favour of the Lender in respect of collateral categories *inventory, equipment, accounts, other* and *motor vehicle included*, made on April 16, 2021 for a period of 10 years;
 - (b) registration File No. 779943699 in favour of the Lender in respect of collateral categories *accounts* and *other*, made on January 26, 2022 for a period of 10 years;and

- (c) registration File No. 783716364 (joint against DMI and its principal, Vinay Gupta) in favour of BMW Canada Inc. in respect of collateral categories *consumer goods, equipment, other, and motor vehicle included* being a 2018 BMW X1 XDRIVE28I, made on June 7, 2022, for a period of 3 years.

A copy of a search of the Ontario Personal Property Registry, current as at July 23, 2023, is attached as **Exhibit “H”**.

Defaults under the Facility Letter

- 17. The Facility Letter, as amended, requires that DMI repay all advances under:
 - (a) the Pre-Shipment Facility on the earlier of (a) the date that the Lender demands repayment and (b) 120 days from the date of the advance;
 - (b) the Discounting Facility on the earlier of (a) the date that the Lender demands repayment and (b) the due date of each draft or bill discounted by the Lender pursuant to the Discounting Facility; and,
 - (c) the other facilities made available under the Facility Letter, as amended, upon demand.

- 18. By May 26, 2023, DMI was in default of the Facility Letter, as amended. Among other reasons, more than US\$10 million in advances under the Pre-Shipment Facility and the Discounting Facility were past due.

Demand for Repayment and *BIA* Notices

19. By letter to DMI dated June 8, 2023 (the “**Demand Letter**”), the Lender demanded payment of all amounts outstanding under the Credit Facilities, and together therewith delivered to DMI a Notice of Intention to Enforce Security (the “**BIA Notice**”) pursuant to section 244 of the *BIA*. Copies of the Demand Letter and enclosed BIA Notice are collectively attached as **Exhibit “I”**.
20. Shortly thereafter, DMI entered into an agreement pursuant to which it consented to the appointment of KPMG LLP as the Lender’s consultant to review, among other things, DMI’s financial position and the Lender’s security position.

DMI’s *BIA* Proceedings

21. On June 19, 2023, DMI filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to the *BIA*. Grant Thornton Limited was named as proposal trustee (the “**Proposal Trustee**”) in the NOI. Copies of DMI’s NOI and Certificate of Filing are attached collectively as **Exhibit “J”**.
22. On July 19, 2023, DMI filed a proposal (the “**Proposal**”) to its unsecured creditors pursuant to the *BIA*. A copy of the Proposal is attached as **Exhibit “K”**.

Need for a Receiver

23. Since shortly before DMI filed its NOI, the Lender and its advisors have been in discussions with the company and its advisors regarding the manner in which DMI’s accounts

receivable can be collected and the indebtedness to the Lender repaid. Those discussions continued with the Proposal Trustee after the NOI was filed.

24. The Lender, in consultation with KPMG, has determined that the appointment of a receiver by the Court would be the most prudent means of collecting the very substantial accounts receivable owing by account debtors in foreign jurisdictions, and providing the degree of oversight required by the Lender. Based on discussions amongst the Lender and its advisors and DMI and its advisors, it is my understanding and the Lender's expectation that the principal of DMI will assist the Receiver, if appointed by the Court, in those collection efforts.
25. The appointment of the Receiver is necessary and appropriate as a result of the following:
 - (a) DMI defaulted under the Credit Facilities, and therefore the GSA, by failing to pay amounts outstanding under the Credit Facilities when due. Further, the amounts outstanding under the Credit Facilities are repayable upon demand, which demand was made;
 - (b) the GSA expressly provides for the appointment of a receiver upon DMI's default thereunder;
 - (c) the appointment of a receiver will ensure that a court officer can take control of DMI's assets and determine the most appropriate means of recovering on same for the purpose of repaying the Lender in an efficient and timely manner; and
 - (d) the Demand Letter and the BIA Notice have not been satisfied and, subject to the stay of proceedings arising under the NOI and Proposal being lifted, which I

understand DMI consents to, the Receiver will be able to take immediate steps to collect the accounts receivable and sell the Office building.

26. The proposed Order appointing the Receiver permits the Receiver to borrow funds from the Lender for the purpose of financing the receivership. If necessary, these borrowings will be secured by the security held by the Lender upon DMI's assets.
27. KPMG Inc. has consented to act as the Receiver. I understand that a copy of KPMG Inc.'s Consent to act as the Receiver will be included in the Lender's Application Record at Tab 3.

SWORN remotely via videoconference,
by BRIAN PETTIT stated as being located
in the Town of Aurora, in York Region, in
the Province of Ontario, before me at the
City of Toronto, in the Province of Ontario,
this 28th day of July, 2023, in accordance
with O. Reg 431/20, *Administering Oath or
Declaration Remotely*



Commissioner for Taking Affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor



BRIAN PETTIT

This is **Exhibit “A”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor



Profile Report

DMI EXIM LIMITED as of July 24, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	DMI EXIM LIMITED
Ontario Corporation Number (OCN)	2417893
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	May 07, 2014
Registered or Head Office Address	10 Falconer Drive, 3, Mississauga, Ontario, Canada, L5N 3L8

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 7

Name VINAY GUPTA
Address for Service 10 Falconer Drive, 3, Mississauga, Ontario, Canada, L5N 3L8
Resident Canadian Yes
Date Began May 07, 2014

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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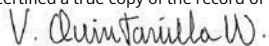
Active Officer(s)

Name VINAY GUPTA
Position President
Address for Service 10 Falconer Drive, 3, Mississauga, Ontario, Canada, L5N 3L8
Date Began May 07, 2014

Name VINAY GUPTA
Position Secretary
Address for Service 10 Falconer Drive, 3, Mississauga, Ontario, Canada, L5N 3L8
Date Began May 07, 2014

Name VINAY GUPTA
Position Treasurer
Address for Service 10 Falconer Drive, 3, Mississauga, Ontario, Canada, L5N 3L8
Date Began May 07, 2014

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.



Director/Registrar

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Corporate Name History

Name

DMI EXIM LIMITED

Effective Date

May 07, 2014

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V. Quintanilla W.

Director/Registrar

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

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V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: VINAY GUPTA - DIRECTOR	March 06, 2021
Annual Return - 2020 PAF: VINAY GUPTA - DIRECTOR	August 23, 2020
Annual Return - 2019 PAF: VINAY GUPTA - DIRECTOR	June 30, 2019
Annual Return - 2018 PAF: VINAY GUPTA - DIRECTOR	July 22, 2018
Annual Return - 2017 PAF: VINAY GUPTA - DIRECTOR	July 09, 2017
Annual Return - 2016 PAF: VINAY GUPTA - DIRECTOR	July 31, 2016
CIA - Notice of Change PAF: VINAY GUPTA - DIRECTOR	April 01, 2016
Annual Return - 2015 PAF: VINAY GUPTA - DIRECTOR	September 26, 2015
CIA - Initial Return PAF: VINAY GUPTA - DIRECTOR	May 07, 2014
BCA - Articles of Incorporation	May 07, 2014

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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This is **Exhibit “B”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor

PROPERTY DESCRIPTION: UNIT 5, LEVEL 1, PEEL CONDOMINIUM PLAN NO. 287 ; PT BLKS G, H & I PL 548, PT 1 43R10656, MORE FULLY DESCRIBED IN SCHEDULE 'A' OF DECLARATION LT839260 ; MISSISSAUGA

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE
ABSOLUTE

RECENTLY:

FIRST CONVERSION FROM BOOK

PIN CREATION DATE:

1995/09/25

OWNERS' NAMES

DMI EXIM LIMITED

CAPACITY SHARE

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
<p>**EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1995/09/25 ON THIS PIN**</p> <p>**WAS REPLACED WITH THE "PIN CREATION DATE" OF 1995/09/25**</p> <p>** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 1995/09/22 **</p>						
VS296364Z	1974/01/03	APL ANNEX REST COV		*** COMPLETELY DELETED ***		
RO621268	1982/10/08	CERTIFICATE REMARKS: PARTIAL RELEASE VS296364 CORRECTIONS: 'REGN. NUMBER' CHANGED		FROM 'LT621268' TO 'RO621268' ON 1996/07/26 BY CLAIRE COOPER.		C
LT635075	1986/04/22	NOTICE REMARKS: COMPLIANCE; VS296364				C
LT839260	1988/01/11	DECLARATION CONDO			FALCON COURT CENTRE INC.	C
LT850338	1988/02/17	BYLAW REMARKS: NO. 1				C
LT850339	1988/02/17	BYLAW REMARKS: NO. 2				C
LT850340	1988/02/17	BYLAW REMARKS: NO. 3				C
LT1565480	1995/05/26	BYLAW REMARKS: NO. 4				C
LT1575548	1995/07/14	TRANSFER		*** COMPLETELY DELETED ***	SPECTRA IMAGING INC	
LT2057426	2000/03/27	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF THE DEPARTMENT OF		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
		<i>REMARKS: PEARSON AIRPORT ZONING REGULATION</i>		TRANSPORT CANADA		
PR852235	2005/05/18	APL (GENERAL)		PEEL CONDOMINIUM CORPORATION NO.287		C
		<i>REMARKS: AMENDS LT839260</i>				
PR1605783	2009/02/19	TRANSFER		*** COMPLETELY DELETED *** SPECTRA IMAGING INC	10 FALCONER DRIVE UNIT 3 LLC	
PR2602246	2014/09/19	TRANSFER		*** COMPLETELY DELETED *** 10 FALCONER DRIVE UNIT 3 LLC	2430729 ONTARIO INC.	
PR2602247	2014/09/19	CHARGE		*** COMPLETELY DELETED *** 2430729 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA	
PR2602353	2014/09/19	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2430729 ONTARIO INC.	BUSINESS DEVELOPMENT BANK OF CANADA	
		<i>REMARKS: PR2602247.</i>				
PR3761268	2021/01/07	DISCH OF CHARGE		*** COMPLETELY DELETED *** BUSINESS DEVELOPMENT BANK OF CANADA		
		<i>REMARKS: PR2602247.</i>				
PR3761442	2021/01/08	TRANSFER	\$770,000	2430729 ONTARIO INC.	DMI EXIM LIMITED	C
PR3761443	2021/01/08	CHARGE		*** COMPLETELY DELETED *** DMI EXIM LIMITED	ROYAL BANK OF CANADA	
PR3829822	2021/05/07	CHARGE	\$575,000	DMI EXIM LIMITED	HSBC BANK CANADA	C
PR3829823	2021/05/07	NO ASSGN RENT GEN		DMI EXIM LIMITED	HSBC BANK CANADA	C
		<i>REMARKS: PR3829822</i>				
PR3940656	2021/11/05	DISCH OF CHARGE		*** COMPLETELY DELETED *** ROYAL BANK OF CANADA		
		<i>REMARKS: PR3761443.</i>				

This is **Exhibit “C”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor



February 7, 2022

DMI Exim Limited
Unit 3, 10 Falconer Dr
Mississauga, ON L5L 3L8

PRIVATE & CONFIDENTIAL

Attention: Vinay Gupta

Dear Sir:

We refer to the facility letter with Schedules dated March 23, 2021 as amended to the date hereof between HSBC Bank Canada (the "**Bank**") and DMI Exim Limited, (collectively called the "**Original Facility Letter**"). On the basis of the financial information and other information, representations, warranties and documents provided to the Bank, the Bank has agreed, at the request of the Borrower, to continue to provide the Credit Facilities and amend certain terms and conditions of the Original Facility Letter all as more particularly set out below. The Original Facility Letter shall, as of the date above, be amended and restated (but without novation of existing credit facilities indebtedness and obligations) to read in its entirety as follows and shall be hereafter referred to as the "**Facility Letter**":

BORROWER

DMI Exim Limited

(the "**Borrower**").

GUARANTOR

Vinay Gupta

(the "**Guarantor**").

For purposes of this Facility Letter, the Borrower and Guarantor are sometimes referred to individually as a "**Credit Party**" and collectively as the "**Credit Parties**".

CREDIT FACILITIES

The following credit facilities (collectively referred to as the "**Credit Facilities**") are authorized subject to the satisfaction of all terms and conditions in this Facility Letter.

1. Operating Loan Facility

1.1 Amount

Demand operating revolving loan facility ("**Operating Loan Facility**") available at the Bank's discretion by way of any of the types of advances and other credit described in section 1.3 (below) up to but not exceeding in aggregate (for all such types of advances and other credit) USD 5,000,000, subject to the Margin Requirement, if any.

1.2 Purpose

To assist in financing, the day-to-day operating requirements of the Borrower.

1.3 Availability

Loan advances and other credit under the Operating Loan Facility ("**Operating Loans**") are available as follows:

- (a) CAD account overdraft up to an aggregate principal amount not exceeding the Canadian Dollar Equivalent of USD 5,000,000 ("**CAD Overdraft Loans**");
- (b) USD account overdraft up to an aggregate principal amount not exceeding USD 5,000,000 ("**USD Overdraft Loans**"); and
- (c) Letters of credit or documentary credits ("**DCs**") up to an aggregate amount of USD 1,000,000, in each case for a period or usance term acceptable to the Bank to finance trade activity in form satisfactory to the Bank, subject to the terms and conditions set out in this Facility Letter, including applicable Schedules, and other documentation acceptable to the Bank. DCs shall be available in major currencies, subject to availability.

The Borrower shall ensure that the aggregate US Dollar Equivalent of all amounts advanced and credits outstanding (including the face amounts of any outstanding issued DCs) under the Operating Loan Facility shall at no time exceed the amount set out in section 1.1 above.

1.4 Repayment

All amounts advanced and outstanding under the Operating Loan Facility shall be repaid on demand by the Bank.

Upon request by the Bank, which may be made at any time at the Bank's discretion, the Borrower shall deliver cash collateral to the Bank, granting a first-ranking Lien in favour of the Bank to fully secure its obligations to the Bank with respect to any outstanding DC.

1.5 Interest

Interest on the outstanding principal balance of all Loans and other credit advanced under the Operating Loan Facility shall, unless otherwise provided, be calculated and payable as follows:

- (a) for CAD Overdraft Loans, the Bank's Prime Rate plus 1.00% per annum, calculated monthly in arrears on the daily balance on the last day of each month, payable on the first Business Day of the following month; or
- (b) for USD Overdraft Loans, the Bank's U.S. Base Rate plus 1.00% per annum, calculated monthly in arrears on the daily balance on the last day of each month, payable on the first Business Day of the following month.

1.6 Additional Terms and Conditions Applicable to DCs and LGs

The DCs and LGs issued under the Operating Loan Facility shall be subject to the additional terms and conditions set out in the Standard Trade Terms to the extent that such terms and conditions do not conflict with the terms and conditions of this Facility Letter.

1.7 Fees

The Borrower shall pay to the Bank:

- (a) an administration fee of CAD 300 payable on the first Business Day of each month with respect to the previous month;
- (b) at the time of issuance of each DC under the Operating Loan Facility, a fee as provided in the "Global Trade and Receivables Finance (Canada) Schedule of Applicable Fees and Charges", as such document may be amended by the Bank in its sole discretion from time to time, calculated against the face amount and over the term of the DC subject to any specified minimum issuance fee and which may be charged to an account of The Borrower;
- (c) an amendment fee of CAD 1,500 payable in the event that any amendment to this Facility Letter is required by the Borrower; and
- (d) an annual review fee of CAD 15,000.

2. Capital Loan Facility

2.1 Capital Loan Facility

2.1.1 Amount

Principal of CAD 555,833.36 demand non-revolving loan facility ("**Capital Loan Facility**") made available to the Borrower.

2.1.2 Purpose

To assist in financing, the capital expenditure by the Borrower for the acquisition of Suite 3, 10 Falconer Dr, Mississauga, ON.

2.1.3 Availability

The Capital Loan Facility has been advanced and is available to be requested by the Borrower by delivery of a Required Notice to the Bank by way of:

- (a) CAD advance based on the Bank's Prime Rate ("**CAD Prime Rate Loan**"); or
- (b) CAD advance based on the Bank's CAD Fixed Rate at the rate and for the period advised by the Bank from time to time ("**CAD Fixed Rate Loan**").

2.1.4 Repayment

All amounts outstanding under this Capital Loan Facility shall be repaid on demand by the Bank and until such demand, the Borrower shall make monthly principal repayments, in an amount advised by the Bank, together with accrued interest calculated at the applicable rate per annum based on a notional amortization period of 20 years commencing on the date advised by the Bank.

The Capital Loan Facility shall, in any event, be repaid in full on or before the fifth anniversary of the initial advance, subject to the Bank's unfettered rights of demand for accelerated payment at any time.

A prepayment at the Borrower's option of all or part of a Capital Loan Facility may be made upon 5 Business Days prior written notice by the Borrower to the Bank, subject to payment to the Bank of the sum referred to in section III(b) of Schedule A, if applicable. Any amount repaid or prepaid may not be reborrowed.

In the event of demand for repayment by the Bank of any issued and outstanding Fixed Rate Loan, the Borrower shall deliver cash collateral to the Bank to fully secure its obligations to the Bank with respect to such Loans.

2.1.5 Interest

Interest on the principal balance of this Capital Loan Facility shall, unless otherwise provided, be calculated and payable as follows:

- (a) for a CAD Prime Rate Loan, the Bank's Prime Rate plus 1.00% per annum, accruing daily, calculated monthly in arrears on the daily balance, and payable as provided in this section; or
- (b) for a CAD Fixed Rate Loan, the Bank's CAD Fixed Rate per annum, accruing daily, calculated monthly in arrears on the daily balance, and payable as provided in this section.

3. Letter of Guarantee Facility

3.1 Purpose

To finance the day to day operations of the Borrower through the issuance by the Bank of letters of guarantee, standby letters of credit, performance bonds, counter guarantees, counter standby letters of credit or similar credits from time to time (each an "LG") upon the instructions of the Borrower and in a form satisfactory to the Bank (the "**LG Facility**").

3.2 Amount

LG Facility available up to permitted maximum of USD 2,200,000 subject to the Margin Requirement, if any (the "**LG Facility Limit**").

The Borrower shall ensure that the aggregate US Dollar Equivalent of all amounts advanced and credits outstanding (including the face amounts of any outstanding issued LGs) under the LG Facility shall at no time exceed the LG Facility Limit.

3.3 Availability

The availability of each LG shall be at the sole and absolute discretion of the Bank and subject to the Conditions Precedent. LGs are available at the Bank's discretion for terms of up to 12 months.

3.4 Repayment

Each issuance of an LG is an advance of credit (for the Borrower's account) for purposes of the LG Limit. Any amount drawn under an LG shall be immediately reimbursed to the Bank by the Borrower. Interest on any amount drawn under an LG and not immediately reimbursed by the Borrower to the Bank shall accrue, calculated monthly in arrears accruing daily at 21% per annum.

3.5 Additional Terms and Conditions

The LG Facility shall be subject to the additional terms and conditions set out in the Standard Trade Terms to the extent that such terms and conditions do not conflict with the terms and conditions of this Facility Letter.

3.6 Fees

The Borrower shall pay the Bank the following fees in respect of LGs issued under the LG Facility:

- (a) at the time of issuance by the Bank of each Financial LG (including at the time of issuance of any renewal or replacement Financial LG, following maturity or expiry of a Financial LG),

a fee equal to 2.00% per annum calculated against the face amount and over the term of the Financial LG, subject to a minimum per issuance of \$300;

- (b) at the time of issuance by the Bank of each Performance LG (including at the time of issuance of any renewal or replacement Performance LG, following maturity or expiry of a Performance LG), a fee equal to 1.50% per annum calculated against the face amount and over the term of the Performance LG, subject to a minimum per issuance of \$300; and
- (c) if applicable, the additional fees and charges set out in the "Global Trade and Receivables Finance (Canada) Schedule of Applicable Fees and Charges", as such document may be amended in the sole discretion of the Bank from time to time.

4. Foreign Exchange Facility

4.1 Amount

Demand revolving foreign exchange facility up to a permitted maximum of USD 10,526,315 (the "**Foreign Exchange Facility Limit**").

4.2 Purpose

To hedge against currency fluctuations of the Borrower in the normal course of business and not for speculative purposes.

4.3 Availability

Advances are available to purchase foreign exchange forward contracts for major currencies identified and approved by the Bank from time to time for periods up to one year, subject to an overall maximum aggregate USD Equivalent outstanding face value not exceeding the Foreign Exchange Facility Limit.

4.4 Repayment

All liabilities of the Bank under foreign exchange forward contracts shall be paid by the Borrower on demand by the Bank and, unless and until otherwise demanded, such contracts shall be fulfilled by the Borrower as they fall due.

5. Draft/Bill Discounting Facility (With Recourse)

5.1 Amount

Draft/bill discounting facility (the "**Bill Discounting Facility**") up to USD 15,000,000.

5.2 Purpose

For the discounting of documentary export drafts or bills drawn at 180 days or less from the date of draft or bill, with full recourse to the beneficiary.

5.3 Availability

The Bank may discount, at its sole discretion from time to time, documentary export drafts or bills acceptable to the Bank at a rate of up to 90% of the face value of such bills, upon the receipt of appropriate commercial documentation as specified in accordance with the Uniform Rules for Collections, International Chamber of Commerce (ICC) Publication No. 522.

Notwithstanding the Bill Discounting Facility limit in Section 5.1 (above), the sum of the amounts advanced and outstanding under the Bill Discounting Facility, the PSL Facility in Section 6.1 (below) and the POSTSL

Facility set forth in Section 7.1 (below) shall not, in the aggregate, exceed USD 15,000,000.

5.4 Full Recourse

Notwithstanding the discounting of the documentary export drafts or bills by the Bank, the Bank shall retain full recourse to the beneficiary of such drafts or bills. Nonpayment shall be deemed to have occurred if the Bank has not received the whole sum due from the drawee or otherwise on the applicable due date of such draft or bill.

5.5 Interest

In the event that the Bank exercises in its discretion to demand repayment by the beneficiary of such draft or bill, interest shall, unless otherwise provided, be calculated at:

- (a) the Bank's Prime Rate plus 1.00% per annum on the basis of a year of 365 days;
- (b) the Bank's U.S. Base Rate plus 1.00% per annum on the basis of a year of 360 days; or
- (c) EURIBOR plus 1.00% per annum, on the basis of a year of 365 days;

from the date of such demand until the date of repayment to the Bank and shall be payable upon settlement of the applicable draft or bill or repayment of the amounts owing, whichever is earlier.

5.6 Fees

For each discount of a draft or bill under the Bill Discounting Facility, the Borrower shall pay to the Bank:

- (a) an administrative fee of 0.125% of the face value of the discounted bill or draft, subject to a minimum fee of CAD 150.

5.7 Fee and Minimum Amount Requirements where the underlying transaction is denominated in foreign currency

All fees and minimum amounts set forth in this statement are expressed in CAD; provided, however, that where the underlying transaction is denominated in USD or EUR, all fees and minimum amounts set forth in this statement are to be read as being stated in USD or EUR, as applicable. For the avoidance of doubt, where the underlying transaction is denominated in a currency other than CAD, USD or EUR, all fees and minimum amounts set forth in this statement are expressed in CAD unless otherwise specified (or, where fees are expressed as a percentage of a certain amount, the CAD equivalent of such amount as determined by the Bank) and are payable in CAD.

5.8 Additional Applicable Terms and Conditions

- (a) The Borrower represents, warrants and covenants to the Bank that:
 - (i) it has submitted to the Bank a complete package of the commercial documentation involved in the transaction between the Borrower and its customer which gave rise to the bill or draft which the Borrower is requesting for the Bank to discount under the Bill Discounting Facility;
 - (ii) all of the commercial documentation presented to the Bank pursuant to in section 5.3 of this Agreement in connection with a bill or draft discounting request under the Bill Discounting Facility, is complete, accurate, valid, and in order; and
 - (iii) to the extent that the Borrower has received advance payment(s) from its customer in connection with a purchase transaction involving the bill or draft requested by the Borrower to be discounted under the Bill Discounting Facility, the Borrower has

submitted to the Bank documentation satisfactory to the Bank evidencing the remittance of any such advance payment.

- (b) Without limiting in any way the discretion of the Bank to accept or reject advance requests in any way, it shall be a condition precedent to the discount of any documentary export draft or bill by the Bank that the Borrower shall have submitted to the Bank documentation satisfactory to the Bank evidencing the remittance of any advance payment paid to the Borrower (if any) in connection with the underlying sales transaction.
- (c) The Bill Discounting Facility shall be subject to the additional terms and conditions set out in the Standard Trade Terms to the extent that such terms and conditions do not conflict with the terms and conditions of this Facility Letter.

6. Pre-Shipment Seller Loan Facility

6.1 Amount

Pre-shipment seller loan facility (the “**PSL Facility**”) up to USD 10,000,000.

6.2 Purpose

To finance up to 80% of the face amount of each written request for services or offers to purchase goods, pro forma invoices or proof of sale or production contract (each such written request, a “**Requested Purchase Order**”) that are, in each case, approved by the Bank (each such approved written request or offer, an “**Approved Purchase Order**”).

6.3 Availability

- (a) The Borrower shall provide the Bank with an application for each advance under the PSL Facility in a form and manner satisfactory to the Bank, together with a certified copy of the applicable Approved Purchase Order. The Bank may, in its sole discretion, advance to the Borrower, for each such Approved Purchase Order, an amount under the PSL Facility equal to 80% of the face value of such Approved Purchase Order. The Borrower shall, upon request by the Bank at any time, furnish the Bank with such additional supporting documentation in respect of any advance made under the PSL Facility as the Bank may reasonably request.
- (b) The face value amount of each Requested Purchase Order submitted to the Bank for funding consideration under the PSL Facility will at minimum be CAD 250,000.
- (c) Where a post-shipment seller loan is made available to the Borrower after a PSL Facility has been advanced to the Borrower, the Borrower undertakes to provide the Bank with such original or certified true copy of the relevant transport documents acceptable to the Bank, and which are marked with the relevant pre-shipment seller loan reference number, promptly upon the shipment of the goods. Upon and after the Bank’s receipt of such transport documents, the Bank may where applicable, at its sole and absolute discretion, transfer the relevant debt outstanding under this pre-shipment seller loan to the Borrower’s post-shipment seller loan, and such transferred outstanding debt shall constitute an amount outstanding under the post-shipment seller loan.

Notwithstanding the PSL Facility limit in Section 6.1 (above), the sum of the amounts advanced and outstanding under the PSL Facility, the Bill Discounting Facility in Section 5.1 (above) and the POSTSL Facility set forth in Section 7.1 (below) shall not, in the aggregate, exceed USD 15,000,000.

6.4 Repayment

Each advance made under the PSL Facility, together with all interest and other amounts due in respect of such advance, shall be repayable by the Borrower the earlier of (i) the date that is 120 days from the date

on which the Bank advances credit to the Borrower (the “**Advance Date**”); or (ii) the date that the Bank demands repayment.

6.5 Interest

Interest on the outstanding principal balance of all credit advanced under the PSL Facility shall, unless otherwise provided, be calculated and payable as follows:

- (a) for a PSL Facility drawn in CAD, the Bank’s Prime Rate plus 1.00% per annum on the basis of a year of 365 days;
- (b) for a PSL Facility drawn in USD, the Bank’s U.S. Base Rate plus 1.00% per annum on the basis of a year of 360 days.
- (c) for a PSL Facility drawn in EUR, EURIBOR plus 1.00% per annum on the basis of a year of 365 days.

6.6 Fees

For each Approved Purchase Order that is financed by the Bank, the Borrower shall pay to the Bank from the proceeds of each advance relating to such Approved Purchase Order:

- (a) a processing fee equal to 0.25% of the amount financed for each advance under the PSL Facility, subject to a minimum fee of CAD 300; and
- (b) a fee equal to CAD 50 in connection with any application for an advance under the PSL Facility 1 that is delivered to the Bank in paper form.

All such fees payable on the Advance Date.

6.7 Fee and Minimum Amount Requirements where the underlying transaction is denominated in foreign currency

All fees and minimum amounts set forth in this statement are expressed in CAD; provided, however, that where the underlying transaction is denominated in USD or EUR, all fees and minimum amounts set forth in this statement are to be read as being stated in USD or EUR, as applicable. For the avoidance of doubt, where the underlying transaction is denominated in a currency other than CAD, USD or EUR, all fees and minimum amounts set forth in this statement are expressed in CAD unless otherwise specified (or, where fees are expressed as a percentage of a certain amount, the CAD equivalent of such amount as determined by the Bank) and are payable in CAD.

6.8 Additional Terms and Conditions Applicable to the PSL Facility

The PSL Facility shall be subject to the additional terms and conditions set out in the Standard Trade Terms to the extent that such terms and conditions do not conflict with the terms and conditions of this Facility Letter.

6.9 Treatment of Overdue Payment under the PSL Facility

Notwithstanding anything to the contrary contained in this Facility Letter and overriding any such provision, any amounts (other than for overdue interest) which become payable to the Bank under the PSL Facility and which are not paid when due shall accrue interest and be payable from the due date at the applicable rate for the PSL Facility specified above plus 2% per annum, calculated and payable daily, both before and after demand, default, maturity or judgment and until indefeasible payment in full.

7. Post-Shipment Seller Loan Facility

7.1 Amount

Post-shipment seller loan facility (the “**POSTSL Facility**”) up to USD 5,000,000.

7.2 Purpose

To support the Borrower’s working capital requirements after the supply of goods or rendering of services on credit terms under open account.

7.3 Availability

- (a) Advances of 90% of the sales invoice amount (the “**Invoice Amount**”) with respect to invoices from the Borrower to one or more of the account debtors listed in section 7.6 below (each such account debtor, an “**Approved Account Debtor**”) may be requested by the Borrower by completing and delivering to the Bank the “Post Shipment Seller Loan Facility Advance Request” in the Bank’s standard form together with the original or certified true copy of each applicable invoice and valid transport documents evidencing the shipment of goods related to the invoice(s) stated. The POSTSL Facility is uncommitted, and the making of any advance under the POSTSL Facility is at the sole discretion of the Bank.
- (b) It shall be a condition precedent to any advance under the POSTSL Facility that the Borrower shall have delivered to the Bank the following export documents, duly certified as a true copy of the original by the Borrower:
 - (i) a copy of the applicable invoice(s);
 - (ii) a copy of the non-negotiable bill of lading evidencing shipment of the goods relating to the invoice; and
 - (iii) such other documents that the Borrower may agree with the Bank from time to time.
- (c) The invoice(s) that the Borrower is to present to the Bank must reveal that payment instruction has been duly contained in such invoice(s) to the Approved Account Debtors directing them to make payment to the Bank directly into the particular Borrower’s cash bank account maintained in the name of the Borrower at the Bank (the “**Relevant Account**”) bearing account no. 052-589811-001 (for CAD) / USD Current Account No. 052-589811-070 (for USD) or other account number, in form and substance satisfactory to the Bank. For example, such invoices are expected to contain wording of the following effect:

“Please effect payment to HSBC Bank Canada, 4550 Hurontario Street, Mississauga, L5R 4E4, Ontario, for credit account of DMI Exim Limited, Account No. 052-589811-001 (for CAD) / USD Current Account No. 052-589811-070 (for USD) quoting the name of the remitter, invoice number and date.”
- (d) Where the Borrower provides the Bank with multiple invoices pursuant to which the Bank makes Advances to the Borrower under the POSTSL Facility, the following additional requirements on the Borrower shall apply:
 - (i) the original invoices and transport documents shall be retained by the Borrower; and
 - (ii) the Borrower shall promptly upon the written request of the Bank, allow the Bank to inspect such original invoices and transport documents and/or submit certified

true copies of such invoices and transport documents to the Bank to the satisfaction of the Bank.

Notwithstanding the POSTSL Facility limit in Section 7.1 (above), the sum of the amounts advanced and outstanding under the POSTSL Facility, the Bill Discounting Facility in Section 5.1 (above) and the PSL Facility set forth in Section 6.1 (above) shall not, in the aggregate, exceed USD 15,000,000.

7.4 Repayment

- (a) Each advance made under the POSTSL Facility, together with all interest and other amounts due in respect of such advance, shall be repayable by the Borrower the earlier of (i) the date that is 90 days from the date on which the Bank advances credit to the Borrower (the “**Advance Date**”); or (ii) the date that the Bank demands repayment.
- (b) The Borrower represents, warrants and covenants that:
 - (i) the Bank is authorized to debit the Borrower’s Relevant Account upon such Relevant Account receiving receipt of funds from Approved Account Debtor(s) of the Borrower, for settlement of any outstanding amounts under the POSTSL Facility and any PSL Facility; and
 - (ii) in the event that such an Approved Account Debtor fails to make payment on the due date or fails to remit funds for settlement of the post shipment seller loan according to the payment instructions contained in the invoice, the Bank is authorized to debit the Borrower’s Relevant Account in order to repay such post shipment seller loan.

7.5 Maximum Advance Tenor

The maximum financing period for each advance (including the account debtor credit finance period) shall not exceed 90 days, including any credit terms provided to the Approved Account Debtors, calculated from the date of the applicable transport document evidencing the shipment of the applicable goods (i.e. bill of lading) or such other date that the Bank may agree in writing with the Borrower from time to time. For the avoidance of doubt, the Bank reserves the right to further limit or restrict the tenor of any advance made under the POSTSL Facility in its sole discretion.

Without limiting any of the foregoing, in no event shall the tenor of an advance under the POSTSL Facility extend beyond the date that is 90 days after the date the debt is due to be paid by the Approved Account Debtor as stated in the applicable invoice related to such advance.

7.6 Approved Account Debtors

As agreed in writing between the Borrower and the Bank from time to time.

The Bank may allow for the addition of new account debtors to be added to the list of Approved Account Debtors, provided that such new account debtor(s) satisfies the Bank’s requirements and the Bank provides its written confirmation to the Borrower of its approval of the new account debtors being added to the list of Approved Account Debtors.

7.7 Interest

Interest on the outstanding principal balance of all credit advanced under the POSTSL Facility shall, unless otherwise provided, be calculated and payable as follows:

- (a) for a POSTSL Facility drawn in CAD, the Bank's Prime Rate plus 1.00% per annum on the basis of a year of 365 days;
- (b) for a POSTSL Facility drawn in USD, the Bank's U.S. Base Rate plus 1.00% per annum on the basis of a year of 360 days;
- (c) for a POSTSL Facility drawn in EUR, EURIBOR plus 1.00% per annum on the basis of a year of 365 days.

7.8 Fees

For each advance made under the POSTSL Facility, the Borrower shall pay to the Bank the greater of (i) a flat fee minimum of CAD 300 and (ii) a fee equal to 0.25% of the amount financed for each advance under the POSTSL Facility, payable on the Advance Date.

7.9 Fee and Minimum Amount Requirements where the underlying transaction is denominated in foreign currency

All fees and minimum amounts set forth in this statement are expressed in CAD; provided, however, that where the underlying transaction is denominated in USD or EUR, all fees and minimum amounts set forth in this statement are to be read as being stated in USD or EUR, as applicable. For the avoidance of doubt, where the underlying transaction is denominated in a currency other than CAD, USD or EUR, all fees and minimum amounts set forth in this statement are expressed in CAD unless otherwise specified (or, where fees are expressed as a percentage of a certain amount, the CAD equivalent of such amount as determined by the Bank) and are payable in CAD.

7.10 Additional Terms and Conditions Applicable to the POSTSL Facility

- (a) To the extent that such terms and conditions do not conflict with the terms and conditions of this Facility Letter, the POSTSL Facility shall be subject to the additional terms and conditions set out in the Standard Trade Terms.
- (b) The Borrower shall be required to obtain all-risk insurance covering the account receivables that are the subject of the advance under the POSTSL Facility, regardless of whether or not the Bank has obtained from the Borrower a security interest over such account receivable(s), with endorsements naming the Bank as assignee and/or loss payee, each completed and signed in a form and manner satisfactory to the Bank.

7.11 Treatment of Overdue Payment under the Facility

Notwithstanding anything to the contrary contained in this Facility Letter and overriding any such provision, any amounts (other than for overdue interest) which become payable to the Bank under the POSTSL Facility and which are not paid when due shall accrue interest and be payable from the due date at the applicable rate for the POSTSL Facility specified above plus 2% per annum, calculated and payable daily, both before and after demand, default, maturity or judgment and until indefeasible payment in full.

8. Margin Requirement

Notwithstanding any other provision of this Facility Letter, the Borrower shall ensure that the sum of the following (in CAD or Canadian Dollar Equivalent thereof, calculated by the Bank):

- (a) the amount advanced and liabilities outstanding under the Operating Loan Facility by way of CAD Overdraft Loans and USD Overdraft Loans;
- (b) 25% of the aggregate face amount of issued and outstanding but not accepted DC's under the Operating Loan Facility; and

- (c) 100% of the aggregate face amount of all other issued and outstanding DCs under the Operating Loan Facility (including accepted documentary credits under usance terms);

shall at no time exceed the aggregate (in CAD or Canadian Dollar Equivalent thereof, calculated by the Bank) of the following (the "**Margin Requirement**"):

- (i) 75% of Acceptable Receivables; plus
- (ii) 90% of under 120 days Insured Receivables, subject to maximum amounts specified in any insurance certificate; plus
- (iii) 100% of cash, credit balances and deposit instruments over which the Bank has a first ranking Lien and are currently on hand and blocked in bank accounts at the Bank; less
- (iv) Potential Prior Ranking Claims.

9. Loan Documents

9.1 Loan Documents

The liability, indebtedness and obligations of the Borrower and Guarantor to the Bank shall continue to be evidenced, governed and secured, as the case may be, by documents previously delivered by the Borrower and Guarantor, the continuing validity of which is hereby acknowledged by the Borrower and Guarantor unless otherwise released by the Bank, together with the any other required loan or security documents, including this Facility Letter, completed and signed in a form and manner satisfactory to the Bank (collectively the "**Loan Documents**"):

- (a) assignment of Performance Security Guarantee from Export Development Canada;
- (b) mortgage or deed of hypothec in the amount of CAD 575,000 (the "**Mortgage**") from the Borrower creating a first ranking charge over all the lands and premises municipally known as suite 3, 10 Falconer Dr., Mississauga, ON (the "**Lands**");
- (c) general assignment of rents in respect of the Lands;
- (d) environmental agreement and indemnity from the Borrower in respect of the Lands;
- (e) title insurance in an amount and from an insurer acceptable to the Bank with respect to ownership of Lands secured by the Mortgage or (ii) opinion of the solicitors acceptable to the Bank and addressed to the Bank confirming title to Lands secured by the Mortgage and the first priority ranking of the Mortgage, subject only to Permitted Encumbrances;
- (f) general security agreement from the Borrower creating a first ranking Lien on all present and future or after-acquired Collateral of the Borrower (including its intellectual property, if any);
- (g) agreement as to security over cash, credit balances and deposit instruments from the Borrower;
- (h) the Bank's standard documentation in connection with the provision of trade finance facilities and the issuance of DCs, LGs and/or other trade finance instruments;
- (i) guarantee from the Guarantor of indebtedness of the Borrower to the Bank, together with a duly executed independent legal advice certificate (if required);

- (j) documentation respecting insurance provided by Export Development of Canada, as required by the Bank from time to time;
- (k) contract frustration insurance on the buyers to support the PSL Facility;
- (l) agreement for foreign exchange contracts;
- (m) assignment and postponement by the shareholders and Guarantor in favour of the Bank of all present and future amounts owing to them by the Borrower;
- (n) supporting officer's certificates, certificates of status (or good standing) and other certificates in connection with each Credit Party as the Bank may reasonably require which shall confirm, among other things, the constitutional documents for each Credit Party, incumbent officers with specimen signatures of authorized signatories, and the applicable authorizing resolutions for the Loan Documents, together with legal opinion of the solicitors acting for each Credit Party confirming power and capacity of each Credit Party, existence, due authorization, execution, delivery and enforceability of the Loan Documents to which each is a party and the priority of the Liens granted by each to the Bank; and
- (o) such other Loan Documents as the Bank may reasonably request in order to register or otherwise perfect the Liens granted to the Bank or as the Bank may reasonably require.

9.2 Registration and Priority; Counsel Fees

The Loan Documents (or notice thereof) will be registered in all jurisdictions and at all registries as the Bank may determine is necessary or beneficial to perfect or protect its Liens. The Bank's Liens shall rank in priority to all other Liens, subject only to Permitted Encumbrances. The Borrower shall pay all legal fees and disbursements incurred by Bank's counsel in connection with negotiation, implementation and enforcement of the Credit Facilities, including any expenses incurred to perfect or register Loan Documents.

10. Conditions Precedent

In addition to the conditions precedent set out in Schedule A, it shall be a condition precedent to the next advance and the continued availability of the Credit Facilities that the Bank shall have received in form and content satisfactory to the Bank:

- (a) the Loan Documents, duly authorized, executed and delivered, and, as relevant, duly registered; and
- (b) copies of all Material Agreements (if any) and such other documents as the Bank may reasonably request.

11. Covenants and Conditions

- (a) Without limiting the Bank's right to demand repayment of any outstanding amounts, the Borrower covenants and agrees with the Bank that it shall not, without the prior written consent of the Bank:
 - (i) permit the ratio of Debt to TNW of the Borrower to at any time exceed 3.50 to 1.00;
 - (ii) permit the ratio of current assets to current liabilities of the Borrower to at any time to be less than 1.25 to 1.00. For the purposes hereof, the amount of debt scheduled to be repaid at least one year plus one day from the balance sheet date may be excluded from current liabilities. Current assets shall exclude amounts due from related companies and affiliates; or

- (iii) permit the Debt Service Coverage of the Borrower to be less than 1.25 to 1.00 at any time.

The Borrower agrees that the foregoing financial tests may be calculated periodically by the Bank using financial statements provided by the Borrower or with such other statements as the Bank may agree to use from time to time. Any amounts not in CAD shall be calculated at the Canadian Dollar Equivalent.

- (b) The Borrower agrees to give the Bank written notice of any of the following events as soon as possible and in any event within 5 Business Days of the occurrence thereof:
 - (i) any litigation, proceeding or dispute which if adversely adjudged, mediated or arbitrated could reasonably be expected to constitute a Material Adverse Change;
 - (ii) any representation and warranty given by a Credit Party to the Bank being false or misleading;
 - (iii) the death or insolvency of an individual Guarantor or the dissolution, merger or insolvency of any other Guarantor;
 - (iv) any notice from any Governmental Authority with respect to any violation, possible violation, non-compliance or possible non-compliance or claim which constitutes or could reasonably be expected to constitute a Material Adverse Change;
 - (v) any claim or action made or taken by a creditor of a Credit Party with respect to Debt exceeding CAD 50,000 with respect to an actual or alleged default;
 - (vi) default by a Credit Party under any of its respective credit facilities with the Bank or any other lender;
 - (vii) arranging or undertaking to enter into an agreement for the purchase or sale of any property outside the normal course of business; or
 - (viii) arranging to borrow money, obtain credit or incur additional funded indebtedness (other than pursuant to the Credit Facilities).

The Borrower shall give the Bank at least 5 Business Days prior notice of any proposed change of name by a Credit Party and any proposed change in governing jurisdiction or location of a Credit Party.

12. Reporting Requirements

The continued availability of the Credit Facilities is subject to the Borrower delivering to the Bank the following reports, in a form and on a frequency acceptable to the Bank as advised by the Bank from time to time.

- (a) Monthly, within 30 days of each calendar month end:
 - (i) an aged list of accounts receivable of the Borrower;
 - (ii) an aged list of accounts payable of the Borrower;
 - (iii) an internally-prepared income statement and balance sheet for the Borrower, signed by the Borrower;

- (iv) a certificate of margin compliance and a certificate of covenant compliance in the form requested by the Bank;
- (b) annually, within 120 days of the Borrower's fiscal year end:
 - (i) audited financial statements for the Borrower;
 - (ii) *Pro forma* financial statements, cash flow forecast and budget for the following fiscal year (by month) of the Borrower, if requested by the Bank;
 - (iii) personal financial statements for the Guarantor, if requested by the Bank;
 - (iv) proof of payment of realty taxes for the Lands; and
- (c) such additional financial statements and information as and when requested by the Bank.

13. Counterparts and Electronic Communication

This Facility Letter (and each Loan Document) may be signed by handwritten signature or electronically by using technology acceptable to the Bank. To evidence execution of this Facility Letter (or any Loan Document), the Borrower or Guarantor, as applicable, must deliver and return to the Bank an executed copy of each with the original handwritten signatures of each Credit Party's duly authorized signatories (or Electronic Signatures of such signatories if so permitted by the Bank) by physical delivery, or if so permitted by the Bank, by facsimile, email or other electronic delivery or transmission and such transmission shall constitute delivery of an executed copy of the Facility Letter or relevant Loan Document. If a Credit Party uses an Electronic Signature to indicate its agreement, it shall ensure that its Electronic Signature is attached to or associated with this Facility Letter (or such Loan Document). This Facility Letter and each Loan Document may be executed in one or more counterparts and signed as outlined above, each of which when so executed when taken together shall constitute one and the same agreement. Delivery of a handwritten or electronically-signed counterpart and electronic delivery (including by email transmission or transmission over an Electronic Signature platform acceptable to the Bank) are each as valid, enforceable, binding and effective.

14. Notices

Any notice, request or other communication which the Bank or a Credit Party may be required or may desire to give for purposes of this Facility Letter shall be in writing and may be sent either by electronic transmission (facsimile or email), or hand delivery or first class registered mail postage prepaid to the addresses below. Any such notice, request or other communication shall be deemed to have been effectively given, made and received: (i) when transmitted with receipt confirmed in the case of electronic transmission if such transmission was made on or before 5:00 p.m. (Eastern time) on that Business Day, failing which it shall be deemed to have been effectively given, made and received on the next following Business Day, (ii) when received if sent by hand delivery on or before 5:00 p.m. (Eastern time) on a Business Day, failing which it shall be deemed to have been effectively given, made and received on the next following Business Day, or (iii) five (5) days after deposit in the mail if so mailed, but any notice, request or other communication to be given or made during a strike, lock-out or other labour disturbance at the post office or during an actual or threatened interruption in the mail service shall be hand delivered or sent by electronic transmission and not mailed. Any party hereto may change the address to which all notices, requests and other communications are to be sent to it by giving written notice of such address change to the other parties in conformity with this paragraph, but such change shall not be effective until notice of such change has been received by the other parties. The addresses of the parties for the purposes hereof shall be:

If to the Borrower, addressed as follows:

DMI Exim Limited
Unit 3, 10 Falconer Dr., Mississauga, ON L5L 3L8

Attention: Vinay Gupta
Email: vinay@dmiexim.com

If to the Bank, addressed as follows:

HSBC Bank Canada
4550 Hurontario Street, Mississauga, ON L5R 4E4

Attention: Vips Patel
Email: vips.patel@hsbc.ca

If to the Guarantor, addressed as follows:

Vinay Gupta
1687 Summergrove Crescent, Mississauga, ON L5M 3Z6

Email: vinay@dmiexim.com

15. Lapse and Cancellation

This Facility Letter shall, at the option of the Bank, expire, and be of no further force and effect if an advance of credit under the Credit Facilities has not been made within sixty (60) days of the date of this Facility Letter.

Credit Facilities under this Facility Letter are uncommitted and, notwithstanding any other provision of this Facility Letter, the Bank may, at any time, in its sole discretion: (i) terminate any right to make requests for credit or advances under the Credit Facilities; (ii) even if the Bank has not terminated such right to request credit or advances under the Credit Facilities, decline any request for credit or advances under the Credit Facilities, including requests for renewals or reissuances of any instruments or advances, and may refuse to honour or accept any cheques or other payment items; (iii) demand repayment of all outstanding indebtedness and liability of the Borrower at any time, all upon such notice and otherwise in accordance with applicable law as the Bank may determine.

16. Schedules

Each of the following Schedules as attached here or advised by the Bank from time to time, comprise part of the Facility Letter:

Schedule A - Definitions and Additional Terms and Conditions

17. Language Choice


The parties hereto have requested that this Facility Letter and any document relating thereto be drafted in English. Les parties aux présentes ont exigé que cette lettre relative aux facilités et tout document y afférent soient rédigés en anglais.

18. Acceptance

The offer of credit upon the terms and conditions contained in this Facility Letter may be accepted by the Borrower and acknowledged by the Guarantor signing, dating and delivering a copy of this Facility Letter to the Bank by 5:00 p.m. local time on February 28, 2022. Failing such acceptance and delivery to the Bank, this offer shall be of no further force or effect.

Yours truly,

HSBC BANK CANADA


Vips Patel (Feb 7, 2022 10:48 EST)

Vips Patel
Director
Commercial Banking



Benjamin Walker
Senior Director & Team Leader
Commercial Banking

The undersigned hereby acknowledge(s) and agree(s) to the terms and conditions of this Facility Letter as of:

- (a) Where signed fully or partly using Electronic Signatures, the date indicated in connection with the Electronic Signature of the last or final signatory;
- (b) Where signed solely by manual signatures, the following date: _____

BORROWER

DMI Exim Limited

Per: Vinay Gupta
Vinay Gupta (Feb 7, 2022 11:14 EST)
Authorized Signatory
Title: President
Name: Vinay Gupta

Per: Vinay Gupta
Vinay Gupta (Feb 7, 2022 11:14 EST)
Authorized Signatory
Title: President
Name: Vinay Gupta

GUARANTOR

Vinay Gupta

Vinay Gupta
Vinay Gupta (Feb 7, 2022 11:14 EST)
Signature

SCHEDULE A
TO FACILITY LETTER
FROM HSBC BANK CANADA
TO
DMI EXIM LIMITED
DATED FEBRUARY 7, 2022

This Schedule shall form part of the Facility Letter and the availability of the Credit Facilities as described in this Facility Letter shall also be subject to the terms and conditions contained in this Schedule.

I. Definitions and Interpretation

The section and Schedule headings are for ease of reference only and shall not affect the meaning or interpretation of this Facility Letter.

For the purpose of this Facility Letter, the following terms shall have the meanings indicated below.

"Acceptable Inventory" means the value, determined by the Bank from its review of the most recent financial statements and certificate of compliance and security margin report provided by the Borrower, based on the lower of cost and fair market value of all materials owned by the Borrower for resale or for production of goods for resale, excluding work in progress and over which the Bank holds a first ranking security interest, subject only to Potential Prior Ranking Claims and Permitted Encumbrances. Acceptable Inventory excludes inventory amounts financed under post-shipment buyer loan facilities.

"Acceptable Receivables" means the aggregate of accounts receivable of the Borrower, determined by the Bank from the most recent financial statements and aged list of accounts receivable of the Borrower, over which the Bank holds a first ranking security interest, subject only to Potential Prior Ranking Claims and Permitted Encumbrances, from customers approved by the Bank and which are aged from invoice date and which have been outstanding for not more than 90 days, from which shall be excluded: (i) accounts receivable from related or affiliated corporations or other non-arm's length Persons; (ii) warranty claims receivable; (iii) tax refunds; (iv) rebates; (v) discounts (whether cash discounts, volume discounts, promotional/advertising discounts or otherwise); and (vi) accounts which are disputed by the Borrower's customers; (vii) contra accounts and trade accounts receivable subject to offset; (viii) such excessive concentration of trade accounts receivable from a single customer and affiliates or from a single region or other category as the Bank may determine and notify to the Borrower; (ix) the amount of Potential Prior Ranking Claims; (x) the insured and uninsured portions of any Insured Receivables; (xi) accounts receivable that are governed by or issued by a customer subject to the laws of a jurisdiction other than Canada or the U.S.; and (xii) accounts receivable that are "Purchased Receivables" or "Financed Receivables" (as such terms are defined in any Receivables Purchase Agreement, Trade Invoice Recourse Financing Facility Agreement or other similar agreement between the Borrower and the Bank; and (xiii) accounts receivables financed under the PSL Facility, POSTSL Facility or the Bill Discounting Facility; and (xvii) such other exclusions and deductions, if any, which have been communicated by the Bank to the Borrower in writing. If any portion of an account receivable has been outstanding for more than 90 days (or such other date as advised by the Bank) from the invoice date, the entire account receivable (including the portion outstanding for 90 days or less) shall be excluded from the calculation of Acceptable Receivables except that if the portion of the account receivable that has been outstanding for more than 90 days is less than 10% of the specific account receivable and is less than CAD 100,000, the portion of the account receivable outstanding for 90 days or less may nonetheless be included in the calculation unless otherwise advised by the Bank.

"Bank Branch" means the branch of the Bank identified under the heading "Notices" in the Facility Letter or as otherwise advised by the Bank from time to time.

"Bank's CAD Fixed Rate" means the annual fixed rate of interest offered by the Bank and accepted by the Borrower for the requested funds in CAD for a period of 30, 60, 90, or 180 days or 1, 2, 3, 4 or 5 years, subject to confirmation by the Bank, as selected by the Borrower (but in any event not diminishing or

prejudicing the rights of the Bank to demand payment of all indebtedness and liabilities under the Credit Facilities at any time), but in no event shall such interest rate be less than 0% per annum. A confirmation or certificate from the Bank shall, absent manifest error, be conclusive evidence of the Bank's CAD Fixed Rate from time to time.

"Bank's USD Fixed Rate" means the annual fixed rate of interest offered by the Bank and accepted by the Borrower for the requested funds in USD for a period of 30, 60, 90, or 180 days or 1, 2, 3, 4 or 5 years, subject to confirmation by the Bank, as selected by the Borrower (but in any event not diminishing or prejudicing the rights of the Bank to demand payment of all indebtedness and liabilities under the Credit Facilities at any time) but in no event shall such interest rate be less than 0% per annum. A confirmation or certificate from the Bank shall, absent manifest error, be conclusive evidence of the Bank's USD Fixed Rate from time to time.

"Bank's Prime Rate" means the variable annual rate of interest per annum established and adjusted by the Bank from time to time as a reference rate for purposes of determining rates of interest it will charge on commercial loans in Canada denominated in Canadian dollars based on a year of 365 days and which was 2.45% per annum on February 7, 2022 provided that if such interest rate is less than zero, then such rate shall be deemed to be zero. Such rate is available in a Bank Branch or on the Bank's website. A confirmation or certificate from the Bank shall, absent manifest error, be conclusive evidence of the Bank's Prime Rate from time to time.

"Bank's U.S. Base Rate" means the variable annual rate of interest established and adjusted by the Bank from time to time as a reference rate for purposes of determining rates of interest it will charge on commercial loans denominated in United States dollars in Canada based on a year of 360 days, and which was 3.75% per annum on February 7, 2022 provided that if such interest rate is less than zero, then such rate shall be deemed to be zero. Such rate is available in a Bank Branch. A Certificate of a manager or account manager of the Bank shall, absent manifest error, be conclusive evidence of the Bank's U.S. Base Rate from time to time.

"Business Day" means a day, other than a Saturday, Sunday or statutory (or civic) holiday, upon which the Bank is open for business in the Bank Branch.

"CAD" and **"Canadian Dollars"** means lawful currency of Canada in same day immediately available funds, or, if such funds are not available, the form of money of Canada that is customarily used in the settlement of international banking transactions on the day in question.

"CAD Fixed Rate Loan" has the meaning ascribed to such term under the heading "Credit Facilities" in the Facility Letter.

"CAD Prime Rate Loan" has the meaning ascribed to such term under the heading "Credit Facilities" in the Facility Letter.

"Canadian Dollar Equivalent" means at any time on any date in relation to any specified amount in a currency other than Canadian dollars, the amount of Canadian dollars which could be purchased from the Bank by the payment of that specified amount of such other currency at the rate of exchange quoted by the Bank at or about 8:00 a.m. Pacific time on such date, including all premiums and costs of exchange.

"Collateral" means all property of the relevant Credit Party, real and personal, movable and immovable, present and future or after-acquired, subject to the Liens granted to the Bank pursuant to the Loan Documents.

"Compensating Amount" means an amount determined by the Bank to be the net cost, if any, incurred by the Bank as a direct result of the repayment of all or a portion of any advance under any of the Credit Facilities which bears interest at the Bank's CAD Fixed Rate, Bank's USD Fixed Rate or other rate, on a date other than the expiration of the selected Interest Period, including, without limitation, any unwinding costs and other losses or expenses or damages sustained or incurred by the Bank relating to such payment.

A confirmation or certificate from the Bank shall, absent manifest error, be conclusive evidence of the Compensating Amount from time to time.

"Compliance Action" has the meaning ascribed to it in section XVII of this Schedule A.

"Conditions Precedent" means the conditions precedent to the next advance and the continued availability of the Credit Facilities set out in the Facility Letter, including this Schedule A and any other Schedules and Addenda hereto.

"Credit Facilities" has the meaning ascribed to such term under the heading "Credit Facilities" in the Facility Letter.

"Credit Party" and **"Credit Parties"** have the meanings ascribed to such terms under the heading "Borrower(s)" or "Guarantor(s)" as applicable, in the Facility Letter.

"DC's" has the meaning ascribed to such term under the heading "Credit Facilities" in the Facility Letter.

"Debt" means all indebtedness and liability of the Borrower including without limitation under the Credit Facilities, and Off-Balance Sheet Arrangements and the principal portion of non-realty operating lease obligations, less (i) deferred taxes; (ii) loans to the Borrower that are postponed and subordinated in favour of the Bank, in form and substance satisfactory to the Bank; and (iii) the after tax portion of any management bonus or any amount payable under an employee profit sharing plan ("**EPSP**") which has been postponed and subordinated, to the Bank's satisfaction, to the indebtedness and liability of the Borrower to the Bank.

"Debt Service Coverage" means (A) EBITDA less (i) unfunded capital expenditures, (ii) deferred charges, (iii) dividends, (iv) distributions, (v) advances to related companies and affiliates, (vi) investments in related companies and affiliates, and (vii) cash taxes, including those related to any discretionary management bonus, divided by (B) the total of all payments of principal and interest on debt, capital leases and obligations under the Credit Facilities including payments under leases and Off-Balance Sheet Arrangements.

"Drawdown Date" means the date, which must be a Business Day, specified by the Borrower in a Required Notice as being the date on which the Borrower would like to obtain an advance.

"EBITDA" means earnings before interest, taxes, depreciation and amortization plus non-cash expenses approved by the Bank, less (to the extent included in determining net income) non-cash non-recurring items on a trailing twelve month basis.

"Electronic Communication" means any agreement, instruction, document, information, disclosure, notice or other form of communication that is sent or stored by means of any electronic or other digital transmission.

"Electronic Signature" means a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with an Electronic Communication and includes a secure electronic signature as may be prescribed by applicable law or otherwise required by us.

"EUR" or "Euro" means lawful currency of the European Union, as constituted by the Treaty of Rome, as such treaty may be amended from time to time and as referred to in European Monetary Union legislation, in same day immediately available funds, or, if such funds are not available, the form of money of the European Union that is customarily used in the settlement of international banking transactions on the day in question.

"EUR Equivalent" or "Euro Equivalent" means at any time on any date in relation to any specified amount in a currency other than Euros, the amount of EUR which could be purchased from the Bank by the payment of that specified amount of such other currency at the rate of exchange quoted by the Bank at or about 8:00 a.m. Pacific time on such date, including all premiums and costs of exchange.

“EURIBOR” means, in relation to any advance in EUR, the applicable EURIBOR Screen Rate at or around 11:00 am Brussels time two EURIBOR Business Days (or such other time or day as determined by the Bank if the market practice differs) before the proposed date of the advance and, if any such rate is below zero, EURIBOR will be deemed to be zero. For the purposes of EURIBOR, the following terms have the following meaning:

“EURIBOR Business Day” means any day on which TARGET2 is open for the settlement of payment in EUR.

“TARGET2” means Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single share platform and which was launched on 19 November 2007 and any replacement system.

“EURIBOR Screen Rate” means the Relevant Administrator’s Interest Settlement Rate for EUR for the relevant period displayed on the appropriate page of the Reuters screen provided that (a) if in the Bank’s sole determination its funding cost is in excess of EURIBOR, the Bank may specify the cost of funding any facility or financial arrangement; or (b) if the screen page is replaced, not available or such service ceases to be available temporarily, the Bank may specify another page or service displaying the appropriate rate.

“Relevant Administrator” means the European Money Markets Institute or any other person to whom the administrator function of the EURIBOR fixing process is transferred from time to time.

“EURIBOR Loan” means any advance to the Borrower(s) on which interest is calculated and payable on the basis of EURIBOR based on a period of a 365 day year.

“EURIBOR Period” means a period of one week, one month, three months, six months or one year, subject to availability.

“Facility Letter” means the letter from the Bank to the Borrower to which this Schedule is attached, together with this Schedule and all other Schedules and Addenda, and includes all amendments and restatements thereof.

“Financial LG” means any LG which is not a Performance LG and in that regard, determination of whether an LG is a Financial LG or Performance LG shall be at the Bank’s sole discretion.

“Fixed Rate Loan” means any USD Fixed Rate Loan or CAD Fixed Rate Loan.

“Foreign Currency Obligation” has the meaning ascribed to such term under section V of this Schedule A.

“Foreign Exchange Facility Limit” has the meaning ascribed to such term under the heading “Credit Facilities” in the Facility Letter.

“Governmental Authority” means any government, legislature or regulatory authority, agency, commission, law enforcement agency, board or court, tribunal or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of any nation, province, state, municipality or country or other subdivision thereof or other jurisdiction.

“Governing Jurisdiction” has the meaning ascribed to such term under section XVII of this Schedule A.

“Guarantor” means the party or parties described in the Facility Letter and includes any other party or parties who from time to time execute a guarantee or guarantees of the obligations of the Borrower under or in connection with this Facility Letter and the Loan Documents.

"HSBC Group" has the meaning ascribed to such term under section XVIII of this Schedule A.

"Insured Receivables" means those Acceptable Receivables of the Borrower which are insured for payment by Export Development Canada or similar insurer approved by the Bank.

"Interest Period" means such period of time mutually agreed between the Bank and the Borrower, including a EURIBOR Period.

"Legal Requirement" means any law, statute, code, ordinance, order, award, judgment, decree, injunction, rule, regulation, authorization, directive, guidance note, advisory, consent, approval, order, permit, franchise, licence, direction, deferred prosecution agreement or other requirement of any Governmental Authority.

"LG" has the meaning ascribed to such term under the heading "Credit Facilities" in the Facility Letter.

"Lien" means any mortgage, hypothec, lien, security interest, pledge, charge, prior claim, conditional sale agreement, reservation of ownership, rights of the lessor under a leasing agreement, or other encumbrance of any kind in respect of any property of any Credit Party.

"Loan" means (a) any advance to the Borrower in USD on which interest is calculated and payable on the basis of either the Bank's U.S. Base Rate (as a U.S. Base Rate Loan) or as a USD Fixed Rate Loan, (b) any advance to the Borrower in CAD on which interest is calculated and payable on the basis of either the Bank's CAD Fixed Rate or the Bank's Prime Rate, and (c) any advance to the Borrower in EURO on which interest is calculated and payable on the basis of EURIBOR.

"Loan Documents" has the meaning ascribed to such term under the heading "Loan Documents" in the Facility Letter.

"Margin Requirements" has the meaning ascribed to such term under the heading "Margin Requirement" in the Facility Letter.

"Material Adverse Change" means, with respect to any Credit Party any event, circumstance, act or omission which individually or in the aggregate has had or could reasonably be expected to have, a material adverse effect on: (i) the business, operations, prospects, properties, assets or condition, financial or otherwise, of such Credit Party; (ii) the ability of any Credit Party to perform its obligations and covenants in this Facility Letter or any other Loan Document to which it is a party; or (iii) to the rights and remedies of the Bank under this Facility Letter or any other Loan Document.

"Material Agreements" means agreements material to the conduct of the business of the Borrower including those related to intellectual property, leases, licences and other rights of use of property.

"Off-Balance Sheet Arrangements" means any transaction, agreement or other contractual arrangement between the Borrower and an entity that is not consolidated on the Borrower's financial statements, under which the Borrower may have: (i) any obligation under a direct or indirect guarantee or similar arrangement; (ii) a retained or contingent interest in assets transferred to an unconsolidated entity, (iii) derivatives, to the extent that the financial statements do not fully reflect fair value thereof as a liability or asset; or (iv) any obligation or liability, including a contingent obligation or liability, to the extent that it is not fully reflected in the Borrower's financial statements.

"Performance LG" means an LG which is (a) an LG issued to secure ordinary course performance obligations of the Borrower to a third party (the **"Performance Obligations"**), including, without limitation, any performance related advance payment, retention or warranty obligations, in each case in connection with project engineering, procurement, construction, power business, maintenance and other similar projects (including projects about to be commenced) or bids for prospective project engineering, procurement, construction, power business, maintenance and other similar projects, or (b) an LG issued to back a bank guarantee, surety bond, performance bond, or other similar obligation in each case issued to

support performance obligations and is not a documentary credit issued to finance the import or export of goods.

"Permitted Encumbrances" means liens, encumbrances or other rights permitted by the Bank in writing.

"Person" shall mean and include an individual, a partnership, a corporation, a joint stock company, a trust, an unincorporated association, a joint-venture or other entity or a government or any agency or political subdivision of the above.

"Potential Prior Ranking Claims" means the aggregate of all amounts owing or required to be paid, where the failure to pay any such amount could give rise to a lien or trust or other claim pursuant to any law, statute, regulation or similar enactment, which ranks or is capable of ranking in priority to all or any portion of the Bank's security or in priority to any claim by the Bank for repayment of amounts owing under the Credit Facilities including, without limitation, amounts due and payable for wages, vacation pay, employee deductions (including income, CPP, EI, workers compensation, social security or other employment tax withholdings), sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of HST input credits) and pension fund obligations.

"Premises" has the meaning ascribed to such term under section VII of this Schedule A.

"Required Notice" means a written notice in form and content approved by the Bank, signed by the Borrower, given to the Bank Branch not later than 10:30 a.m. local time (of the Bank Branch) two Business Days immediately preceding the date on which:

- (a) a CAD Prime Rate Loan, a USD Floating Rate Loan, a CAD Fixed Rate Loan, a USD Fixed Rate Loan, EURIBOR Loan or other advance (other than by way of account overdrafts) is to be made;
- (b) a rollover is to be made from one interest option to another, or a rollover of an existing Loan on maturity to the same type of Loan; or
- (c) an LG or DC is to be issued by the Bank;

as the case may be, stating the requested date, amount and, if applicable, term to maturity (or Interest Period or EURIBOR Period) of the requested advance or rollover, or particulars of the LG or DC requested.

With respect to the foregoing, a confirmation or certificate from the Bank shall be *prima facie* evidence of the Bank's CAD Fixed Rate, USD Fixed Rate, the Bank's Prime Rate, the Bank's U.S. Base Rate from time to time.

"Sanctions" has the meaning ascribed to it in section II(f) of this Schedule A.

"Screen Rate" has the meaning ascribed to that term in the definition of "EURIBOR" or other relevant reference rate.

"Standard Trade Terms" means the Bank's "Standard Trade Terms" (as amended from time to time), which can be accessed, read and printed by the Borrower at/from www.gbm.hsbc.com/gtrfstt or, alternatively, upon request from the Borrower's relationship manager.

"Taxes" means any fee (including without limitation, any documentation, licence or registration fee), any tax (including, without limitation, any gross receipts, sales, use, property (personal and real), tangible or intangible and stamp tax, value added tax, income tax, excise tax), levy, imposts, duty, charge, assessment, deduction or withholding of any nature whatsoever, together with any fine, addition to tax and interest on the fee or tax.

"TNW" means the aggregate of paid in capital, retained earnings and loans (including principal and interest) to the Borrower which have been subordinated and postponed in favour of the Bank, in form and substance satisfactory to the Bank, less any assets deemed by the Bank to be intangible including, without limitation,

(i) goodwill, (ii) related company and affiliate accounts receivable, (iii) advances to shareholders, (iv) deferred charges and (v) investments in related companies and affiliates.

"US Base Rate Loan" means an advance to the Borrower in USD in respect of which interest accrues and is payable at the Bank's U.S. Base Rate.

"USD" and **"United States Dollars"** means lawful currency of the United States of America in same day immediately available funds, or, if such funds are not available, the form of money of the United States of America that is customarily used in the settlement of international banking transactions on the day in question.

"USD Equivalent" or "US Dollar Equivalent" means at any time on any date in relation to any specified amount in a currency other than United States dollars, the amount of USD which could be purchased from the Bank by the payment of that specified amount of such other currency at the rate of exchange quoted by the Bank at or about 8:00 a.m. Pacific time on such date, including all premiums and costs of exchange.

"USD Fixed Rate Loan" has the meaning ascribed to such term under the heading "Credit Facilities" in the Facility Letter.

Whenever the singular or the masculine is used herein the same shall be deemed to include the plural and other Persons, and vice versa.

II. Representations and Warranties

Each Credit Party represents and warrants to the Bank, as of the date of the Facility Letter and as at the time of an advance or other utilization of any of the Credit Facilities from time to time that:

- (a) if a corporation, it has been duly incorporated and organized (or if a partnership or other legal entity, has been duly formed, or settled as relevant) and organized and is properly constituted, is in good standing and subsisting and is entitled to conduct its business in all jurisdictions in which it carries on business or has assets;
- (b) the execution of this Facility Letter and the other Loan Documents and the incurring of liability and indebtedness to the Bank does not and will not contravene:
 - (i) any Legal Requirement applicable to such Credit Party; or
 - (ii) any provision contained in any other loan or credit agreement or borrowing instrument or contract to which it is a party;
- (c) this Facility Letter and the Loan Documents to which it is a party have been duly authorized, executed and delivered by it, and constitute its valid and binding obligations and are enforceable in accordance with their respective terms;
- (d) all necessary Legal Requirements have been met and all other authorizations, approvals, consents and orders have been obtained with respect to the execution and delivery of this Facility Letter and the other Loan Documents;
- (e) all financial and other information provided to the Bank in connection with the Credit Facilities is true and accurate, and it acknowledges that the offer of credit by the Bank contained in this Facility Letter is made in reliance on the truth and accuracy of this information and the above representations and warranties;
- (f) neither the Borrower nor any of its subsidiaries, directors, officers, employees, agents, or affiliates is an individual or entity (nor does the Borrower nor any such other entity or person operate, possess, own, charter, or use a vessel) that is, or is owned or controlled by any one or more Persons that are: (i) the subject of any sanctions issued, administered or enforced by, or named

on any list of specially designated or blocked Persons maintained by, the Office of Foreign Assets Control of the US Department of the Treasury, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority, or the Department of Global Affairs (Canada), Foreign Affairs, Trade and Development Canada, Canada Border Services Agency, or Justice Canada, including any enabling legislation or executive order related thereto, and any similar sanctions laws as may be enacted from time to time in the future by the United States, Canada, the European Union (and any of its member states), the United Kingdom or the United Nations Security Council, or any other legislative body of the United Nations or other relevant Governmental Authority (collectively, "**Sanctions**"), or (ii) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions other than to the extent that such representation and warranty would result in a violation of an applicable Legal Requirement in which case the applicable Credit Party shall immediately notify the Bank and provide particulars;

- (g) with respect to each LG or DC issued by the Bank pursuant to any of the Credit Facilities all required import or export licenses applicable to the transactions for which such LG or DC is issued have been obtained and the Borrower is in compliance in all material respects with foreign and domestic laws and regulations pertaining to each jurisdiction in which it operates and to each LG and/or DC and the subject matter of such LG and/or DC including, if applicable, the shipment and financing of the goods described in such LG and/or DC;
- (h) no shares in a Credit Party have been issued as, or are held as, or convertible to, bearer shares; and
- (i) it holds insurance coverage in accordance with the requirements set forth in section VI of this Schedule A.

III. Interest, Fees

- (a) Interest on the daily balance of the principal amount advanced under the Credit Facilities and remaining unpaid from time to time shall accrue and shall be payable by the Borrower as set out in this Facility Letter both before and after demand, default, maturity, or judgment and until indefeasible payment in full, except as otherwise expressly provided for.
- (b) If the Borrower repays any portion of the Credit Facilities accruing interest at the Bank's CAD Fixed Rate or the Bank's USD Fixed Rate or on a EURIBOR loan based on a date other than the expiration of the selected Interest Period, whether as a result of a demand for repayment by the Bank or otherwise, it shall also concurrently pay to the Bank the greater of:
 - (i) three months' interest on the portion prepaid at the interest rate applicable to such Credit Facility; and
 - (ii) the applicable Compensating Amount.
- (c) Interest based on the Bank's U.S. Base Rate shall be computed on the basis of a year of 360 days and for actual days that the amounts are outstanding under the relevant Credit Facilities on this basis. For the purpose of the Interest Act (Canada), (i) the annual rate of interest to which interest computed on the basis of a year of 360 days is equivalent is the rate of interest as provided in this Facility Letter multiplied by the actual number of days in such year (whether 365 or 366) and divided by 360 and (ii) the annual rate of interest to which interest computed on the basis of a year of 365 days is equivalent is the rate of interest as provided in this Facility Letter multiplied by the actual number of days in such year (whether 365 or 366) and divided by 365. The Borrower confirms that it fully understands and is able to calculate the rate of interest applicable to the Credit Facilities based on the methodology for calculating per annum rates provided for in this Facility Letter. The Bank agrees that if requested in writing by the Borrower, it shall calculate the nominal and effective per annum rate of interest on any advance outstanding at any time and provide such information to the Borrower promptly following such request; provided that any error in any such calculation, or

any failure to provide such information on request, shall not relieve any Credit Party of any of its obligations under this Facility Letter or any other Loan Document, nor result in any liability to the Bank. Each Credit Party hereby irrevocably agrees not to plead or assert, whether by way of defence or otherwise, in any proceeding relating to the Loan documents, that the interest payable under the Loan Documents and the calculation thereof has not been adequately disclosed to the Credit Parties, whether pursuant to section 4 of the *Interest Act (Canada)* or any other applicable law or legal principle.

- (d) Upon expiration of the Interest Period of any CAD Fixed Rate Loan, USD Fixed Rate Loan or the EURIBOR Period of any EURIBOR loan, unless another interest rate option is selected by the Borrower to refinance such Loan, by delivery to the Bank of a Required Notice:
- (i) if in CAD, it shall bear interest at the rate applicable to, and payable as described for, CAD Overdraft Loans;
 - (ii) if in USD, it shall bear interest at the rate applicable to, and payable as described for, USD Overdraft Loans;
- provided that if the Facility Letter does not provide for such an Overdraft Loan:
- (iii) if in CAD, it shall bear interest at the Bank's Prime Rate plus 3% per annum, calculated daily and payable monthly; or
 - (iv) if in USD, it shall bear interest at the Bank's U.S. Base Rate plus 3% per annum, calculated daily and payable monthly.
- (e) The fees paid to and received by the Bank shall be its entitlement as consideration for the time, effort and expense incurred by the Bank in the review of financial statements and its review and administration of documents, and the Borrower acknowledges and agrees that the determination of these costs is not feasible and that the fees set out in this Facility Letter represent a reasonable estimate of such costs.
- (f) Whenever any payment shall be due on a day which is not a Business Day including, for greater certainty, if such date is the end of an Interest Period, the date for payment thereof shall be extended to the next succeeding Business Day. Interest shall continue to accrue and be payable thereon as provided herein, until the date on which such payment is received by the Bank.
- (g) In the event that interest is not received by the Bank on any date for payment provided for in this Facility Letter or in any other relevant document, interest on such overdue interest shall be compounded on the basis of interest calculated and payable on overdue interest in the same manner and at the same rate per annum as is applicable to such overdue interest until indefeasible payment in full. Any other amounts which become payable to the Bank under this Facility Letter or the other Loan Documents and which are not paid when due shall accrue interest and be payable from the due date at the Bank's Prime Rate plus 3% per annum, calculated and payable monthly on the last day of each month, both before and after demand, default, maturity or judgment and until indefeasible payment in full (other than for overdrafts exceeding the permitted limit which shall accrue interest at the rate of 21% per annum both before and after demand, default and judgment until indefeasible payment in full).
- (h) All payments to the Bank shall be made at the address of the Bank Branch or at such other place as the Bank may specify in writing from time to time. The Borrower shall make payment to the Bank in immediately available funds in the same currency(ies) as the currency in which the original Loan or other credit was advanced or made available by the Bank. Any payment delivered or made to the Bank by 1:00 p.m. local time at the place where such payment is to be made shall be credited as of that day, but if made after such time such payment shall be credited as of the next Business Day.

- (i) Notwithstanding anything to the contrary contained in this Facility Letter, the parties acknowledge that: (i) the applicable rate of interest payable by a Borrower in connection with this Facility Letter shall not be less than zero, and in the event any reference rate is negative it shall be deemed to be zero; and (ii) the Bank may, in its discretion, and is hereby irrevocably authorized by the Borrower to, make an advance under the Credit Facilities (or debit or set-off any bank account of a Borrower with the Bank in any currency), to pay any unpaid interest, fees or other amounts which have become due under the terms of this Facility Letter. If any provision of this Facility Letter or any other Loan Document would obligate a Credit Party to make a payment of interest or other amount to the Bank in an amount or calculated at a rate that would be prohibited by law or would result in receipt by the Bank of interest at a criminal rate (as construed under the *Criminal Code* (Canada)), then notwithstanding that provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or result in receipt by the Bank of interest at a criminal rate.
- (j) The Borrower acknowledges that the actual recording of the amount of any advance or repayment thereof under the Credit Facilities, and interest, fees and other amounts due in connection with the Credit Facilities, in an account of a Borrower maintained by the Bank shall constitute *prima facie* evidence of the Borrower's indebtedness and liability from time to time under the Credit Facilities; provided that the obligation of the Borrower to pay or repay any obligations in accordance with the terms and conditions of the Credit Facilities shall not be affected by the failure of the Bank to make such recording. The Borrower also acknowledges being indebted to the Bank for principal amounts shown as outstanding from time to time in the Bank's account records, including any amounts for which the Borrower is jointly and severally, or solidarily, liable, if any, and all accrued and unpaid interest in respect of such amounts, in accordance with the terms and conditions of this Facility Letter.
- (k) The obligation of the Borrower to make all payments under this Facility Letter and the other Loan Documents shall be absolute and unconditional and shall be made without any deduction or withholding of any nature and shall not be limited or affected by any circumstance, including, without limitation:
- (i) any set-off, compensation, counterclaim, recoupment, defence or other right which the Borrower may have against the Bank or anyone else for any reason whatsoever; or
 - (ii) any insolvency, bankruptcy, reorganization or similar proceedings by or against the Borrower.
- (l) In addition to and not in limitation of any rights now or hereafter available to the Bank under applicable law or arising under the Loan Documents, the Bank is hereby irrevocably authorized, at any time and from time to time, to set-off and appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing by the Bank to or for the credit of the Borrower against and on account of the obligations of the Borrower to the Bank under this Facility Letter, irrespective of currency and irrespective whether such obligations of the Borrower are owing on a joint and several, or solidary, basis. The Bank agrees to provide written notice to the Borrower of the exercise of any of the rights under this section promptly after the exercise of such rights.
- (m) The Borrower shall pay to and indemnify and save harmless the Bank for the full amount of all out of pocket costs and expenses (including, but not limited to, any interest payable in order to maintain any Loan hereunder) which the Bank may sustain or incur as a consequence of the failure by the Borrower to pay when due any principal of or any interest on any Loan or any other amount due hereunder.
- (n) All payments made on account of principal, interest or otherwise shall be made to the Bank, to the extent permitted by applicable Legal Requirements, free and clear of and exempt from, and without deduction for or on account of, any present or future Taxes or other charges of any nature imposed, levied, collected, withheld or assessed by any Governmental Authority. However, in the event that

any payments made under this Facility Letter shall not be made free and clear of and exempt from, and without deduction or withholding for or on account of any Taxes, then the Borrower shall gross up the payments to the Bank so that the Bank receives such additional amounts as may be necessary in order that each such net payment to the Bank, after payment or deduction or withholding for and on account of any such Taxes, will not be less than the amount to be paid and received by the Bank in accordance with this Facility Letter. With respect to each such deduction or withholding, the Borrower shall promptly pay any such Taxes and (but in no event later than 90 days after payment) furnish to the Bank evidence of such payment, satisfactory to the Bank and also at the Bank's request provide such certificates, receipts and other documents required to establish any tax credit to which the Bank may be entitled.

- (o) The agreements of the Borrower pursuant to the foregoing subparagraphs (l) and (m) shall survive the repayment of the Loans and the termination of this Facility Letter or the Credit Facilities (or both).
- (p) The remedies, rights and powers of the Bank under this Facility Letter, the other Loan Documents and at law and in equity are cumulative and not alternative and are not in substitution for any other remedies, rights or powers of the Bank and no delay or omission in exercise of such remedy, right, or power shall exhaust such remedies, rights or powers or be construed as a waiver of any of them.

IV. Conditions Precedent

In addition to the conditions precedent previously set out in the Facility Letter, it shall also be a condition precedent to the initial advance and continued availability of any credit or advances under any of the Credit Facilities that the Bank shall have received and be satisfied with:

- (a) Duly completed and executed Loan Documents registered where necessary in form and manner satisfactory to the Bank's solicitors;
- (b) satisfactory banker's and/or other agency reports on the financial position of each Credit Party and such customers of the Borrower as the Bank may specify from time to time;
- (c) the insurance coverage arranged by the Borrower conforming to the requirements set forth in section VI of this Schedule;
- (d) confirmation that the Borrower is in compliance with each of the terms and conditions of this Facility Letter;
- (e) all identification, business activity, business structure and other "know your customer" documents and information as required by the Bank and any screening conducted in accordance with Sanctions and other applicable legal requirements; and
- (f) such other conditions as the Bank may determine, in its discretion.

V. Borrower's Covenants and Conditions of Credit

In addition to the conditions previously set out, the following additional conditions shall apply until all indebtedness and liability under the Credit Facilities are indefeasibly repaid in full to the Bank and the Credit Facilities cancelled:

- (a) The Borrower shall not, without the prior written consent of the Bank:
 - (i) grant or allow any Lien to be registered against or exist on any of its property and in particular, without limiting the generality of the foregoing, shall not grant a trust deed or other instrument in favour of a trustee;

- (ii) become a guarantor or an endorser or otherwise become liable upon any note or other obligation other than in the normal course of business of the Borrower;
 - (iii) declare any management bonus, declare or pay dividends on any class or kind of its shares or other securities, repurchase or redeem any of its shares or other securities, or reduce its capital in any way whatsoever or repay any shareholders' advances that would cause a breach of agreed covenants;
 - (iv) amalgamate with or permit all or substantially all of its assets to be acquired by any other person, firm or corporation or permit any reorganization or change in ownership or corporate structure of the Borrower, or issue bearer shares;
 - (v) permit any property taxes or strata fees to be past due at any time;
 - (vi) enter into any agreement for the purchase or sale of any property outside the normal course of business; or
 - (vii) use the Credit Facilities to accumulate or maintain cash or cash equivalents in an amount, in aggregate greater than CAD 1,574,665, but excluding therefrom cash or cash equivalents accumulated or maintained for a specified business purpose that is lawful and not for purposes in contravention of the Facility Letter (other than simply accumulating cash reserve), and, for greater certainty, the Bank may refuse to make any requested advance which the Bank, acting reasonably, determines would result in a contravention of this section;
 - (viii) borrow money, obtain credit or incur additional funded indebtedness (other than pursuant to the Credit Facilities).
- (b) The Borrower agrees to file all tax returns which it is required to file in accordance with any Legal Requirement from time to time; to pay or make provision for the payment of all taxes (including any interest and penalties); to pay any Potential Prior Ranking Claims when due; and to maintain adequate reserves for the payment of any tax which is being contested diligently in good faith.
- (c) The Bank shall have the right to waive the delivery of any Loan Documents or the performance of any term or condition of this Facility Letter, and may advance all or any portion of the Loan(s) prior to satisfaction of any of the Conditions Precedent, but waiver by the Bank of any obligation or condition shall not constitute a waiver of performance of such obligation or condition for any future advance.
- (d) All financial terms and covenants shall be determined in accordance with generally accepted accounting principles, applied consistently.
- (e) If the amount outstanding under any Credit Facility (i) in CAD plus the Canadian Dollar Equivalent of the amount outstanding under any of the Credit Facilities in a currency other than Canadian Dollars, or (ii) in USD plus the USD Equivalent of the amount outstanding under any of the Credit Facilities in a currency other than USD, at any time exceeds the amount of such Credit Facility specified above (taking into account the Margin Requirement, if any), the Bank may, from time to time, in its sole discretion:
- (i) limit the further utilization of that Credit Facility;
 - (ii) convert all or part of the amount outstanding under that Credit Facility to Canadian Dollars in which event, interest shall accrue and be paid on such converted amounts at the rate set out in this Facility Letter for Canadian dollar advances accruing interest with reference to the Bank's Prime Rate. If no such rate is set out in this Facility Letter, interest shall accrue on the amount so converted at the Bank's Prime Rate plus 3% per annum,

calculated monthly and payable on the last day of each month, both before and after demand, default, maturity or judgment and until indefeasible payment in full; or

- (iii) require the Borrower to pay the excess.
- (f) With respect to any monies payable by the Borrower hereunder, or any portion or portions thereof, which are payable in a currency other than CAD (the "**Foreign Currency Obligation**"), the following provisions shall apply:
- (i) payment of the Foreign Currency Obligation made hereunder shall be made in immediately available funds in lawful money of the jurisdiction in the currency of which the Foreign Currency Obligation is payable in such form as shall be customary at the time of payment for settlement of international payments in Vancouver, British Columbia without set-off, compensation, or counterclaim and free and clear of and without deduction for any and all present and future taxes, levies, imposts, deductions, charges and withholdings with respect thereto.
 - (ii) if the Borrower makes payment to the Bank, or if an amount is applied by the Bank, in CAD in circumstances where the relevant indebtedness and liabilities constitute a Foreign Currency Obligation, such payment or amount shall satisfy the said liability of the Borrower hereunder only to the extent that the Bank is able, using the rate of exchange applied by the Bank in accordance with its normal banking procedures, to purchase the full amount of the relevant foreign currency owing with the amount of the CAD received by the Bank on the date of receipt, and the Borrower shall remain liable to and hereby agrees to indemnify the Bank for any deficiency (together with interest accruing thereon calculated and payable pursuant to the terms of the relevant underlying indebtedness and liabilities).
 - (iii) the Borrower shall indemnify and hold the Bank harmless from any loss incurred by the Bank arising from any change in the value of CAD in relation to the relevant foreign currency between the date the Foreign Currency Obligation becomes due and the date of full, final and indefeasible payment thereof to the Bank.
 - (iv) if for the purpose of commencing any proceeding against the Borrower to enforce payment of its indebtedness and liability under the Credit Facilities it is necessary to convert a sum due hereunder in a foreign currency into CAD, the rate of exchange used for purposes of commencing such proceeding shall be the rate of exchange at which in accordance with its normal banking procedures the Bank could purchase CAD with such foreign currency amount claimed to be due hereunder on the Business Day preceding that on which proceeding is commenced.
 - (v) the obligation of the Borrower in respect of any such sum due from it to the Bank hereunder shall, notwithstanding any judgment in CAD, be discharged only to the extent that on the Business Day following receipt by the Bank of any sum adjudged to be so due in CAD the Bank may in accordance with its normal banking procedures purchase the relevant foreign currency in the full amount owing to the Bank with the CAD; if the amount of such foreign currency so purchased is less than the sum actually due to the Bank in such foreign currency the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Bank against such loss and if the foreign currency purchased exceeds the sum actually due to the Bank in the foreign currency, the Bank agrees to remit such excess to the Borrower as the Borrower may be entitled thereto.
- (g) The Borrower confirms that it will (i) not, directly or indirectly, use any amounts advanced or seek advances under the Credit Facilities for any illegal purpose or (a) to fund any activity or business with any person or in any country or territory that is the subject or target of Sanctions or (b) in any manner that would result in a violation of Sanctions by any person (including any lender, advisor, or otherwise) and (ii) not repay any amounts owing to the Bank using any funds derived directly or indirectly from any illegal or sanctionable activity, provided that this covenant shall be inapplicable

only to the extent of any relevant violation of the *Foreign Extra-Territorial Measures Act* (Canada) or any similar applicable anti-boycott law or regulation.

VI. Insurance Matters

- (a) The Borrower and each Guarantor providing security to the Bank shall insure and keep insured, with good and responsible insurance companies, all of their Collateral against loss or damage from such hazards and risks, and in such amounts, as are insured by Persons similarly situated and operating like property. The Borrower and each Guarantor providing security to the Bank shall also insure such other hazards and risks (including employers' and public liability risks) as and to the extent usually insured by Persons similarly situated and conducting similar businesses. The Borrower and each Guarantor providing security to the Bank shall at all times insure or cause to be insured such property against such risks and hazards as other Persons similarly situated insure against, and including in any event loss or damage by fire, theft, burglary, pilferage, loss in transit and such other hazards as the Bank may determine. The Borrower shall, prior to the first advance hereunder and at any time on demand by the Bank, furnish to the Bank a certificate setting forth in summary form the nature and extent of the insurance maintained pursuant to this section. Notwithstanding the foregoing, all insurance required hereby shall be maintained in amounts and under policies and with insurers acceptable to the Bank, and all such policies shall contain a standard mortgage clause and loss payable clauses naming the Bank as loss payee and first mortgagee in a form acceptable to the Bank. The Borrower and each Guarantor providing security to the Bank shall pay or cause to be paid all premiums on such insurance. Certificates of insurance evidencing compliance with the foregoing and, at the Bank's request, copies of the policies of such insurance, shall be delivered by the Borrower to the Bank annually. All insurance required hereby shall provide that any loss shall be payable to the Bank notwithstanding any act or negligence of the insured, shall provide that no cancellation thereof or amendment thereto shall be effective until at least thirty (30) days prior written notice thereof to the Bank, and shall be satisfactory to the Bank in all other respects.
- (b) In case of any loss, damage to or destruction of the Collateral or any part thereof, the Borrower shall promptly give written notice thereof to the Bank describing the nature and extent of such damage or destruction. The Borrower and each Guarantor providing security to the Bank hereby authorizes the Bank to adjust, compromise and settle any such losses under any insurance afforded, and does hereby irrevocably constitute the Bank, and each of its nominees, officers, agents, attorneys, and any other Person whom the Bank may designate, as its attorney, with full power and authority to effect such adjustment, compromise or settlement and to endorse any drafts drawn by an insurer of the Collateral or any part thereof and to do everything necessary to carry out such purposes. In the event the Borrower or any Guarantor providing security to the Bank shall receive any proceeds of such insurance regarding such loss, damage or destruction, the Borrower or such Guarantor shall immediately pay over or cause to be paid such proceeds to the Bank. Net insurance proceeds received by the Bank under the provisions hereof or under any policy of insurance covering the Collateral or any part thereof shall be held as collateral security for or applied to the reduction of the obligations secured under the Loan Documents, whether or not then due, as the Bank may determine in its sole discretion. If insurance proceeds are released to the Borrower or a Guarantor, the Borrower or the relevant Guarantor shall at its cost and expense, promptly cause to be repaired or replaced the Collateral so lost, damaged or destroyed (whether or not the insurance proceeds, if any, on account of such damage or destruction shall be sufficient for that purpose). All insurance proceeds shall be subject to the Liens of the Bank under the Loan Documents.

VII. Environmental Matters

- (a) To the best of the Borrower's knowledge after due and diligent inquiry, no regulated, hazardous or toxic substances are being stored on any of the Borrower's lands, facilities or premises (the "**Premises**") or any adjacent property, nor have any such substances been stored or used on the Premises or in the Borrower's business or any adjacent property prior to the Borrower's ownership, possession or control of the Premises. The Borrower agrees to provide written notice to the Bank

immediately upon the Borrower becoming aware that the Premises or any adjacent property are being or have been contaminated with regulated, hazardous or toxic substances. The Borrower shall not permit any activities on the Premises which directly or indirectly could result in the Premises or any other property being contaminated with regulated, hazardous or toxic substances. For the purposes of this Facility Letter, the term "regulated, hazardous or toxic substances" means any substance, defined or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance or other similar term, by any Legal Requirement now or in the future in effect, or any substance or materials, the use or disposition of which is regulated by any such Legal Requirement.

- (b) The Borrower shall promptly comply with all Legal Requirements relating to the use, collection, storage, treatment, control, removal or cleanup of regulated, hazardous or toxic substances in, on, or under the Premises or in, on or under any adjacent property that becomes contaminated with regulated, hazardous or toxic substances as a result of construction, operations or other activities on, or the contamination of, the Premises, or incorporated in any improvements thereon. The Bank may, but shall not be obligated to, enter upon the Premises and take such actions and incur such costs and expenses to effect such compliance as it deems advisable and the Borrower shall reimburse the Bank on demand for the full amount of all costs and expenses incurred by the Bank in connection with such compliance activities.
- (c) The property of the Borrower which are now or in the future encumbered by any one or more of the Loan Documents are hereby further mortgaged and charged to the Bank, and the Bank shall have a Lien on such assets, as security for the repayment of such costs and expenses and interest thereon, as if such costs and expenses had originally formed part of the Credit Facilities.

VIII. Increased Cost Indemnities

If any change in the applicable Legal Requirements or in their interpretation or the administration of any of them by any Governmental Authority, or compliance by the Bank with any request (whether or not having the force of law) of any relevant central bank or other comparable agency or Governmental Authority, shall change the basis of taxation of payments to the Bank of the principal of or interest on the Loans or any other amounts payable under this Facility Letter (except for changes in the rate of tax on, or determined by reference to, the net income or profits of the Bank) or shall impose, modify or deem applicable any reserve, special deposits or similar requirement against assets of, deposits with or for the account of, or credit extended by the Bank or shall impose on the Bank or the London interbank market any other conditions directly affecting this Facility Letter or the Loans, and the result of any of the foregoing is to increase the cost to the Bank of making the Loans or maintaining the Loans or to reduce the amount of any sum received or receivable by the Bank under this Facility Letter by an amount deemed by the Bank to be material, then the Borrower shall, upon receiving notice from the Bank, reimburse to the Bank, on demand by the Bank, such amount or amounts as will compensate the Bank for such additional cost or reduction. A certificate of a manager or account manager of the Bank setting forth the additional amounts necessary to compensate the Bank as aforesaid, and the basis for its determination, shall be conclusive as to the determination of such amount in the absence of manifest error.

IX. Bank Visits

Representatives of the Bank shall be entitled to attend at and inspect the Borrower's place(s) of business and to view all financial records of the Borrower and meet with key officers or employees of the Borrower at any time, on reasonable notice.

X. Legal and Other Expenses

The Borrower shall pay (i) all reasonable legal fees and disbursements (on a solicitor and own client basis) in respect of legal advice and services to or on behalf of the Bank in connection with the Credit Facilities including: the preparation, negotiation and settlement of the Facility Letter, the preparation, issue and registration of the other Loan Documents together with any amendments or restatements thereto from time to time; the enforcement and preservation of the Bank's rights and remedies; searches from time to time,

including in connection with any advance; and (ii) all reasonable fees and expenses relating to appraisals, insurance consultation, environmental investigation, credit reporting and other due diligence and to responding to demands of any Governmental Authority; whether or not the documentation is completed or any funds are advanced under the Credit Facilities.

XI. Non-Merger; Records of Bank; Assignment

The terms and conditions of this Facility Letter shall not be merged by and shall survive the execution and delivery of the Loan Documents.

The taking of judgment on any covenant contained in this Facility Letter and/or the other Loan Documents shall not operate so as to create any merger or discharge of any indebtedness or liability of the Borrower under, nor of any assignment, transfer, guarantee, lien, contract, promissory note, bill of exchange or security of any form held or which may in the future be held by the Bank from the Borrower or from any other Person.

The benefits conferred by this Facility Letter and the other Loan Documents shall enure to the benefit of the Bank and its successors and assigns and shall be binding on each Credit Party and their respective heirs, successors and permitted assigns.

The records of the Bank as to the making or rollover of Loans (and the amounts thereof) hereunder, payment of any money payable hereunder or any part thereof being in default or of any notice or demand for payment having been made shall be prima facie proof of such fact, absent manifest error.

No Credit Party shall assign all or any of its rights, benefits or obligations under this Facility Letter or the Loan Documents without the prior written consent of the Bank. The Bank shall be entitled, without the consent of the Credit Parties, to assign, syndicate, sell or transfer all or any portion of its rights, benefits and obligations under this Facility Letter and the other Loan Documents.

XII. Waiver; Amendment

No term or condition of this Facility Letter or any of the other Loan Documents may be waived or varied verbally or deemed to be waived or varied by any cause or course of conduct of any officer, employee or agent of the Bank. All waivers must be in writing and signed by a duly authorized officer of the Bank.

Any amendment to this Facility Letter or the other Loan Documents must be in writing and signed by a duly authorized officer of the Bank. Without limiting the foregoing, the Bank may amend this Facility Letter if such amendment is required in connection with any change in applicable law or its interpretation or in connection with any Legal Requirement; the Bank shall provide 30 days prior written notice of any such amendment.

XIII. Severability

Any provision of this Facility Letter or the other Loan Document which is determined or adjudged to be illegal, invalid, prohibited or unenforceable under applicable law in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such illegality, invalidity, prohibition or unenforceability and shall be severed from the balance of this Facility Letter or such Loan Document, all without affecting the remaining provisions of this Facility Letter or such other Loan Document or affecting the legality, validity or enforceability in any other jurisdiction.

XIV. Consent to Disclosure

- (a) Each Credit Party consents to and acknowledges that it is aware that credit, financial and personal inquiries and information regarding each Credit Party and individuals connected to Credit Parties (including directors, officers, shareholders and individuals acting on behalf of a Credit Party) may be gathered, made, maintained and/or used at any time in connection with: (i) initial and ongoing credit assessment, (ii) any funding of the Credit Facilities by investors or participants or any

assignment or sale of the Credit Facilities by the Bank, (iii) the enforcement of any remedies that the Bank may have under the Credit Facilities, and (iv) compliance and risk monitoring purposes. Each Credit Party consents to the making of any such inquiries by or on behalf of the Bank, confirms the consent of any such individuals connected to Credit Parties has been provided, if required, to such collection, use and disclosure, and consents, without restriction and without further notice to or further consent, to disclosure of such information to any service provider, prospective investor, participant, assignee or purchaser of all or any part of the Credit Facilities, to any affiliate or supplier of the Bank, and to any regulator, examiner, monitor, auditor or similar person.

- (b) The Bank may collect, use, transfer and disclose information for the following purposes and as follows:
- (i) Providing the Credit Facilities (including adjudicating, monitoring, and reviewing availability of the Credit Facilities) and information respecting other services;
 - (ii) Taking any Compliance Action referred to in this Schedule A (including actions taken to comply with laws, international guidance, internal policies or procedures, requirements from judicial, administrative, law enforcement and regulatory authorities);
 - (iii) Conducting financial crime risk management activity, including verifying the identification of the Credit Party and related individuals, screening, monitoring and investigation activity, and sharing information within HSBC Group, including in other jurisdictions, for these purposes;
 - (iv) As requested or required by judicial, administrative, public or regulatory bodies, as well as governments, tax, revenue and monetary authorities, examiners, monitors, securities or futures exchanges, courts, central banks or law enforcement bodies with jurisdiction over any HSBC Group member.
- (c) The Bank may collect, transfer and disclose information for these purposes from and to members of the HSBC Group, sub-contractors, agents and service providers within Canada and in other jurisdictions.
- (d) Before providing the Bank with personal information respecting any connected individual, the Credit Party will ensure that it has provided all necessary disclosures to, and obtained any necessary consents from, such individuals in connection with the collection, use and disclosure of such information by the Bank.

XV. Time of Essence

Time shall be of the essence of this Facility Letter.

XVI. Indemnity

The Borrower agrees to keep the Bank and its officers, directors, employees, solicitors, agents and affiliates indemnified against any claim for any damages, losses, costs or expenses (including, without limitation, legal costs on a solicitor and his own client basis) incurred or suffered by any of them in relation to this Facility Letter or as a consequence (direct or indirect) of any breach by the Borrower of this Facility Letter, or as a result of an assessment made by any tax authority in respect of any payment made by the Bank to any third party including, without limitation, to the beneficiary of any LG, unless such damage, loss, cost or expense was incurred solely as a direct result of the Bank's gross negligence or wilful misconduct.

XVII. Governing Law

This Facility Letter and, unless otherwise specified therein, all Loan Documents or instruments delivered in accordance with this Facility Letter shall be governed by and interpreted in accordance with the laws of the Province of Ontario (the "**Governing Jurisdiction**") and the federal laws of Canada applicable therein.

Each Credit Party irrevocably submits to the non-exclusive jurisdiction of the courts in the Governing Jurisdiction and waives, to the fullest extent permitted by applicable law any defence based on convenient forum.

XVIII. Financial Crimes and Sanctions Laws Acknowledgements and Indemnification

Each Credit Party acknowledges and agrees that:

- (a) the Bank, HSBC Holdings plc, its affiliates and subsidiaries (collectively "**HSBC Group**"), and HSBC Group's service providers are required to act in accordance with the laws and regulations of various jurisdictions, including those which relate to Sanctions and the prevention of money laundering, terrorist financing, bribery, corruption and tax evasion;
- (b) the Bank may take, and may instruct other members of the HSBC Group to take, to the extent it or such member is legally permitted to do so under the laws of its jurisdiction, any action (a "**Compliance Action**") that the Bank or any such other member, in its sole discretion, considers appropriate to act in accordance with Sanctions or domestic and foreign laws and regulations. Such Compliance Action may include but is not limited to the interception and investigation of any payment, communication or instruction or other information; the making of further enquiries as to whether a Person or entity is subject to any Sanctions; and the refusal to issue, pay, renew, extend or transfer any DC or LG or to process any transaction or instruction that, in the Bank's discretion, may not conform with Sanctions. The Bank will use reasonable commercial efforts to notify the Borrower of the existence of such circumstances as soon as is reasonably practicable, to the extent permitted by law;
- (c) neither the Bank nor any member of HSBC Group will be liable for any loss, cost, damage, claim, action, suit, liabilities, suffered or incurred by the Borrowers, any Guarantor or other Person, or for any delay or any failure of the Bank to perform its duties under this Facility Letter arising out of or relating to any Compliance Action taken by or on behalf of the Bank, its service providers, or any HSBC Group member in its sole discretion;
- (d) the Bank may, in its sole discretion, refuse to issue, pay, renew, extend or transfer any DC or LG in connection with or relating to any countries, governments, entities or other Persons that are subject to Sanctions or limitations imposed by domestic or foreign laws, or by the Bank or any member of the HSBC Group, and that the Bank has the right, without prior notice to any Credit Party, to reject, refuse to pay, any demand, or not process any transaction or instruction that does not conform with any such Sanctions, or limitations; and
- (e) The Borrower will indemnify the Bank for all losses, costs, damages, claims, actions, suits, demands and liabilities suffered or incurred by or brought against the Bank arising out of or relating to any Compliance Action, unless such losses, costs, damages, claims, actions, suits, demands and liabilities are determined by a final, non-appealable decision of a court of competent jurisdiction to have been caused solely and directly by the gross negligence or wilful misconduct of the Bank.

XIX. Electronic Communications and Electronic Signatures

- (a) The Borrower hereby authorizes the Bank to accept Electronic Communications and Electronic Signatures from the Borrower in relation to this Facility Letter and the other Loan Documents and hereby consents to receiving commercial electronic messages from or on behalf of the Bank and any agreement, instruction, document, information, disclosure, notice or other form of communication from the Bank by Electronic Communication.
- (b) The Borrower agrees that any Electronic Communication, including any Electronic Signature associated with such Electronic Communication, which the Bank receives from the Borrower or in the Borrower's name, or which appears to be from the Borrower or in its name, will be considered to be duly authorized and binding upon the Borrower (whether or not that Electronic Communication was actually from or authorized by the Borrower) and the Bank will be authorized to rely and act

upon any such Electronic Communication, including any Electronic Signature associated with the Electronic Communication, even if it differs in any way from any previous Electronic Communication sent to the Bank.

- (c) The Borrower acknowledges and agrees that the Bank's methods of storing, maintaining and retrieving any Electronic Communication, including any Electronic Signatures associated with such Electronic Communication, and the Bank's data systems, maintain the integrity of the Electronic Communication.
- (d) If, for any reason, an Electronic Communication stored in the Bank's data systems differ from the Borrower's, the Borrower acknowledges and agrees that the version stored on the Bank's data systems shall prevail over any inconsistency. In this regard, the Borrower acknowledges and agrees that Electronic Communications maintained by the Bank will be admissible in any legal or other proceedings as conclusive evidence as to the contents of those Electronic Communications in the same manner as an original paper document, and that further proof of our records system integrity is not required (the integrity of the Bank's records system is hereby acknowledged and agreed by the Borrower) and the Borrower hereby waives any right to object to the introduction of any such Electronic Communications into evidence. To the fullest extent permitted by applicable law, the Borrower waives any defence, or waiver of liability, based on the absence of a written document in paper format, signed manually. The Borrower will keep its own records of all Electronic Communications for a period of 7 years (unless otherwise stipulated by local regulation) and will produce them to the Bank upon request.
- (e) At the Bank's discretion, it may require: (i) Electronic Communications be delivered using technology acceptable to the Bank including the use of a secure Electronic Signature, and (ii) any agreement, instruction, document, information, disclosure, notice or other form of communication from the Borrower to be manually signed and/or delivered to the Bank in paper format. If the Bank requires that the Borrower acknowledge its agreement to this Facility Letter or any other Loan Document by clicking the appropriate button, the Borrower will follow any instructions that the Bank provides to indicate the Borrower's agreement (which may include typing the Borrower's name and/or clicking "I Agree" or similar button).
- (f) When the Borrower's handwritten or Electronic Signature is delivered by facsimile, email or other electronic or digital transmission, such transmission shall constitute delivery of an executed copy of this Facility Letter or other relevant Loan Document. If the Borrower uses an Electronic Signature to indicate its agreement, the Borrower shall ensure that its Electronic Signature is attached to or associated with the relevant Electronic Communication.

XX. Further Assurances

Each Credit Party shall, at its cost and expense, upon request of the Bank, duly execute and deliver, or cause to be duly executed and delivered, to the Bank all such further agreements, instruments, documents and other assurances and do and cause to be done all such further acts and things as may be necessary or desirable in the reasonable opinion of the Bank to carry out more effectually the provisions and purposes of this Facility Letter or any of the other Loan Documents.

XXI. ADDITIONAL GENERAL PROVISIONS

- (a) For greater certainty, and notwithstanding anything to the contrary herein or in any other Loan Document, the following provisions shall not apply to GTRF Facilities.
- (b) Whenever any payment shall be due on a day which is not a Business Day including, for greater certainty, if such date is the end of an Interest Period, the date for payment thereof shall be extended to the next succeeding Business Day. Interest shall continue to accrue and be payable thereon as provided herein, until the date on which such payment is received by the Bank.

- (c) Without limiting the foregoing, in the event of a permanent discontinuance of EURIBOR or unavailability of EURIBOR, then the Bank may at its discretion notify the Borrower of the substitution of the Euro Short-Term Rate (ESTR) published by the European Central Bank for EURIBOR, and the Bank may make any conforming changes to the terms and conditions herein to provide for the substitution of ESTR for EURO Loans without the need for further action or consent by the Borrower or any other party to this Facility Letter

XXII. Conflict

In the event of any conflict between the terms of this Schedule and the corresponding terms of this Facility Letter to which this Schedule is attached, the terms of this Facility Letter shall prevail to the extent necessary to resolve such conflict. In the event of a conflict between the terms of this Facility Letter and the corresponding terms of any of the other Loan Documents, the terms of this Facility Letter shall prevail to the extent of such conflict.

XXIII. Confidentiality

Each Credit Party acknowledges that the contents of this Facility Letter are confidential and shall not be disclosed by such Credit Party other than to its solicitors (or any other person bound by a duty of confidentiality) except with the prior written consent of the Bank.

This is **Exhibit “D”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor



July 11, 2022

DMI Exim Limited
Unit 3, 10 Falconer Drive
Mississauga, ON
L5L 3L8

PRIVATE & CONFIDENTIAL

Attention: Vinay Gupta

Dear Sir:

We refer to the facility letter (including the schedules and appendices thereto) dated March 23, 2021, as amended from that date to the date hereof (the "**Original Facility Letter**") between HSBC Bank Canada (the "**Bank**") and DMI Exim Limited (the "**Borrower**"). On the basis of the financial information and other information, representations, warranties and documents provided to the Bank, the Bank has agreed, at the request of the Borrower, to continue to provide the Credit Facilities and to amend certain terms and conditions of the Original Facility Letter all as more particularly set out below. This agreement together with the Original Facility Letter is hereinafter referred to as the "**Facility Letter**". This agreement does not amend or supersede any other agreements between the parties respecting other products and services provided by the Bank unless specifically stated otherwise.

1. Amendments to the Facility Letter

As of the date hereof, the following terms of the Facility Letter shall be as follows:

1.1 Section 1.7 of the Facility Letter is deleted and replaced in its entirety with the following:

1.7 Fees

The Borrower shall pay to the Bank:

- (a) an administration fee of CAD 300 payable on the first Business Day of each month with respect to the previous month;
- (b) at the time of issuance of each DC under the Operating Loan Facility, a fee as provided in the "Global Trade and Receivables Finance (Canada) Schedule of Applicable Fees and Charges", as such document may be amended by the Bank in its sole discretion from time to time, calculated against the face amount and over the term of the DC subject to any specified minimum issuance fee and which may be charged to an account of the Borrower requesting such DC;
- (c) an amendment fee of CAD 5,000 payable on acceptance of this Facility Letter;
- (d) an amendment fee of CAD 1,500 payable in the event that any amendment to this Facility Letter is required by the Borrower; and
- (e) an annual review fee of CAD 20,000.

1.2 Section 4.1 of the Facility Letter is deleted and replaced in its entirety with the following:

4.1 Amount

Demand revolving foreign exchange facility up to a permitted maximum of USD 27,777,777 (the "**Foreign Exchange Facility Limit**").

1.3 Section 5.1 of the Facility Letter is deleted and replaced in its entirety with the following:

5.1 Amount

Draft/bill discounting facility (the "**Bill Discounting Facility**") up to USD 21,000,000.

1.4 Section 5.3 of the Facility Letter is deleted and replaced in its entirety with the following:

5.3 Availability

The Bank may discount, at its sole discretion from time to time, documentary export drafts or bills acceptable to the Bank at a rate of up to 90% of the face value of such bills, upon the receipt of appropriate commercial documentation as specified in accordance with the Uniform Rules for Collections, International Chamber of Commerce (ICC) Publication No. 522.

Notwithstanding the Bill Discounting Facility limit in Section 5.1 (above), the sum of the amounts advanced and outstanding under the Bill Discounting Facility and the Pre-Shipment Seller Loan Facility in Section 6.1 (below) shall not, in the aggregate, exceed USD 21,000,000.

1.5 Section 6.1 of the Facility Letter is deleted and replaced in its entirety with the following:

6.1 Amount

Pre Shipment seller loan facility (the "**PSL Facility**") up to USD 15,000,000.

1.6 Section 6.3 of the Facility Letter is deleted and replaced in its entirety with the following:

6.3 Availability

(a) The Borrower shall provide the Bank with an application for each advance under the PSL Facility in a form and manner satisfactory to the Bank, together with a certified copy of the applicable Approved Purchase Order. The Bank may, in its sole discretion, advance to the Borrower, for each such Approved Purchase Order, an amount under the PSL Facility equal to 80% of the face value of such Approved Purchase Order. The Borrower shall, upon request by the Bank at any time, furnish the Bank with such additional supporting documentation in respect of any advance made under the PSL Facility as the Bank may reasonably request.

(b) The face value amount of each Requested Purchase Order submitted to the Bank for funding consideration under the PSL Facility will at minimum be CAD 250,000.

(c) Where a post-shipment seller loan is made available to the Borrower after a PSL Facility has been advanced to the Borrower, the Borrower undertakes to provide the Bank with such original or certified true copy of the relevant transport documents acceptable to the Bank, and which are marked with the relevant pre-shipment seller loan reference number, promptly upon the shipment of the goods. Upon and after the Bank's receipt of such transport documents, the Bank may where applicable, at its sole and absolute discretion, transfer the relevant debt outstanding under this pre-shipment seller loan to the Borrower's post-shipment seller loan, and such transferred outstanding debt shall constitute an amount outstanding under the post-shipment seller loan.

Notwithstanding the PSL Facility limit in Section 6.1 (above), the sum of the amounts advanced and outstanding under the PSL Facility and the Bill Discounting Facility in Section 5.1 (above) shall not, in the aggregate, exceed USD 21,000,000.

1.7 Section 7 of the Facility Letter is deleted in its entirety.

2. Interpretation

All capitalized terms herein, unless otherwise expressly defined herein, shall have the meaning ascribed to them in the Facility Letter.

The Facility Letter and the Loan Documents shall henceforth be read and construed in conjunction with this agreement; and the Facility Letter and this agreement shall henceforth have effect as far as practicable as though the provisions thereof were contained in one instrument.

All the terms, conditions and provisions of the Original Facility Letter not otherwise amended by this agreement shall remain unchanged and have full force and effect.

3. Continuation of Facility Letter

Each Credit Party agrees that this agreement constitutes an amendment to the Original Facility Letter and that accordingly, in this agreement the term "Facility Letter" means the Original Facility Letter as amended by this agreement.

4. Representations and Warranties

Each Credit Party confirms the representations and warranties made by it in the Original Facility Letter remain true and accurate as of the date hereof.

5. General Provisions

5.1 Governing Law

This agreement is governed by the laws of the Governing Jurisdiction.

5.2 Language Choice

The parties hereto have requested that this agreement and any document relating thereto be drafted in English. Les parties aux présentes ont exigé que cette convention et tout document y afférent soient rédigés en anglais.

6. Novation


It is expressly understood and agreed between the parties hereto that this agreement does not constitute a novation of the terms and conditions of the Credit Facilities, the Facility Letter or the other Loan Documents, the Bank hereby reserving all of its rights and recourses under the Credit Facilities, the Facility Letter and the other Loan Documents. Nothing set forth in this agreement shall, except as specifically set forth herein, be construed as altering the obligations of the Borrower and the Guarantors under the Credit Facilities, the Facility Letter and the other Loan Documents. Nothing herein shall in any way release the Borrower and the Guarantors from their obligations to the Bank under the Credit Facilities, the Facility Letter and the other Loan Documents.

7. Acceptance

Kindly confirm acceptance and agreement to the terms and conditions of this agreement by the Borrower signing, dating and delivering a copy of this letter, also acknowledged by the Guarantor to the Bank by 5:00 p.m. local time on August 2, 2022.

Yours truly,

HSBC BANK CANADA


Vips Patel
Vips Patel (Jul 11, 2022 12:51 EDT)

Vips Patel
Director
Commercial Banking




Benjamin Walker
Senior Director & Team Leader
Commercial Banking

The undersigned hereby acknowledge(s) and agree(s) to the terms and conditions of this agreement as of the date indicated with the Electronic Signature of the authorized signatory of the undersigned, where acceptance and agreement is provided by Electronic Communication, and, where there is more than one signatory, the date indicated in connection with the Electronic Signature of the last or final signatory.

BORROWER:


DMI Exim Limited


Per: Vinay Gupta (Jul 11, 2022 13:13 EDT)
Authorized Signatory
Title:
Name:

Per: _____
Authorized Signatory
Title:
Name:

GUARANTOR:

Vinay Gupta


Vinay Gupta (Jul 11, 2022 13:13 EDT)
Signature of Individual Guarantor

This is **Exhibit “E”** referred to in the Affidavit of Brian Pettit sworn remotely by Brian Pettit stated as being located in the Town of Aurora, in York Region, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 28th day of July, 2023 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely.*



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor

Standard Trade Terms

HSBC Bank Canada



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STANDARD TRADE TERMS (THESE TERMS)

1. APPLICATION

1.1 These Terms shall apply to any Trade Service which HSBC may agree to make available or procure at the request of the Customer and shall include any relevant Country Conditions.

1.2 These Terms shall, where applicable, be subject to other terms and conditions in relation to services provided by HSBC to the Customer (including any banking service or account operating agreement) from time to time. In relation to any Trade Service, where any conflict arises between these Terms and any other applicable terms and conditions, the terms and conditions shall apply in the following order of priority:

- (a) the Application;
- (b) the Facility Agreement (if any) and/or any applicable Security Agreement;
- (c) the Country Conditions (if any);
- (d) these Terms; and
- (e) such other terms.

1.3 HSBC does not offer any advice to the Customer in relation to any Trade Service. Whilst HSBC may provide information or express opinions from time to time, such information or opinions are not offered as advice. Before applying for, or accepting, any Trade Service, the Customer shall make such enquiries and assessments as the Customer considers appropriate and the Customer should place no reliance on HSBC to give advice or make recommendations. If the Customer is in doubt of any Trade Service, the Customer should seek independent professional advice.

1.4 Each Trade Service is separate and independent from the Trade Transaction to which such Trade Service relates and HSBC is in no way concerned with, subject to, or bound by, the terms of such Trade Transaction, even if a reference is included in any document relating to that Trade Service.

1.5 HSBC may name, instruct or procure any correspondent bank (including any HSBC Group member) to be the issuing, advising, nominated or confirming bank in respect of any Trade Service (and may restrict such correspondent bank to an HSBC Group member or a correspondent bank acceptable to HSBC) and is authorised to issue a counter-guarantee or counter-SBLC in such form and content as determined by HSBC in favour of the correspondent bank. HSBC may pay to, or receive from any correspondent bank, charges, commissions, fees or other payments.

1.6 Nothing in these Terms shall oblige HSBC to enter into or provide any Trade Service at any time.

SECTION 1 – TRADE SERVICES

2. ICC RULES

2.1 Unless the Customer otherwise requests (and HSBC agrees with such request):

(a) all Documentary Credits issued by HSBC will be issued subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 (UCP600) and, if required by HSBC, the Uniform Customs and Practice for Documentary Credits (UCP600) Supplement for Electronic Presentation (eUCP);

(b) all SBLCs issued by HSBC will be issued subject to the International Standby Practices 1998, ICC Publication No. 590 (ISP98);

(c) all bonds and guarantees issued by HSBC will be issued subject to the Uniform Rules for Demand Guarantees, ICC Publication No.758 (URDG 758); and

(d) all Collections will be undertaken subject to the Uniform Rules for Collections 1995, ICC Publication No. 522 (URC 522) and, if required by HSBC, the Uniform Rules for Collections (URC 522) Supplement for Electronic Presentation (eURC),

in each case, as may be revised from time to time (together the ICC Rules), and the rights and obligations of the Customer will be subject to the applicable ICC Rules in addition to these Terms.

2.2 If there is any conflict between any ICC Rule and these Terms, these Terms shall prevail.

3. DOCUMENTARY CREDITS

3.1 The terms in this Clause 3 apply to any Documentary Credits.

3.2 The Customer:

(a) undertakes to examine the customer copy of each Documentary Credit issued by HSBC in order to check its consistency with the relevant Application; and

(b) agrees to give immediate notice to HSBC of any objection to its contents.

Imports

3.3 HSBC is authorised to honour and pay any Claim made under a Documentary Credit which appears on its face to comply with its terms and/or any Documents drawn (or purporting to be drawn) and presented under such Documentary Credit in accordance with its terms, without reference to or further authority from the Customer or any other party, and without enquiring whether any Claim has been properly made, and notwithstanding that the validity of any such Claim, or the amount of it, may be in dispute. The Customer accepts any such Claim as conclusive evidence that HSBC was liable to honour and pay it, and any payment made, or any steps taken by HSBC in good faith under or in connection with it, shall be binding on the Customer.

3.4 The presentation of any Documents under a Documentary Credit shall be deemed to be in compliance with the terms of the Documentary Credit if HSBC determines that they appear to be in order and, taken as a whole, conform with the

requirements of the Documentary Credit. The Customer waives all claims against HSBC for any delay that may result in examining such Documents or any failure to identify any discrepancies that may exist.

3.5 Notwithstanding any contrary instruction from the Customer, HSBC may reject any Claim which HSBC determines does not comply with the terms of the relevant Documentary Credit. HSBC is not obliged to notify the Customer or to seek the Customer's waiver of any discrepancy before refusing the Claim. Where HSBC does seek a waiver in respect of any discrepancy, the taking of such action does not oblige HSBC to seek a waiver of any discrepancy at any other time.

3.6 If HSBC notifies the Customer of a discrepancy with respect to a Claim and the Customer requests HSBC and/or its correspondent bank or its agent to:

- (a) effect payment under the Documentary Credit, notwithstanding the discrepancy; or
- (b) countersign or issue any guarantee or indemnity covering the discrepancy,

the Customer confirms that its reimbursement obligations and the indemnity set out in Clause 9 (*REIMBURSEMENT AND INDEMNITY*) shall apply to such Claim and/or any such guarantee or indemnity.

3.7 HSBC may at any time amend or insert additional terms and conditions into a Documentary Credit as HSBC may consider appropriate, provided that any such amendment or additional terms and conditions shall not increase the Customer Liabilities in relation to such Documentary Credit. HSBC may, subject to the beneficiary's consent, cancel the whole or any unused balance of a Documentary Credit.

3.8 Notwithstanding any instruction in an Application, HSBC may restrict the availability of any Documentary Credit, or any advising or confirming, to its own offices or to any correspondent bank or agent of its choice and, in such case, HSBC may refuse to honour, or make payment for, any Document drawn or purporting to be drawn on any office, bank or other person other than such office, correspondent bank or agent.

3.9 If HSBC effects payment under a Documentary Credit prior to the maturity date of such Documentary Credit:

- (a) (in the case where the Documentary Credit beneficiary bears interest) the Customer shall be liable to pay to HSBC the full amount of the Documentary Credit on the maturity date, even if HSBC only paid a discounted amount under the Documentary Credit; and
- (b) (in the case where the Customer is required to bear interest under the Documentary Credit pursuant to any other agreement with HSBC) the Customer shall, on the maturity date of such Documentary Credit or such earlier date as may be demanded by HSBC, pay to HSBC the full amount of the Claim together with interest accruing on such Claim for the period from and including the date of HSBC's payment to and including the maturity date, such interest payable in accordance with Clause 15 (*FEES, COMMISSION, INTEREST AND CHARGES*).

3.10 If the terms of a Documentary Credit (whether expressly or impliedly) permits payment to be effected to the beneficiary prior to receipt of the Documents required to be delivered under such Documentary Credit, the Customer shall, on the maturity date of such Documentary Credit or such earlier date as may be demanded by HSBC, pay to HSBC the full amount of the Claim (whether or not the Documents subsequently delivered are compliant with the terms of the Documentary Credit) together with interest accruing on such Claim for the period from and including the date of HSBC's payment to and including the maturity date, such interest payable in accordance with Clause 15 (*FEES, COMMISSION, INTEREST AND CHARGES*).

3.11 If any Documentary Credit stipulates that certain specific Documents be forwarded by the beneficiary directly to the Customer at or prior to the time the beneficiary makes any Claim, all remaining Documents must be produced to HSBC in respect of any Claim under such Documentary Credit. If the Customer uses the Documents forwarded directly to it to obtain possession of the Goods, HSBC is authorised to accept all Documents presented under such Documentary Credit and pay or accept upon presentation and pay at maturity all Documents drawn in respect of the Goods, notwithstanding any discrepancy or any other matter or thing that might otherwise have relieved or affected the Customer's or HSBC's obligations. The Customer confirms that its reimbursement obligations and the indemnity set out in Clause 9 (*REIMBURSEMENT AND INDEMNITY*) shall apply to any amount paid by HSBC in respect of such Documentary Credit.

3.12 If any Documentary Credit stipulates that the Goods be insured under insurance policies/certificates containing "Institute Cargo Clauses" or other industry standard clauses, HSBC may accept insurance policies/certificates which contain "American Institute Cargo Clauses" or any other industry standard clauses that HSBC determines appropriate.

3.13 HSBC will not be bound at any time to release any Documents or Goods to the Customer unless the Customer has fully discharged its Customer Liabilities in respect of the Documentary Credit relating to such Documents or Goods.

3.14 If HSBC issues a Documentary Credit back-to-back (a **Back-to-Back Documentary Credit**) to another Documentary Credit (a **Master Documentary Credit**) the Customer:

- (a) acknowledges that its Customer Liabilities in respect of the Back-to-Back Documentary Credit are not dependent or conditional on the performance of the Master Documentary Credit;
- (b) unconditionally and irrevocably assigns or transfers absolutely to HSBC all of its payment rights in the Master Documentary Credit;
- (c) shall not amend or accept any amendment to the Master Documentary Credit without the consent of HSBC or take any action which might result in HSBC not receiving the full amount under the Master Documentary Credit; and
- (d) authorises HSBC to use the Documents presented under the Back-to-Back Documentary Credit to make a Claim under the Master Documentary Credit irrespective of any discrepancies or irregularities in the Documents presented.

3.15 HSBC is not obliged to notify the Customer of any incompatibility between the terms of a Back-to-Back Documentary Credit and the relevant Master Documentary Credit.

Exports

3.16 If HSBC confirms a Documentary Credit or SBLC (whether on a disclosed or undisclosed basis) and payment in full or part is not received by HSBC from the relevant issuing bank, the Customer is only required to reimburse HSBC for amounts not received if the non-payment was due to a Recourse Event. Such reimbursement by the Customer is payable immediately upon HSBC's demand together with any interest payable in accordance with Clause 15 (*FEES, COMMISSION, INTEREST AND CHARGES*) and the Customer shall reimburse HSBC for any loss or damage suffered by HSBC as a result of the non-payment.

3.17 HSBC will not be bound by a confirmation (whether on a disclosed or undisclosed basis) and will not be obliged to negotiate a Documentary Credit or SBLC if it is amended without HSBC's consent, the Documents presented do not fully comply with the terms of the Documentary Credit or SBLC, the original Documentary Credit or SBLC is different from the copy of the Documentary Credit or SBLC upon which HSBC based its confirmation, the Customer does not comply with any of its obligations under this Clause 3, or if payment in full or part is not received by HSBC (or cannot be accepted by HSBC) from the relevant issuing bank as a result of a Recourse Event.

3.18 If HSBC confirms a Documentary Credit or SBLC on an undisclosed basis, the Customer shall not make a presentation in respect of the Documentary Credit or SBLC to any person other than HSBC and shall promptly provide to HSBC the original Documentary Credit or SBLC, any operative documents and any amendments issued by the relevant issuing bank.

3.19 If HSBC confirms a Documentary Credit or SBLC (whether on a disclosed or undisclosed basis), the Customer:

- (a) unconditionally and irrevocably assigns or transfers absolutely to HSBC all of its payment rights in such Documentary Credit or SBLC; and
- (b) shall not take any action which might result in HSBC not receiving the full amount under the Documentary Credit or SBLC.

4. INSTRUMENTS

4.1 The terms in this Clause 4 apply to any SBLC, demand guarantee (including an avaluation, co-acceptance or acceptance of a Document), bond, counter-guarantee, counter-SBLC, or similar independent payment obligation (including any extension, renewal or amendment of the same)(each an **Instrument**) issued, confirmed or provided by HSBC.

4.2 The Customer:

- (a) undertakes to examine the customer copy of each Instrument issued or entered into by HSBC in order to check its consistency with the relevant Application; and
- (b) agrees to give immediate notice to HSBC of any objection to its contents.

4.3 HSBC is authorised to accept, pay or honour any Claim made under any Instrument which appears on its face to comply with its terms, without reference to or further authority from the Customer or any other party, and without enquiring whether any such Claim on HSBC has been properly made, notwithstanding that the validity of any such Claim, or the amount of it, may be in dispute. The Customer accepts any such Claim as conclusive evidence that HSBC was liable to pay or comply with it, and any payment made, or any steps taken by HSBC in good faith under or in connection with it, shall be binding upon the Customer.

4.4 The presentation of any documents under an Instrument shall be deemed to be in compliance with the terms of the Instrument if HSBC determines that they appear on their face to be in order and, taken as a whole, conform with the requirements of the Instrument. The Customer waives all claims against HSBC for any delay that may result in examining such documents or any failure to identify any discrepancies that may exist.

4.5 Notwithstanding any contrary instruction from the Customer, HSBC is entitled to reject any Claim which HSBC determines does not comply with the terms of the relevant Instrument. HSBC is not obliged to notify the Customer or to seek the Customer's waiver of any discrepancy before refusing the Claim. Where HSBC does seek a waiver in respect of any discrepancy, the taking of such action does not oblige HSBC to seek a waiver of discrepancy at any other time.

4.6 If HSBC notifies the Customer of a discrepancy with respect to a Claim and the Customer requests HSBC and/or its correspondent bank or its agent to:

- (a) effect payment under the Instrument, notwithstanding the discrepancy; or
- (b) countersign or issue any guarantee or indemnity covering the discrepancy,

the Customer confirms that its reimbursement obligations and the indemnity set out in Clause 9 (*REIMBURSEMENT AND INDEMNITY*) shall apply to such Claim and/or any such guarantee or indemnity.

4.7 HSBC may at any time amend or insert additional terms and conditions into an Instrument as HSBC may consider appropriate, provided that any such amendment or additional terms and conditions shall not increase the Customer Liabilities in relation to such Instrument. HSBC may, subject to the beneficiary's consent, cancel the whole or any unused balance of an Instrument.

4.8 Notwithstanding any instruction in an Application, HSBC may restrict the availability of any SBLC, or any advising or confirming, to its own offices or to any correspondent bank or agent of its choice and, in such case, HSBC may refuse to honour, or make payment for, any Document drawn or purporting to be drawn on any office, bank or other person other than such office, correspondent bank or agent.

4.9 If the terms of an SBLC (whether expressly or impliedly) permits payment to be effected to the beneficiary prior to receipt of the documents required to be delivered under such SBLC, the Customer shall, on the maturity date of such SBLC or such earlier date as may be demanded by HSBC, pay to HSBC the full amount of the Claim (whether or not the documents subsequently delivered are compliant with the terms of the SBLC) together with interest accruing on such Claim for the period from and including the date of HSBC's payment to and including the maturity date, such interest

payable in accordance with Clause 15 (*FEES, COMMISSION, INTEREST AND CHARGES*).

4.10 Notwithstanding the foregoing, if the Customer has requested HSBC to issue or arrange for the issuance of an Instrument by a correspondent bank for which a counter-guarantee or counter-SBLC must be issued by HSBC, HSBC may include such terms in the counter-guarantee or counter-SBLC that HSBC considers are required to support the issuance of such Instrument. Without limitation, the validity period and Claim period (if applicable) of the counter-guarantee or counter-SBLC shall be longer than the validity period and Claim period (if applicable) of the Instrument and other terms may be added to reflect the laws under which the Instrument is governed.

4.11 If any Instrument contemplates renewal or extension and the Customer does not advise HSBC at least 5 Business Days prior to the time required for HSBC to provide notice of cancellation as required by the Instrument, HSBC may renew or extend for an additional year or such other term as HSBC may so select. HSBC shall however be under no obligation to issue, extend or renew any Instrument and may at any time:

- (a) cancel or revoke any Instrument without prior notice to or authorisation from the Customer if such Instrument or the beneficiary of such Instrument permits cancellation or revocation; or
- (b) pay any Instrument without prior notice to or authorisation from the Customer if the Instrument or any relevant law permits or requires payment to be made if such Instrument is cancelled, withdrawn, not extended or not renewed.

4.12 Any cancellation, payment or revocation by HSBC of any Instrument at any time shall be without prejudice to the rights and obligations of HSBC and the Customer under these Terms.

4.13 Unless an Instrument expressly provides that the original Instrument must be presented to HSBC to support a Claim, HSBC may pay and/or comply with any Claim, whether or not the original of the Instrument is presented to HSBC.

4.14 Notwithstanding that the Customer may claim that an Instrument has been reduced, cancelled or terminated, HSBC may determine that, due to the governing law of the Instrument, it is has not been reduced, cancelled or terminated, or HSBC may determine that it is necessary to obtain or require the relevant beneficiary's confirmation of the reduction, release or discharge of HSBC's and/or any correspondent bank's liabilities under such Instrument. Subject to such determination, or until such confirmation is received by HSBC, such Instrument shall not be treated or deemed as reduced, cancelled or terminated.

5. COLLECTIONS

5.1 The terms in this Clause 5 apply to any Collection transaction.

5.2 If HSBC is requested by the Customer to handle a Collection as the remitting bank, HSBC shall be under no obligation to make any payment to the Customer in respect of the Collection until HSBC has received full payment from the collecting or presenting bank.

5.3 HSBC is not obliged to check the Documents before sending them to the collecting or presenting bank.

5.4 HSBC is not obliged to check the Documents that it receives from a remitting bank.

6. FINANCE

6.1 The terms in this Clause 6 apply where HSBC Finances any Document or Documentary Credit.

6.2 Upon HSBC Financing a Document or Documentary Credit, the Customer unconditionally and irrevocably:

(a) transfers ownership of the Document or Documentary Credit to HSBC and undertakes to endorse the relevant Document in favour of HSBC (if not already endorsed in favour of HSBC as a condition to such Finance) and deliver the original endorsed Document to HSBC;

(b) assigns or transfers absolutely to HSBC all of its rights to receive the proceeds of such Documentary Credit or Document; and

(c) assigns or transfers absolutely to HSBC all of its rights, title and interest in the associated underlying receivable (and related rights and proceeds) (if any) arising from the underlying Trade Transaction,

and where the amount of the Finance was calculated by applying an advance rate to the face value of the Document or Documentary Credit, upon receipt by HSBC of any proceeds of that Document or Documentary Credit in excess of the amount of the Finance, HSBC shall pay those proceeds to the Customer (after deducting any outstanding Customer Liabilities).

6.3 If HSBC has Financed a Document or Documentary Credit and payment in full or part is not received by HSBC for any reason (or cannot, for any reason whatsoever, be accepted by HSBC) from the relevant issuing bank, confirming bank, collecting bank, presenting bank, drawee or obligor (as applicable), then unless otherwise agreed in writing by HSBC:

(a) such Trade Service is provided with full recourse against the Customer; and

(b) the Customer is required to reimburse HSBC for amounts not received.

Such reimbursement is payable immediately upon HSBC's demand together with any interest payable in accordance with Clause 15 (*FEES, COMMISSION, INTEREST AND CHARGES*) and the Customer shall reimburse HSBC for any loss or damage suffered by HSBC as a result of the non-payment.

6.4 If HSBC has agreed to Finance a Document or Documentary Credit on a non-recourse basis and payment in full or part is not received by HSBC (or cannot be accepted by HSBC) from the relevant issuing bank, confirming bank, collecting bank, presenting bank, drawee or obligor (as applicable), the Customer is only required to reimburse HSBC for amounts not received if the non-payment was due to a Recourse Event. Such reimbursement is payable immediately upon HSBC's demand together with any interest payable in accordance with Clause 15 (*FEES, COMMISSION,*

INTEREST AND CHARGES) and the Customer shall reimburse HSBC for any loss or damage suffered by HSBC as a result of the non-payment.

6.5 Where HSBC has Financed a Document or Documentary Credit, HSBC may at its discretion:

- (a) take conditional acceptances and/or acceptances for honour and/or to extend the due date for payment in relation to any such Document or Documentary Credit;
- (b) accept payment from any drawee or acceptor before maturity under rebate or discount;
- (c) accept part payment before maturity and deliver a proportionate part of the Goods to any drawee or acceptor of such Document or Documentary Credit or the consignee of the related Goods;
- (d) at the request of any drawee, delay presentation of such Document or Documentary Credit for payment or acceptance without affecting the liability of the Customer to HSBC in respect of such Document or Documentary Credit;
- (e) give an indemnity against any loss arising from any discrepancies in order to obtain acceptance or payment of a Document and the Customer confirms that its reimbursement obligations and the indemnity set out in Clause 9 (*REIMBURSEMENT AND INDEMNITY*) shall apply to any such indemnity; and
- (f) institute proceedings and take steps for the recovery from the acceptors or endorsers of any such Document or Documentary Credit of any amount due in respect of such Document or Documentary Credit, despite HSBC having debited the bank account of the Customer with the amount of such Document or Documentary Credit.

7. TRADE FINANCE LOANS

7.1 The terms in this Clause 7 apply to any Trade Finance Loans which HSBC may provide to the Customer from time to time.

7.2 Subject to the terms of any applicable Facility Agreement which may apply, any Trade Finance Loan which HSBC provides to the Customer shall be on an uncommitted basis and HSBC may terminate or cancel such Trade Finance Loan at any time without providing reasons to the Customer.

7.3 Interest shall accrue on the Trade Finance Loan and shall be payable in accordance with Clause 15 (*FEES, COMMISSION, INTEREST AND CHARGES*).

7.4 The Customer shall repay each Trade Finance Loan together with accrued interest and any outstanding fees, commissions, charges and expenses incurred by HSBC on demand unless HSBC agrees otherwise in writing. In any event the Customer shall repay a Trade Finance Loan no later than:

- (a) its maturity date;
- (b) if it is for financing goods or services, the date on which the Customer receives the proceeds of sale of those goods or services (in full or part); and/or

- (c) if it is for the financing of a debt owed to the Customer, the date on which the Customer receives payment of the debt (in full or part),

and, upon the request of HSBC, the Customer will arrange for all monies payable to the Customer under or in connection with the relevant Trade Transaction to be paid directly to a bank account as specified by HSBC to be used towards the repayment of that Trade Finance Loan and any other outstanding Customer Liabilities.

7.5 If a Trade Finance Loan is due for repayment on a day when the Customer is entitled to make a drawing under another Trade Finance Loan, HSBC may require:

- (a) the amount of the Trade Finance Loan that is to be repaid to be deducted from the amount of the drawing to be made; and
- (b) only the difference in amounts (if any) to be paid to the Customer.

7.6 Where the Customer requests a Trade Finance Loan and it is to be backed by a Documentary Credit or a confirmed purchase order, pro-forma invoice or such other supporting document specified in the Application, the Customer shall, at or before the time when the Customer submits the Application for that Trade Finance Loan, lodge with HSBC the original Documentary Credit (including all amendments (if any)) or a copy of the confirmed purchase order, pro-forma invoice or other such supporting document referred to in the Application (as applicable), in each case in the format required by HSBC (the **Supporting Document**).

7.7 Where HSBC provides to the Customer a Trade Finance Loan backed by a Supporting Document, the Customer shall:

- (a) only use the proceeds of that Trade Finance Loan for the purpose of purchasing, producing, processing, manufacturing, storing, insuring and/or preparing for the sale or shipment of the Goods referred to in the Supporting Document;
- (b) not accept any amendment to or cancellation of the Supporting Document without HSBC's prior written consent;
- (c) promptly notify HSBC if the value of the relevant Goods or the proceeds due under the Supporting Document at any time falls below the amount of the Trade Finance Loan;
- (d) promptly notify HSBC if the relevant Goods are not shipped in accordance with the terms of the Supporting Document;
- (e) where the Supporting Document is a Documentary Credit, present all Documents to HSBC in strict compliance with the terms and conditions of the Documentary Credit before the expiry of the time limit(s) prescribed in the Documentary Credit; and
- (f) where the Supporting Document is not a Documentary Credit, promptly following shipment of the relevant Goods, provide HSBC with the invoice and other documents evidencing that the relevant Goods have been supplied to the relevant buyer in accordance with the terms and conditions of the relevant sales contract.

7.8 Where HSBC provides to the Customer a Trade Finance Loan backed by a Documentary Credit and HSBC presents the required Documents to the issuing bank

for payment or approval and/or HSBC Finances that Documentary Credit or any Document presented under that Documentary Credit, HSBC is authorised to apply the proceeds of the Documentary Credit or the amount of the Finance towards the repayment of that Trade Finance Loan and any other outstanding Customer Liabilities (including accrued interest).

8. APPLICATIONS FOR RELEASE OF GOODS, SHIPPING GUARANTEES AND LETTERS OF INDEMNITY

8.1 The terms in this Clause 8 apply to any Application for the release of Goods, shipping guarantee or letter of indemnity.

8.2 If the Customer requests HSBC to sign or countersign any letter of indemnity or shipping guarantee or (as the case may be) sign, endorse or release any air waybill, bill of lading, parcel post receipt or delivery order (collectively, the **Transport Documents**) to facilitate the release of Goods:

(a) HSBC is authorised (but not obliged):

(i) to honour any Claim (including the acceptance of any Document presented) made under any Documentary Credit, Collection or Document relating to any released Goods and to pay the invoiced amount of the Goods or the value of the Goods (whichever is higher) without examining any of the presented Documents and whether or not aware of any discrepancies; and

(ii) to utilise any Transport Documents in HSBC's possession for the redemption of any letter of indemnity or shipping guarantee; and

(b) the Customer shall promptly accept any Document presented for the payment of the relevant Goods (whether discrepant or not) and shall indemnify HSBC and each other Indemnified Party in accordance with Clause 9.2 (*REIMBURSEMENT AND INDEMNITY*).

8.3 Goods and/or Documents are released to the Customer for the purpose of taking delivery of and selling the Goods.

8.4 HSBC may compromise, settle, pay or resist any Claim arising from or in connection with the issuance of any letter of indemnity or shipping guarantee or HSBC signing, endorsing or releasing any Transport Document in such manner as HSBC determines appropriate, without releasing the Customer's obligation and liability to reimburse and indemnify HSBC hereunder.

8.5 The Customer shall redeem and deliver each letter of indemnity or shipping guarantee (if any) to HSBC for cancellation immediately upon receipt of the relevant original Transport Documents.

8.6 The Customer agrees that its Customer Liabilities in respect of a letter of indemnity or shipping guarantee shall continue and shall not be reduced until such letter of indemnity or shipping guarantee has been returned to HSBC and HSBC has been released from all its liabilities under such letter of indemnity or shipping guarantee.

SECTION 2 – REIMBURSEMENT, INDEMNITY AND OTHER RIGHTS

9. REIMBURSEMENT AND INDEMNITY

9.1 The Customer shall upon demand reimburse or pay to HSBC all sums paid (in whatever manner) or due to be paid by HSBC to any person in respect of any Trade Service and shall upon demand pay to HSBC all sums owing at any time by the Customer to HSBC including any principal, interest, commissions, fees, Increased Costs, taxes, customs duties and charges in respect of such Trade Services and any costs and expenses incurred by HSBC in connection with providing such Trade Services.

9.2 The Customer shall indemnify HSBC, each HSBC Group member, and their officers, employees and delegates (each, an **Indemnified Party**) on demand against all direct, indirect and consequential liabilities and losses, payments, damages, demands, claims, expenses and costs (including legal fees and fees, claims, demands and liabilities from a beneficiary or any other person on a full indemnity basis), proceedings, actions and other consequences (collectively, the **Losses**) which any Indemnified Party may suffer, sustain or incur under or in connection with any Trade Service and the enforcement of its rights under these Terms (except where any such Loss is caused by the Indemnified Party's fraud, gross negligence or wilful misconduct). The Customer shall on demand pay to the Indemnified Party the full amount of the Losses.

9.3 The Customer shall, upon request by any Indemnified Party, forthwith appear and defend at the Customer's own cost and expense any action which may be brought against such Indemnified Party in connection with any Trade Service and to provide such assistance as such Indemnified Party may reasonably require.

9.4 HSBC may, at any time and without notice, debit from any bank account which the Customer holds with any HSBC Group member, or deduct from any proceeds held or received by HSBC which are due to the Customer, any Customer Liabilities outstanding at that time (even if such debit or deduction would cause the relevant bank account to become overdrawn).

9.5 The indemnities contained in these Terms shall not be in any way discharged or diminished, nor shall the liability of the Customer be affected by reason of HSBC or any person from time to time, varying, realising or releasing any of the same, or granting any time, indulgence or concession or compounding with any person, or concurring in accepting or varying any compromise, arrangement or settlement, or omitting to claim or enforce payment, or determining, varying, reducing or extending the terms of any Trade Service, or by anything done or omitted which, but for this provision, might operate to discharge or otherwise exonerate the Customer.

10. CASH COLLATERAL

10.1 The Customer shall upon demand pay to such bank account as HSBC may direct cash cover in an amount sufficient to cover the Customer Liabilities or such lesser amount if agreed by HSBC (such amount paid, being **Cash Collateral**).

10.2 If required by HSBC, the Customer will grant to HSBC, in form and substance satisfactory to HSBC, a security interest which is customary in the Governing Jurisdiction in respect of the bank account and such Cash Collateral, and the Customer shall undertake any filing, registration, recording or enrolment of such security interest for it to be perfected and enforceable against the Customer and shall pay any related fees.

10.3 HSBC may, at any time without notice or demand, apply (whether by way of set-off, transfer or otherwise) any or all Cash Collateral towards the payment of any Claim, the repayment of any Trade Finance Loan and/or the satisfaction of any or all other Customer Liabilities.

10.4 Unless HSBC otherwise agrees:

(a) Cash Collateral shall not constitute a debt owed by HSBC to the Customer or any other person and shall not be repayable or refundable (in whole or in part) by HSBC to the Customer or any other person, in each case, until and unless HSBC is satisfied that all the Customer Liabilities have been unconditionally and irrevocably paid and discharged in full; and

(b) no interest shall accrue on Cash Collateral.

10.5 The Customer shall not create or permit to subsist any mortgage, charge, pledge, lien or other security interest or encumbrance over the Cash Collateral, or any bank account in which such Cash Collateral is held (except for any security in favour of HSBC) or assign, transfer or otherwise deal with the same.

11. PLEDGE

11.1 The Customer will pay to HSBC on demand all Customer Liabilities.

11.2 The Customer hereby, to the extent permissible, pledges to HSBC as a continuing security for the Customer Liabilities all Documents and Goods which are at any time in actual or constructive possession or control of HSBC or held on trust for, or to the order of, HSBC whether for custody, collection, security, the making of a Claim or any other reason and whether or not in the ordinary course of banking business and whether in the Governing Jurisdiction or elsewhere.

11.3 To the extent required by HSBC, the Customer shall do all acts (including entering into such further documents) to create, evidence and give the full effect of a pledge over the Documents and Goods as security for the Customer Liabilities.

11.4 If, in the Governing Jurisdiction a pledge (or its equivalent) is required to be registered, filed or otherwise publicly recorded for it to be enforceable, upon request of HSBC the Customer shall take all reasonable action to so register, file and/or record such pledge (including making payment of any related fees).

11.5 Any restriction on the right of consolidating securities shall not apply to the pledge under this Clause 11.

11.6 The risk in any Documents and Goods pledged shall remain with the Customer and neither HSBC nor any other HSBC Group member shall be responsible for any loss or damage or depreciation in value of any Documents or Goods held by HSBC as security.

11.7 If:

- (a) the Customer fails to pay any Customer Liabilities when due or demanded;
- (b) the Customer does not comply with any other provision of these Terms;
- (c) any representation made by the Customer under these Terms is or proves to have been incorrect when made or deemed to have been made;
- (d) the Customer is unable or admits inability to pay its debts as they fall due or the Customer is or is deemed to be insolvent or bankrupt under the laws of its jurisdiction of establishment and/or incorporation (as applicable); or
- (e) the Customer enters into or becomes subject to a reorganisation, a composition or other arrangement with one or more creditors, a winding-up, or any other form of bankruptcy or insolvency process or proceeding,

HSBC may enforce its pledge and may, without demand, notice, legal process or any other action with respect to the Customer or any other person, realise, sell, negotiate or otherwise dispose of all or some of the Documents and the Goods at any time and in any way which it deems expedient free from any restrictions and claims and HSBC shall not be liable for any loss arising out of such realisation, sale, negotiation or disposal.

11.8 All monies received, recovered or otherwise realised by HSBC following the enforcement of the pledge may be credited to a separate interest-bearing suspense account for so long as HSBC determines in order to preserve HSBC's rights towards discharge of the whole of the Customer Liabilities.

12. TRUST RECEIPTS

12.1 Whilst any Customer Liabilities remain outstanding in respect of any Trade Service provided in relation to any Documents or Goods, if any such Documents or Goods are held by or released to the Customer or to its order, the Customer:

- (a) will hold such Documents and Goods (and the proceeds of sale and/or any insurance) on trust for HSBC (or, if a trust is not recognised and enforceable, hold to the order of HSBC) exclusively for the purpose agreed between HSBC and the Customer from time to time in respect of the Trade Service being provided;
- (b) will keep such sale and/or insurance proceeds, and store such Goods, separate from any other property of the Customer and capable of being identified;
- (c) confirms that such Documents and Goods will continue to be subject to the pledge in Clause 11 (*PLEDGE*) but at the risk of the Customer;
- (d) will, at the request of HSBC, execute and deliver to HSBC trust receipts in form and substance satisfactory to HSBC together with any other documentation HSBC may require;
- (e) will comply promptly and fully with any instructions or request which HSBC may give to the Customer in relation to such Documents and Goods;
- (f) will, upon receipt, promptly pay to HSBC the proceeds of sale and/or insurance of the Goods; and

(g) acknowledges that HSBC may at any time take possession and dispose of the Goods, Documents and/or sale and/or insurance proceeds of the Goods.

13. SET-OFF

13.1 HSBC may, at any time and without notice, combine or consolidate all the bank accounts of the Customer held with HSBC and/or set-off any Customer Liabilities against any obligation owed by HSBC to the Customer (including in respect of any Cash Collateral, or proceeds received or held by HSBC), regardless of the place of payment, booking branch or currency of either obligation.

13.2 To effect any set-off HSBC may convert to a currency any amount which is in a different currency at the relevant Exchange Rate.

13.3 If any Customer Liabilities are unliquidated or unascertained, HSBC may apply or set off an amount estimated by it in good faith to be the amount of that liability.

14. SUPPLEMENTARY RIGHTS

14.1 HSBC's rights under these Terms are to be in addition to and are not to be in any way prejudiced or affected by any one or more other indemnities, guarantees, securities or other obligations which HSBC may now or subsequently hold whether from the Customer or any other person.

14.2 HSBC may enforce its rights under these Terms or in respect of any other indemnities, guarantees, securities or other obligations which HSBC may now or subsequently hold whether from the Customer or any other person in any order it chooses and the Customer waives any rights it may have which provide otherwise.

SECTION 3 – FEES AND PAYMENTS

15. FEES, COMMISSION, INTEREST AND CHARGES

15.1 Unless otherwise agreed in writing with the Customer:

(a) fees and other charges (other than interest and commission) shall be payable by the Customer to HSBC in respect of each Trade Service at the rates, in the amounts, and at the times agreed in the relevant Application, Facility Agreement or Tariff Book or as otherwise in accordance with HSBC's standard practices;

(b) interest shall be payable by the Customer to HSBC upon demand in respect of any Trade Finance Loan or Finance, shall accrue on the amount of such Trade Finance Loan or Finance for the period from the date HSBC provides such Trade Finance Loan or Finance to the date such Trade Finance Loan or Finance is repaid or settled in full, and shall be calculated by reference to the rates agreed in the relevant Application, Facility Agreement or Tariff Book or as otherwise in accordance with HSBC's standard practices;

(c) interest shall be payable by the Customer to HSBC upon demand in respect of any Claim paid by HSBC, shall accrue on the amount of the Claim for the period from the date HSBC pays such Claim to the date the Customer Liabilities resulting from such Claim are reimbursed in full, and shall be calculated by reference to the rates agreed in the relevant Application, Facility Agreement or Tariff Book or as otherwise in accordance with HSBC's standard practices; and

(d) commission shall be payable by the Customer to HSBC upon demand in respect of any Documentary Credit or Instrument and shall be calculated by reference to the face value of such Documentary Credit or Instrument and the rates agreed in the relevant Application, Facility Agreement or Tariff Book or as otherwise in accordance with HSBC's standard practices.

15.2 Any fee, interest or commission accruing in respect of a Trade Service will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days or, in any case where the market practice in the relevant Governing Jurisdiction differs, in accordance with that market practice.

15.3 Any fee, commission, interest or charge payable by the Customer to HSBC is non-refundable.

15.4 If the Customer fails to pay any amount payable by it under these Terms on its due date, default interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at the rate agreed in the relevant Application, Facility Agreement or Tariff Book or as otherwise in accordance with HSBC's standard practices.

16. PAYMENTS

16.1 Payments by the Customer shall be made to HSBC in immediately available, freely transferable, cleared funds and as specified by HSBC, without any set-off, counterclaim, withholding or conditions of any kind unless compelled by law.

16.2 All amounts paid or payable to HSBC in respect of any Trade Service are expressed on a Tax-exclusive basis. The Customer must pay any relevant Tax (as necessary) on any amount that the Customer is required to pay HSBC.

16.3 If any deduction or withholding is required by law (including on account of any Tax), the Customer must:

(a) increase the sum payable so that, after making the minimum deduction or withholding required, HSBC will receive and be entitled to retain a net sum at least equal to the sum that HSBC would have received had that deduction or withholding not been made; and

(b) within 30 days of such payment, forward to HSBC the confirmation in writing from the relevant tax authority evidencing receipt by the relevant tax authority of that deduction or withholding.

16.4 Unless HSBC agrees otherwise, each payment by the Customer to HSBC shall be made in the currency of the relevant Customer Liability for which that payment is being made and the Customer waives any right it may have in any jurisdiction to pay such payment in another currency. If HSBC receives a payment from the Customer or any other person in a currency which is not the currency in which that payment was due or if any Cash Collateral needs to be converted into another currency so that HSBC may apply it to satisfy any outstanding Customer Liabilities in another currency, HSBC shall undertake that conversion using the relevant Exchange Rate (or, if applicable, pursuant to the terms of any hedging agreement that the Customer and HSBC may have entered into for these purposes). Where HSBC undertakes any currency

conversion permitted by these Terms, the Customer shall indemnify HSBC for any cost, loss or liability incurred by HSBC in undertaking the conversion.

16.5 If any payment due from the Customer, or any order, judgment or award given or made in relation to any payment due from the Customer, has to be converted into another currency for the purpose of making or filing a claim or proof against the Customer or any other person, or obtaining or enforcing an order, judgment or award, the Customer shall indemnify HSBC against any cost, loss or liability arising out of or as a result of the conversion.

16.6 Any notice from, or determination by, HSBC of a rate or amount under these Terms, a Trade Service or any document referred to in these Terms shall (unless it contains an obvious error) be conclusive evidence of that rate or amount. In any legal proceedings connected with these Terms and/or a Trade Service, the account entries of HSBC are prima facie evidence of the matters to which they relate.

16.7 Any moneys paid to HSBC in respect of the Customer Liabilities may be applied in or towards satisfaction of the same or credited to a separate suspense account for so long as HSBC determines in order to preserve HSBC's rights towards discharge of the whole of the Customer Liabilities.

16.8 Moneys received by HSBC shall be applied by it (unless otherwise mandatorily required by law):

- (a) first, in discharging all costs, fees and expenses (including legal fees) owing by the Customer to HSBC;
- (b) second, in or towards the discharge of any interest or other amounts (not being principal) owing to HSBC; and
- (c) thirdly in or towards the discharge of any principal owing by the Customer to HSBC.

16.9 If any moneys paid to HSBC in respect of the Customer Liabilities are required to be repaid by virtue of any law relating to insolvency, bankruptcy or liquidation or for any other reason, HSBC may enforce these Terms and the relevant Trade Service as if such moneys had not been paid.

16.10 Any sums that would fall due on a day other than a Business Day will be due on the next Business Day. In such event, interest and commission calculations will be adjusted accordingly.

16.11 If any amount to be paid by the Customer to HSBC in connection with a Trade Service is calculated by reference to a published benchmark interest rate (such as a central bank reference rate) and that rate is less than zero per cent at the time of calculation, such rate shall be deemed to be zero per cent.

SECTION 4 – REPRESENTATIONS, UNDERTAKINGS AND SANCTIONS

17. REPRESENTATIONS AND WARRANTIES

17.1 In addition to other representations and warranties made by the Customer to HSBC, the Customer represents and warrants to HSBC that:

- (a) it is duly established and/or incorporated under the laws of its jurisdiction of establishment and/or incorporation (as applicable), is validly existing and has full power to carry on its business as now being conducted, to own its assets and to enter into and perform its obligations under these Terms, and shall promptly notify HSBC of any change to its constitution or existence;
- (b) the obligations expressed to be assumed by it in these Terms and in each Trade Transaction which it may enter into from time to time are legal, valid, binding and enforceable obligations;
- (c) all authorisations, consents, approvals, resolutions, licences, exemptions, filings, notarisations or registrations required or desirable to enable it lawfully to enter into, exercise its rights and comply with its obligations under these Terms and each Trade Transaction have been obtained or effected and are in full force and effect;
- (d) these Terms and each Trade Transaction which it may from time to time enter into do not and will not conflict with its constitutional documents or any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument;
- (e) each Trade Service requested by or for the Customer relates to a genuine Trade Transaction as described in the documents pertaining to such Trade Transaction and all documents and information (including in any Application) provided by the Customer to HSBC in relation to each Trade Service or these Terms is/are complete, accurate, genuine and valid;
- (f) it has not taken any corporate action, or any other steps and no legal proceedings have been commenced for its liquidation, judicial management, receivership, or any similar or analogous proceedings or for the appointment of a receiver and manager, judicial manager, liquidator or similar officer of it or of all or any material part of its assets or revenues;
- (g) any Documents, Goods or proceeds of sale in which HSBC has or is purported to have an interest are free from any security interest(s) and encumbrance(s) (other than in favour of HSBC) and the Customer is the sole and beneficial owner of any such Documents, Goods or proceeds of sale;
- (h) as at the date HSBC provides Finance to the Customer in respect of a Document or Documentary Credit, it is not aware of any dispute (actual, pending or threatened) in respect of that Document or Documentary Credit or the relevant Trade Transaction; and
- (i) as at the date HSBC provides Finance to the Customer in respect of a Document or Documentary Credit or provides a Trade Finance Loan to the Customer, it has not received any financing in respect of that Document, Documentary Credit or the relevant Trade Transaction from any person other than HSBC.

17.2 All representations and warranties in these Terms are deemed to be made on each day (a) an Application is made and is being processed, (b) any Trade Service is outstanding and (c) any Customer Liabilities remain outstanding.

17.3 The Customer acknowledges that HSBC will rely on any representations and warranties made by the Customer including when HSBC assesses whether or not to provide a Trade Service to the Customer.

17.4 The Customer shall promptly notify HSBC on becoming aware of any representation or warranty becoming untrue, or the Customer being unable to make any representation or warranty when repeated.

18. UNDERTAKINGS

General Undertakings

18.1 The Customer shall at the request of HSBC:

- (a) provide HSBC with such information concerning a Trade Transaction (including copies of sale contracts, purchase order and invoices), Documents and Goods and any proposed sale of Goods as HSBC may require and promptly notify HSBC if any Trade Transaction is cancelled or terminated for any reason or if any material dispute arises in respect of a Trade Transaction;
- (b) provide HSBC with such information regarding the financial condition, assets and operations of the Customer and its affiliates as HSBC may reasonably require;
- (c) provide HSBC with any information required by HSBC to satisfy its "*know your customer*" or similar identification procedures;
- (d) keep HSBC informed of the whereabouts of the Goods and of any change in the condition, quality or quantity of the Goods;
- (e) co-operate fully with HSBC and render to HSBC all assistance it requires in the collection and enforcement of any payments under or in connection with any Trade Service whether by legal proceedings or otherwise; and
- (f) promptly do all such acts or execute all such documents at its own cost as HSBC may specify:
 - (i) for the purpose of the creation, perfection, protection or maintenance of any interest conferred or intended to be conferred on HSBC by, pursuant to or in connection with these Terms (including in respect of any Cash Collateral, Documents, Goods or sale proceeds);
 - (ii) for the exercise of any rights, powers and remedies of HSBC provided by, pursuant to or in connection with these Terms or by law; and
 - (iii) to facilitate the realisation by HSBC of any Documents or Goods in which HSBC is, or is intended to be, interested.

Trade Service Undertakings

18.2 The Customer shall, to the extent applicable to a Trade Service and/or where HSBC has or is purported to have an interest in the relevant Documentary Credit, Documents, Goods or proceeds of sale referred to:

- (a) ensure that the Documentary Credit, Documents, Goods or proceeds of sale (as applicable) are free from any mortgage, charge, pledge, lien or other security

interest, encumbrance or claim except for any trust, pledge or other form of security in favour of HSBC or which has been expressly permitted by HSBC;

(b) for so long as the Customer has title to the Goods or if as a condition to the Trade Service the Customer is required to procure the insurance of the Goods:

(i) insure the Goods for such value against such insurable risks as is stipulated in the relevant condition or, in the absence of any such condition, as is customary for those Goods;

(ii) promptly following (and in any event within ten days of) the date of the Application for the relevant Trade Service, provide to HSBC copies of the relevant insurance policies; and

(iii) promptly notify HSBC of any claims made on the relevant insurance policies and direct the insurer to pay to HSBC all insurance proceeds in respect of the Goods;

(c) if so requested by HSBC:

(i) promptly arrange for HSBC's interest in the Goods to be endorsed on any relevant insurance policy; and

(ii) promptly submit claims in respect of the Goods to relevant insurer;

(d) promptly pay to HSBC all insurance proceeds received by it in respect of the Goods and, pending payment, hold such proceeds on trust for HSBC (or, if a trust is not recognised and enforceable, hold to the order of HSBC);

(e) promptly endorse all Documents in favour of HSBC, deposit all Documents with HSBC or to its order and note in its records the interest of HSBC in all Documents and the Goods;

(f) promptly pay all freight, warehouse, dock, transit and other charges, rent and all other costs of and in connection with the Documents and/or Goods;

(g) not permit the Goods to be processed or altered without the prior written consent of HSBC;

(h) not take any action, which might prejudice the value of the Goods or the effectiveness of any pledge or trust under these Terms;

(i) promptly inform HSBC of any event of which it becomes aware that may adversely affect the liability of a buyer to complete the purchase of the Goods or any change or deterioration in the state or quality or otherwise of the Goods;

(j) promptly inform HSBC if it becomes aware of any theft, fraud, illegal activity, loss, damage or other misuse of or in relation to any Goods or Documents;

(k) permit HSBC (or any delegate) access to any premises at which the Goods are stored or located for the purpose of inspecting, taking possession of, or otherwise protecting its interest in the Goods;

(l) not attempt to factor, transfer, sell, dispose of or otherwise deal with the Documents, Goods or proceeds of sale (as applicable), Documentary Credit (or any confirmation (whether given on a disclosed or undisclosed basis)), except as

agreed between HSBC and the Customer from time to time in respect of the Trade Service(s) being provided;

(m) not present the Documents to any other bank, financial institution or similar type of financing entity or obtain any form of financing and/or borrowing in respect of the same Trade Transaction;

(n) not agree to any amendment to the Documentary Credit, SBLC or Document without the prior written consent of HSBC; and

(o) procure the prompt release of HSBC from any guarantee, indemnity or other commitment that HSBC may have provided in respect of the Documents or the Goods,

and HSBC (or any delegate) is authorised to take such steps and to make any payments, on behalf and at the cost of the Customer, to ship, collect, land, store, insure or inspect the Goods and/or to demand and collect any proceeds of sale.

19. COMPLIANCE WITH LAWS AND SANCTIONS

19.1 The Customer represents and warrants that:

(a) neither the Customer nor any of its subsidiaries, directors, officers, employees, agents, or affiliates is a person or entity that is, or is owned or controlled by any person or entity that is:

(i) the subject of any sanctions issued, administered or enforced by the US Department of the Treasury's Office of Foreign Assets Control, the US Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury, the Hong Kong Monetary Authority or any other sanction issuing or enforcement body that may be applicable to HSBC, the Customer, a Trade Service or a Trade Transaction (the **Sanctions**); or

(ii) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions;

(b) any required import or export licenses applicable to each Trade Transaction have been obtained and, if the Customer is aware that HSBC may require an export license or other authorisation for the provision of the relevant Trade Service for the Customer, the Customer will notify HSBC prior to HSBC providing the Trade Service; and

(c) the Customer is compliant in all material respects with foreign and domestic laws and regulations pertaining to each jurisdiction in which it operates and to each Trade Transaction and the subject matter of such Trade Transaction including, if applicable, the shipment and financing of the goods described in such Trade Transaction or the associated documents.

19.2 The Customer acknowledges and agrees that:

(a) HSBC Group and its service providers are required to act in accordance with the laws and regulations of various jurisdictions, including those which relate to Sanctions, export controls and the prevention of money laundering, terrorist financing, bribery, corruption and tax evasion;

(b) at any time, HSBC may require the Customer to immediately provide to HSBC information related to any Trade Transaction, including the underlying contract or other documentation;

(c) HSBC may take, and may instruct other HSBC Group members to take, to the extent it is legally permitted to do so under the laws of its jurisdiction, any action (a **Compliance Action**) which it considers appropriate to act in accordance with Sanctions or domestic and foreign laws and regulations. Such Compliance Action may include:

(i) the interception and investigation of any payment, communication or instruction;

(ii) the making of further enquiries as to whether a person or entity is subject to any Sanctions or export control restrictions; and/or

(iii) the refusal to:

(A) issue, renew, extend, transfer or assign a Trade Service;

(B) make payment of any Claim; or

(C) process a Trade Service or instruction that does not conform with Sanctions, export controls or domestic and foreign laws or regulations; and

(d) neither HSBC nor any HSBC Group member will be liable for any loss, damage, delay, or a failure of HSBC to perform its duties under these Terms or a Trade Service:

(i) arising out of or relating to any Compliance Action taken by HSBC, its service providers, or any HSBC Group member; and/or

(ii) being prevented from paying any Claim in respect of a Trade Service or sending or receiving any message or data or taking any other action in connection with any Trade Service because of an applicable law, regulation or ruling of any governmental agency.

SECTION 5 – INSTRUCTIONS AND ELECTRONIC PLATFORMS

20. INSTRUCTIONS

20.1 HSBC is authorised to accept, act and rely upon, and treat as valid and accurate:

(a) all communications, demands and instructions (including any Applications) given or purporting to be given by the Customer to HSBC (an **Instruction**);

(b) all communications and any Claims made or purported to be made by any person; and

(c) any documents provided to HSBC,

including, in each case, those made or given by way of or through a Platform, email, facsimile, telecopier, telex, cable, telephone or such other electronic means (in each

case, an Electronic Means) and is under no obligation to enquire as to the authorisation or validity of any such Instruction, communication, Claim or Document.

20.2 The Customer acknowledges and accepts the risk that communications, Instructions, Claims and documents sent to or from HSBC by Electronic Means may be intercepted, monitored, amended, corrupted, contain viruses or be otherwise interfered with by third parties and acknowledges and agrees that HSBC is not responsible or liable to the Customer or any other person for, and the Customer waives any and all claims in respect of, any Losses arising from the same.

20.3 If the Customer communicates, gives an Instruction, makes a Claim or sends a document by Electronic Means, or instructs HSBC to permit a beneficiary or any other person to do the same, the Customer shall indemnify, and hold HSBC harmless from and against, any and all Losses that HSBC may incur (including in respect of any payment made where the relevant Instruction or Claim was unauthorised).

20.4 Where the Customer has made an Application for any Trade Service to be provided for the benefit of an affiliate of the Customer:

- (a) the Customer agrees (and will procure the concurrent written agreement of its affiliate) that HSBC has no obligation to obtain instructions from the affiliate and HSBC can deal solely with the Customer on behalf of the affiliate;
- (b) the definition of "Trade Transaction" shall be construed to refer to such affiliate rather than the Customer, and the definitions of "Documents" and "Goods" shall be construed accordingly;
- (c) references in these Terms to the Customer presenting, handling, disposing, transferring, dealing with or using (however so described) the relevant Documents, Goods or proceeds of sale shall include the affiliate undertaking any such action;
- (d) the Customer shall procure that the affiliate complies with all undertakings in these Terms in respect of the relevant Trade Transaction, Documents, Goods and proceeds of sale; and
- (e) each representation in these Terms made by the Customer shall be made by the Customer for itself and on behalf of the affiliate or, where it can only be made in respect of the affiliate (due to factual circumstances), by the Customer for and on behalf of the affiliate.

20.5 HSBC has no obligation to:

- (a) verify the identity or authority of any person communicating, giving an Instruction, making a Claim or providing a document by Electronic Means;
- (b) verify the authenticity of any signature(s) (whether electronic or otherwise) on any communication made, Instruction given, Claim made or document provided by Electronic Means; or
- (c) seek the Customer's prior approval before acting on any communication made, Instruction given, Claim made or document provided by Electronic Means,

however HSBC may, in its absolute discretion, take steps to ascertain the validity, authenticity and origin of any communication, Instruction, Claim or document (including

requiring telephone verification of any Instructions) and take any steps that may be mandated by an External Provider and may, where it is unable to ascertain the validity, authority or origin of any communication, Instruction, Claim or document, delay or refuse to act upon any communication, Instruction, Claim or document or suspend or terminate any Trade Service at any time.

21. PLATFORMS

21.1 The Customer acknowledges and agrees that:

- (a) HSBC may rely on External Providers to provide Platforms so that HSBC can perform its obligations under these Terms (or any other applicable terms and conditions) and provide Trade Services;
- (b) External Providers are independent from HSBC and may independently charge the Customer fees for use of their Platform and those fees are the sole responsibility of the Customer;
- (c) HSBC's obligations under these Terms and any Trade Service shall be subject to HSBC's rights under External Terms and Conditions and the availability of any Platform provided by such External Providers;
- (d) HSBC has no obligation to inform the Customer of, or provide the Customer with, any External Terms and Conditions;
- (e) HSBC has no control over the electronic processes used by a Platform provided by an External Provider to process, handle and/or send data or messages;
- (f) it shall inform HSBC of all External Terms and Conditions applicable to or any charges imposed by any Platform which it uses (or intends to use) in respect of any Trade Service and shall promptly notify HSBC of any changes; and
- (g) it shall promptly provide all information concerning any Platform used by the Customer that HSBC may reasonably request.

21.2 HSBC assumes no liability or responsibility to the Customer or to any other person for any loss or damage that is suffered or incurred as a result of:

- (a) the unavailability of any Platform to the Customer, HSBC or any other person for any reason whatsoever; or
- (b) the Customer's use of or connection with any Platform, any External Provider or the services provided by HSBC or any External Provider to the Customer involving any Platform.

21.3 The Customer:

- (a) shall comply with all security procedures of HSBC and each External Provider and any other reasonable requests HSBC or any External Provider may issue to the Customer regarding the security of any Platform, including instructions on steps to remedy any breach of security; and
- (b) acknowledges and agrees that it is the Customer's responsibility to set up, maintain and regularly review all security arrangements concerning access to and use of each Platform and information stored on the Customer's computing and

communications systems, and confirms that it has assessed the security arrangements of each Platform and has determined that they are adequate to protect the Customer's interests;

(c) shall take all reasonable precautions to prevent fraudulent or unauthorised use of or access to each Platform;

(d) shall ensure that neither the Customer nor its employees do anything which may result in the security of any Platform or the systems or security of HSBC being compromised; and

(e) shall notify HSBC, as soon as reasonably possible upon becoming aware, of any actual or attempted unauthorised access to any Platform or any unauthorised transaction or attempt to execute an unauthorised Instruction. This notification must be by telephone but must be followed by written notice within forty-eight hours of the telephone call.

SECTION 6 - OTHER

22. LIMITATION ON LIABILITY

22.1 Neither HSBC nor any other HSBC Group member shall be liable for any loss, damages, payments, demands, claims, expenses or costs suffered or incurred by the Customer (or any of its affiliates) arising from or in connection with these Terms or any Trade Service other than where such loss, damage, payment, demand, claim, expense or cost arises as a direct result of HSBC's or such other HSBC Group member's gross negligence or wilful misconduct.

22.2 Notwithstanding Clause 22.1, in no circumstance whatsoever will HSBC or any HSBC Group member be liable to the Customer (or any of its affiliates) for:

- (a) any loss of business, profits or data; or
- (b) indirect, consequential or special loss or damage,

whether or not HSBC or any HSBC Group member has been advised of the possibility of such loss or damage.

22.3 Without limiting Clauses 22.1 and 22.2, HSBC shall not be responsible or liable for, and the Customer waives all claims against HSBC in respect of:

- (a) any act, omission, loss or delay relating to forwarding documents or payments to any person or correspondent bank, or any suspense, act, omission, insolvency or bankruptcy of any correspondent bank;
- (b) any delay and/or loss in transit of any messages, letters or documents sent by mail, as an electronic communication, through a Platform or a telecommunication channel, or for any delay, mutilation or other errors arising in the transmission or delivery of any communications by third parties and the Customer acknowledges that, notwithstanding any contrary instruction, HSBC may send a document by any method that it considers appropriate;
- (c) any delay in performing or failure to perform any of its obligations under these Terms due to any cause beyond its reasonable control, including, but not limited to, the failure, malfunction or unavailability of telecommunications, data

communications and computer systems and services over which HSBC has no control, war, hostilities, invasion, civil unrest, strikes, lock-outs or other industrial action or trade disputes (whether involving HSBC's employees or any other person) or any law or government order (whether or not having the force of law);

(d) any failure by HSBC to pay a Claim or other HSBC's act or failure to act because of any domestic or foreign law, regulation, ruling or interpretation of any domestic or foreign court or governmental agency;

(e) the form, sufficiency, correctness, genuineness, authority of any person signing or endorsing (including any person making presentations, demands, giving Instructions (including by Electronic Means) to HSBC purportedly on the authority of the Customer or a beneficiary), falsification, or the legal effect of, any documents if such documents on their face reasonably appear to be in order;

(f) the source, accuracy, validity, authenticity, falsification or legal effect of any data, documents or statements made, presented or received from any Platform or any party to a Trade Transaction, any related documents, or the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance to which such data, documents or statements relates, or for the good faith or acts or omissions, solvency, performance or standing of any party to a Trade Transaction, the consignor, carrier, forwarder, consignee, insurer of the goods, or any other person;

(g) any improper acts of the beneficiary, including breach of contract in respect of a Trade Transaction, in which circumstances the Customer shall assume and undertake all such risks; and

(h) the Customer acting or relying on any advice received from HSBC whether or not such advice was requested by the Customer.

22.4 If HSBC uses the services of another party, correspondent bank, agent or Platform for the purposes of issuing an Instrument or Documentary Credit, making payment, handling Goods or Documents or for any other purpose to support the services contemplated by these Terms, HSBC shall do so for the Customer's account and at the Customer's risk and HSBC shall assume no liability or responsibility should any instructions which HSBC gives to any such other party not be carried out even if the choice of such other party was HSBC's. Additionally, HSBC shall not be liable for any act, failure to act, default, suspension, bankruptcy or insolvency of such other party.

22.5 Where HSBC performs a review of any Document at the request of the Customer, such review is indicative only and not final or conclusive and HSBC shall not be responsible or liable for, and the Customer waives all claims against HSBC in respect of, an omission by or failure of HSBC to identify any discrepancies during any such review.

22.6 Where HSBC agrees to advise a Documentary Credit or any Instrument which is not issued by a bank or present any Document in respect of, or otherwise handle, such Documentary Credit or Instrument, the Customer acknowledges and agrees that:

(a) such Documentary Credit or Instrument may not be an independent third party undertaking and may not guarantee payment by the issuer or applicant;

- (b) the applicable ICC Rules may not address, cover or extend to such type of Documentary Credit or Instrument;
- (c) HSBC may not be able to pursue the issuer for payment in the same manner as it would be able to in respect of a Documentary Credit or Instrument issued by a bank; and
- (d) the Customer should seek independent legal advice,

and the Customer assumes all such risks and waives all claims against HSBC for losses, damages, costs, fees, claims, actions or demands with respect to such Documentary Credit or Instrument including any claims that HSBC failed to alert the Customer that it was advising such type of Documentary Credit or Instrument, failed to pay such Documentary Credit or Instrument in the manner of a Documentary Credit or Instrument issued by a bank, or failed to collect payment from the issuer of such Documentary Credit or Instrument.

22.7 Subject to the provisions above, where any liability of HSBC or any HSBC Group member to the Customer (or any of its affiliates) arises under these Terms or in connection with any Trade Service, such liability shall not exceed USD 1,000,000 in aggregate in any calendar year.

23. DISCLOSURE, CONFIDENTIALITY AND PRIVACY

23.1 Without limiting any other terms between the Customer and HSBC or any HSBC Group member, HSBC is authorised:

- (a) to appoint any other person as its correspondent, nominee or agent in connection with these Terms and any Trade Service and HSBC may delegate any of its powers under these Terms or a Trade Service to such person;
- (b) to notify any other person of its interest in any Documents, Goods or proceeds of sale; and
- (c) to transfer and disclose any Customer Information to the following recipients (who may also process, transfer and disclose such Customer Information):
 - (i) any HSBC Group member and any of its or their officers, directors, employees, professional advisors, insurers, brokers, auditors, partners, sub-contractors, correspondents, nominees, agents, delegates, service providers (including External Providers and Platforms) and associates;
 - (ii) any Authorities;
 - (iii) anyone acting on the Customer's behalf, payment recipients, beneficiaries, account nominees, intermediary, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, and companies in which the Customer has an interest in securities (where such securities are held by HSBC for the Customer);
 - (iv) any person or entity who acquires (or may acquire) an interest in or assumes (or may assume) risk in or in connection with any Trade Service;

(v) any other financial institutions, credit reference agencies or credit bureaus, for obtaining or providing credit references; and/or

(vi) any person or entity in connection with any HSBC Group business transfer, disposal, merger or acquisition, wherever located, including in jurisdictions which do not have data protection laws that provide the same level of protection as the jurisdiction in which the Trade Service is supplied,

including where the recipient of any such appointment, notification, transfer or disclosure is located outside of the relevant Governing Jurisdiction.

23.2 HSBC will not be liable for the acts or omissions of any External Provider as to the collection, use or disclosure by that External Provider of Customer Information.

23.3 Where the Customer has given HSBC information about natural persons (such as authorised signatories), the Customer confirms that those natural persons have authorised the Customer to do so (and to receive any data protection notices on their behalf) and have consented to HSBC's collection, use, storage, processing, transfer and disclosure of their Personal Data and data for the purpose of HSBC carrying out any action contemplated by these Terms or providing a Trade Service to or for the Customer.

23.4 The Customer shall ensure that any information that the Customer asks HSBC to forward to third parties is complete, accurate and will not give rise to any claim against HSBC (including any claim in defamation, in relation to privacy, banking secrecy or data protection or for infringement of any other third party rights) and the Customer confirms and represents that it has obtained the requisite consent and/or waiver (where required) for HSBC to forward such information.

24. MISCELLANEOUS

24.1 Other than a Trade Service which has been provided on an irrevocable or committed basis, HSBC may at any time withdraw a Trade Service or refuse to provide a Trade Service in its absolute discretion.

24.2 Any waiver, release or consent by HSBC under or in respect of these Terms or a Trade Service will only be effective if made in writing (which may be made through a Platform).

24.3 HSBC may at any time change these Terms by providing the Customer with at least 30 days' written notice and any Trade Service requested on or after the effective date in such notice shall be subject to the amended Terms.

24.4 HSBC is authorised to take such steps and to make such payments as it considers necessary, at the cost of the Customer, to remedy any default by the Customer in respect of its obligations under these Terms or any Trade Service.

24.5 Neither HSBC's failure to exercise, nor HSBC's delay in exercising, any of its rights or remedies under these Terms or in respect of a Trade Service shall operate as a waiver of any such right or remedy, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of any other right or remedy.

24.6 The Customer may not assign or transfer any of its rights or obligations under these Terms or a Trade Service. HSBC may assign, transfer or create security over

any of its rights under or in respect of these Terms or a Trade Service without restriction or notice.

24.7 Without prejudice to Clause 20 (*INSTRUCTIONS*), any notices by the Customer in connection with these Terms or a Trade Service must be given to HSBC in writing at the address of HSBC most recently advised by HSBC to the Customer. HSBC may give notice to the Customer in person, by telephone or facsimile, by post, through a Platform or, if agreed by the Customer, through another electronic channel at the address or number most recently notified by the Customer to HSBC. A notice sent by post will be deemed to have been received 7 calendar days after posting if within the same country, or 15 calendar days after posting if cross border.

24.8 Each of the provisions of these Terms is severable and distinct from the others and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions shall not be affected in any way.

24.9 If the Customer includes two or more persons, the obligations and liabilities of these persons under or in respect of a Trade Service and these Terms shall be joint and several.

24.10 Nothing in these Terms shall be deemed to create any partnership, joint venture or relationship of principal and agent between HSBC and the Customer or create or give rise to any fiduciary relationship of any nature.

24.11 To the extent permitted by the laws of the Governing Jurisdiction, the Customer irrevocably waives any right of sovereign immunity from suit, jurisdiction or adjudication (including in respect of pre-judgement interim relief and execution of any judgement) that it may have in the Governing Jurisdiction or otherwise, whether that immunity relates to itself or to any commercial or non-commercial assets (including land, bank accounts or other assets held in the name of a diplomatic mission or otherwise or belonging to the Customer's central bank or other monetary authority).

24.12 These Terms are for the benefit of the Customer, HSBC and each HSBC Group member, and are not intended to benefit any other third party or be enforceable by any other third party. Any rights of HSBC to bring to an end or change these Terms or any contract to which they form part are not subject to the consent of any other third party.

25. GOVERNING LAW AND JURISDICTION

25.1 For the purposes of a Trade Service:

- (a) that Trade Service and these Terms will be governed by the laws of the Governing Jurisdiction; and
- (b) the courts of the Governing Jurisdiction shall have non-exclusive jurisdiction to settle any disputes that may arise out of, or in connection with, that Trade Service and these Terms, their interpretation or any non-contractual obligations arising from or connected with them.

25.2 If a process agent is specified in an Application or Facility Agreement in respect of a Trade Service, service of any legal process on the person whose name and address is specified in such Application or Facility Agreement shall constitute service on the Customer.

25.3 If no process agent has been appointed by the Customer, upon request from HSBC the Customer will, within five Business Days, appoint a process agent (with an office in the Governing Jurisdiction) for service of all legal process relating to these Terms and the relevant Trade Service on the Customer and the Customer will notify the process agent's address to HSBC. If the Customer does not do this, HSBC may appoint a process agent on the Customer's behalf and at its expense and shall, as soon as practicable, notify the Customer of such appointment.

SECTION 7 – DEFINITIONS AND INTERPRETATION

26. DEFINITIONS AND INTERPRETATION

26.1 In these Terms:

Application means an application, instruction or request by the Customer for a Trade Service (whether for itself or for another person) using an application form, or pursuant to the terms of a Facility Agreement or made using a Platform.

Authorities includes any judicial, administrative, public or regulatory body (including any self-regulatory body), any government, any tax authority, any securities or futures exchange, any court, any central bank or law enforcement body, or any of their agents, with jurisdiction (direct or indirect) over any part of the HSBC Group at any time.

Back-to-Back Documentary Credit has the meaning given to it in Clause 3.14 (*DOCUMENTARY CREDITS*).

Business Day means, in respect of a Trade Service, a day on which banks are open for general business in the Governing Jurisdiction.

Cash Collateral has the meaning given to it in Clause 10 (*CASH COLLATERAL*).

Claim means any demand, request for payment or for acceptance and payment, claim, presentation or drawing made in respect of a Trade Service by a beneficiary, the Customer or any other person.

Collection means a collection transaction in respect of the handling of Documents where HSBC may act as either a remitting bank, collecting bank or presenting bank.

Compliance Action has the meaning given to it in Clause 19 (*COMPLIANCE WITH LAWS AND SANCTIONS*).

Country Conditions means HSBC's additional terms and conditions for the country in which the HSBC entity providing the relevant Trade Service is located.

Customer means the person who requests the relevant Trade Service and with whom HSBC contracts with respect to the provision of that Trade Service (and, without limitation, as may be specified in the relevant Application). If HSBC provides a Trade Service to a person that is not a customer of HSBC, references in these Terms to the "Customer" shall apply to that person even though that person is not a customer of HSBC.

Customer Information means any Personal Data, confidential information, and/or Tax Information (including accompanying statements, waivers and consents) of either the Customer, or a person or entity whose information (including any Personal Data or Tax Information) which the Customer provides, or which is provided on the Customer's behalf, to any HSBC Group member in connection with the provision of any Trade Service.

Customer Liabilities means at any time:

- (a) all liabilities of the Customer to HSBC or any HSBC Group member (including arising under or in connection with any Trade Service and these Terms) incurred in any currency and in any capacity and whether present or future, actual or contingent, direct or indirect, or incurred alone or jointly with any other person;
- (b) interest on such liabilities (both before and after any demand or judgment) to the date on which HSBC or any such HSBC Group member receives payment, at the rates payable by the Customer or which would have been payable but for any circumstances which restricts payment;
- (c) any costs and expenses incurred by HSBC or any HSBC Group member in making payment under or in respect of a Trade Service on behalf of the Customer (but without HSBC being under any obligation to do so) as a result of failure by the Customer to make such payment when due or demanded; and
- (d) all costs and expenses (including legal fees on a full indemnity basis) of HSBC or any HSBC Group member in perfecting or enforcing its rights under or in respect of a Trade Service and these Terms.

Documentary Credit means a documentary credit or letter of credit or any commitment to issue a documentary credit or letter of credit (including any extension, renewal or amendment of the same).

Documents means any drafts, bills of exchange, promissory notes, cheques, documents of title, certificates, invoices, statements, transport documents, insurance policies, warehouse warrants, warehouse receipts or any other similar instruments relating to a Trade Transaction in respect of which HSBC has provided Trade Service(s) to the Customer.

Electronic Means has the meaning given to it in Clause 20 (*INSTRUCTIONS*).

Exchange Rate means HSBC's spot rate of exchange (or if HSBC does not have an available spot rate of exchange for the relevant currency, any other publicly available spot rate of exchange selected by HSBC) for the purchase of the required currency in the relevant foreign exchange market at the relevant time using the currency in which the relevant payment was paid (where any such spot rate of exchange shall be selected by HSBC acting reasonably in the circumstances).

External Provider means a person (other than HSBC) that makes any Platform available to HSBC and/or the Customer.

External Terms and Conditions means any agreement which is entered into between an External Provider and either HSBC or the Customer setting out the terms and conditions applicable to HSBC's or the Customer's use of a Platform.

Facility Agreement means a letter or agreement between the Customer and HSBC pursuant to which HSBC agrees to provide to the Customer a facility in respect of Trade Services.

Finance means discounting, negotiating, purchasing, prepaying, early paying or endorsing a Document (whether or not drawn under a Documentary Credit or Collection) or Documentary Credit and **Financed** and **Finances** shall be construed accordingly. For the avoidance of doubt, **Finance** does not include a Trade Finance Loan.

Goods means the goods or products which are the subject of a Trade Transaction in respect of which HSBC has provided Trade Service(s) to the Customer.

Governing Jurisdiction means the jurisdiction in which the relevant HSBC entity providing the Trade Service is located or such other jurisdiction agreed in writing between the Customer and HSBC or specified in the relevant Country Conditions.

HSBC means the HSBC Group member (or, if applicable, the branch of such HSBC Group member) providing the relevant Trade Service, and its successors and assigns and, where the context permits, includes any person appointed by HSBC under Clause 23.1(a) (*DISCLOSURE, CONFIDENTIALITY AND PRIVACY*).

HSBC Group means HSBC Holdings plc and its subsidiaries and affiliates from time to time.

ICC means the International Chamber of Commerce.

Increased Costs means a reduction in the rate of return from a Trade Service or on HSBC's overall capital, an additional or increased cost or a reduction of any amount due and payable under these Terms or in respect of a Trade Service, which is incurred or suffered by HSBC to the extent that it is attributable to HSBC performing its obligations under these Terms or a Trade Service.

Indemnified Party has the meaning given to it in Clause 9 (*REIMBURSEMENT AND INDEMNITY*).

Instruction has the meaning given to it in Clause 20 (*INSTRUCTIONS*).

Instrument means any SBLC, demand guarantee (including an avalisation, co-acceptance or acceptance of a Document), bond, counter-guarantee, counter-SBLC, or similar independent payment obligation (including any extension, renewal or amendment of the same).

Losses has the meaning given to it in Clause 9 (*REIMBURSEMENT AND INDEMNITY*).

Master Documentary Credit has the meaning given to it in Clause 3.14 (*DOCUMENTARY CREDITS*).

Personal Data means any information relating to an individual from which such individual can be identified, including sensitive personal data, name(s), residential address(es), contact information, age, date of birth, place of birth, nationality, citizenship, personal and marital status.

Platform means any electronic platform (a) used by HSBC, the Customer or any other person for giving or receiving any Instruction, Claim or other communication in relation to any Trade Service, and/or (b) used by HSBC or any other person for issuing or providing any Trade Service, and shall include HSBCnet.

Recourse Event means in respect of a Trade Service:

- (a) any misrepresentation, alleged or actual fraud, illegality or unauthorised act of the Customer and/or any other party to the Trade Transaction;
- (b) any alleged or actual invalidity, non-compliance or unenforceability of the Documentary Credit, SBLC, Document(s) or Trade Transaction (as applicable); or
- (c) any injunction, court order, law, regulation or Sanctions which restrict any payment (whether to or from HSBC and/or not subsequently discharged).

SBDC means a standby documentary credit.

SBLC means a standby letter of credit (which includes an SBDC).

Sanction has the meaning given to it in Clause 19 (*COMPLIANCE WITH LAWS AND SANCTIONS*).

Security Agreement means any document creating security or quasi-security over any of the Customer's rights and/or assets in support of any obligations which the Customer may have to any HSBC Group member from time to time.

Tariff Book means, if applicable in the relevant jurisdiction, HSBC's tariff book setting out HSBC's fees, commissions, interest rates and other rates for Trade Services as is available upon request by the Customer and/or can be accessed online.

Tax includes goods and services tax, value added tax, sales tax, stamp duty or any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding which is levied or imposed by a government agency, and any related interest, penalty, charge, fee or other amount (but does not include tax on the overall net income of HSBC).

Tax Information means any documentation or information (and accompanying statements, waivers and consents) relating, directly or indirectly, to the Customer's tax status and the tax status of any owner, "controlling person", "substantial owner" or beneficial owner of the Customer.

Trade Finance Loan means a loan, advance, credit or other financial accommodation provided by HSBC to the Customer in respect of a Trade Transaction.

Trade Service includes:

- (a) the issue of a Documentary Credit and instructing any advising bank, nominated bank or confirming bank in relation to such Documentary Credit;
- (b) acting as the advising bank, nominated bank or confirming bank (on a disclosed or undisclosed basis) in relation to a Documentary Credit;
- (c) the issue of an Instrument and/or instructing any correspondent bank in relation to, and issuing an counter-guarantee, counter-SBLC or indemnity in respect of, an Instrument;
- (d) acting as the advising bank, confirming bank or correspondent bank in relation to an Instrument;
- (e) the handling of a Documentary Credit, Instrument or Document;
- (f) Collections;
- (g) the provision of any Finance;
- (h) the provision of a Trade Finance Loan;
- (i) the issue of a letter of indemnity or shipping guarantee and/or the signing, endorsement or release of any Transport Document;
- (j) the release of Documents;
- (k) any other service or product relating to a Trade Transaction provided, by HSBC to, at the request of, or in respect of the Customer.

Trade Transaction means a transaction involving the sale or purchase by the Customer of goods or services from/to a third party, and includes any contract(s) on which such transaction may be based.

Transport Documents has the meaning given to it in Clause 8 (*APPLICATIONS FOR RELEASE OF GOODS, SHIPPING GUARANTEES AND LETTERS OF INDEMNITY*).

USD means the lawful currency of the United States of America.

26.2 Unless contrary indication appears, any reference in these Terms to:

an **Application** or **Trade Service** (and any reference in an Application to a **Trade Service**) includes (where applicable) the contract created between the Customer and HSBC by HSBC accepting that Application by providing or undertaking that Trade Service;

(a) the **Customer, HSBC** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under these Terms, an Application, a Facility Agreement or Country Conditions;

(b) **include** or **including** means include or including "without limitation";

(c) HSBC making a determination or decision or undertaking an action means that HSBC is making or undertaking, and is permitted to make or undertake, such determination, decision or action in its sole discretion or opinion without reference to, or consent from, the Customer or any other person;

(d) an authorisation or confirmation by, or instruction from, the Customer means that such authorisation, confirmation or instruction is irrevocable unless waived by HSBC;

(e) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);

(f) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

(g) these **Terms** include the Country Conditions;

(h) these **Terms** or any other agreement or instrument is a reference to these Terms or, as the case may be, other agreement or instrument as amended, supplemented, novated and/or replaced from time to time;

(i) the singular shall include the plural and vice versa; and

(j) section and clause headings are for ease of reference only.

In addition to these Terms being incorporated into each Application, these Terms may also be incorporated by HSBC into a Facility Agreement or any other document or agreement.

STANDARD TRADE TERMS

COUNTRY CONDITIONS

CANADA

1. APPLICATION

1.1 These Country Conditions are supplemental to, and form part of, the Standard Trade Terms (the **Terms**) which the Customer has accepted and/or may accept from time to time.

1.2 Any terms defined in, or construed for the purposes of, the Terms have the same meanings when used in these Country Conditions (unless the same are otherwise defined in these Country Conditions).

1.3 These Country Conditions shall apply where the HSBC entity providing the relevant Trade Service is located in Canada.

2. ADDITIONAL/SUPPLEMENTAL TERMS AND CONDITIONS

2.1 The Governing Jurisdiction is the province of Canada in which the branch of HSBC Bank Canada that holds the deposit account of the Customer is located. If the Customer does not have a deposit account at HSBC Bank Canada, the Governing Jurisdiction is the province Ontario, Canada.

2.2 The Customer agrees that any action or proceeding with respect to the Terms (or any agreement into which they are incorporated) or any judgment entered by any court in respect thereof may be brought in the Governing Jurisdiction, and the Customer irrevocably submits to the jurisdiction of such courts for the purpose of any such action, proceeding or judgement.

2.3 Nothing in these Terms shall affect any right that HSBC may otherwise have to bring any action or proceeding relating to the Terms (or any agreement into which they are incorporated) against the Customer or its properties in the courts of any other jurisdiction.

2.4 THE CUSTOMER WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY OUT OF OR RELATING TO A TRADE SERVICE OR THE TERMS OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

2.5 For the purposes of complying with the *Interest Act* (Canada), where interest is calculated in connection with a Trade Service at a rate based on a 360 or 365 day period, the yearly rate or percentage of interest to which such rate is equivalent is such rate multiplied by the actual number of days in the year (365 or 366, as the case may be) divided by 360 or 365 respectively. The Customer confirms that it fully understands and is able to calculate the rate of interest applicable to the Trade Services based on the methodology for calculating annual rates described in this paragraph and hereby irrevocably agrees not to plead or assert, whether by way of

defence or otherwise, in any proceeding relating to the Terms, a Trade Service or any other document executed in connection with a Trade Service, that the interest payable under these Terms or in respect of a Trade Service and the calculation thereof has not been adequately disclosed to it as required pursuant to Section 4 of the *Interest Act* (Canada).

2.6 Where these Terms are to be construed in accordance with the laws of the province of Quebec and for all other purposes pursuant to which the interpretation of these Terms may be subject to the laws of Quebec or a court or tribunal exercising jurisdiction in the province of Quebec: (i) where an Application is signed by more than one Customer, each such Customer shall be solidarily liable with one another and waives all benefits of division and discussion, (ii) any right of “set-off” shall include a right of “compensation”, (iii) an “agent” shall include a “mandatary”, (iv) “joint and several” and “jointly and severally” shall include “solidary” and “solidarily”, and (v) a “corporation” shall include a “company”.

2.7 Where applicable, the Customer hereby waives all rights to receive a copy of any financing statement, financing change statement or verification statement filed at any time and from time to time in respect of security interests granted by the Customer to the Bank herein, to the fullest extent permitted by applicable law.

2.8 The Customer may cancel any Application by providing written notice to HSBC within three (3) business days of execution of such Application. A cancellation fee will not be charged. However, if HSBC has initiated or completed the Trade Service requested in such Application in any manner, then these Terms as well as any fees or charges incurred continue to apply to all such initiated or completed Trade Services.

2.9 It is the express wish of the parties that this Agreement and any supplemental documents be drawn up and executed in English. ***Les parties conviennent que la présente convention et tous les documents s’y rattachant soient rédigés en anglais.***

This is **Exhibit “F”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor



HSBC Bank Canada

GENERAL SECURITY AGREEMENT (Ontario)

This Agreement made as of the .9th day of April, 2021.

Between:

DMI EXIM LIMITED

10 Falconer Drive, Suite 3
Mississauga, Ontario L5N 3L8

(hereinafter called the “Debtor”)

and:

HSBC BANK CANADA

4550 Hurontario Street
Mississauga, Ontario L5R 4E4

(hereinafter called the “Bank”)

As continuing security for the payment and performance of all Indebtedness (as defined below), the Debtor hereby enters into this Agreement with the Bank for valuable consideration and as continuing security for the payment and performance of all indebtedness and liabilities of any kind, now or hereafter existing, direct or indirect, absolute or contingent, joint or several, matured or unmatured, of the Debtor to the Bank, whether as principal or surety or indemnifier, together with all expenses (including legal fees on a full indemnity basis) incurred by or on behalf of the Bank, its receiver or agent in the preparation, perfection and enforcement of security or other agreements held by the Bank in respect of such indebtedness, liabilities and interest thereon (all of which present and future indebtedness, liabilities, expenses and interest are herein collectively called the “**Indebtedness**”).

For the purposes of this Agreement:

“**Business Day**” means a day, (other than a Saturday, Sunday or statutory or civic holiday) upon which the Bank is open for business at the Branch of the Bank described above.

“**Collateral**” means all the present and future property, assets and undertaking of the Debtor mortgaged, charged, pledged, assigned, hypothecated, transferred or otherwise made subject to the Security Interest pursuant to this Agreement.

“**Contractual Right**” means any agreement, right, franchise, licence, authorization, approval, privilege or permit (a) to which the Debtor is now or hereafter becomes a party, (b) in which the Debtor now or hereafter has any interest or (c) of which the Debtor is or hereafter becomes a beneficiary.

“**Credit Agreement**” means the facility letter, commitment letter, credit agreement or other loan document, if any, between the Debtor and the Bank setting out the terms and conditions under which the Bank might provide loans or other credit to the Debtor, as it may be amended, extended, restated or replaced from time to time.

“**Encumbrances**” means any lien, charge, mortgage, security interest, hypothec, other encumbrance or adverse claim to any property, assets or undertaking.

“**Intellectual Property**” means all patents, trademarks, trade names, business names, trade styles, logos and other business identifiers, copyrights, technology, inventions, industrial designs, know-how, trade secrets and other industrial and intellectual property in which the Debtor now or in the future has any right, title or interest, including without limitation any industrial or intellectual property specifically listed or otherwise described in Schedule “C” hereto.

“**Investment Collateral**” means all present and future Investment Property (as such term is defined in the PPSA) and Financial Assets (as such term is defined in the STA) of the Debtor, including all present and future options and warrants of the Debtor and all other rights and entitlements arising therefrom or related thereto, and the Debtor’s present and future interests in partnerships, limited partnerships, limited liability partnerships and limited liability companies, and including all substitutions for any of the foregoing and dividends and income derived therefrom or payable in connection therewith.

“**Permitted Encumbrances**” means any and all liens, charges, mortgages, security interests, hypothecs and other encumbrances which affect all or any portion of the Collateral and which have been consented to in writing by the Bank which, as at the date hereof, are the

liens, charges, mortgages, security interests, hypothecs and other encumbrances (if any) listed in **Schedule "B"** hereto.

"**Person**" means as the context requires any individual, partnership, firm, company, corporation, unlimited liability corporation or other body corporate, government, governmental body, agency or trust.

"**PPSA**" means the *Personal Property Security Act* (Ontario) as amended from time to time and any legislation substituted therefor and any amendments thereto.

"**Receiver**" has the meaning provided for in Section 28 below.

"**Security Interest**" has the meaning provided for in Section 1 below.

"**STA**" means the *Securities Transfer Act, 2006* (Ontario) as amended from time to time and any legislation substituted therefor and any amendments thereto.

Unless otherwise defined herein, all other capitalized terms used herein shall have the meanings ascribed to them in the PPSA.

A. Grant of Security Interests

1. As continuing security for the payment and performance of all Indebtedness, the Debtor hereby mortgages, charges, pledges, assigns, hypothecates, transfers and grants a security interest (collectively, the "**Security Interest**") to the Bank in all of the Debtor's right, title and interest in and to its present and after-acquired property, assets and undertaking of whatsoever nature and kind and wherever situate, including:
 - (a) all present and future Equipment of the Debtor, including all of its present and future machinery, fixtures, plant, tools, furniture, apparatus, plant furniture, fixtures, books, records, documents, vehicles of any nature, kind or description, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing, and all drawings, specifications, plans and manuals relating to the foregoing;
 - (b) all present and future Inventory of the Debtor of whatever kind and wherever situate, including all of its present and future raw materials, materials used or consumed in its business, work-in-progress, finished goods, goods used for packing and goods acquired or held for sale or lease or that have been leased or furnished or that are to be furnished under contracts of rental or service, and all accessions to any of the foregoing, including all spare parts and accessories installed in or affixed or attached to any of the foregoing;
 - (c) all present and future Intangibles of the Debtor, including all of its present and future Accounts and other amounts receivable, book debts, all Contractual Rights, goodwill, Intellectual Property and chose in action of every nature and kind howsoever arising or secured including, without limitation, letters of credit, guarantees and advices of credit which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor;
 - (d) all present and future Documents of Title, Chattel Paper, Instruments and Money of the Debtor;
 - (e) all present and future Investment Collateral;
 - (f) all present and future real property, personal property, assets, and undertaking of the Debtor of any nature or kind, including all real property, personal property, assets and undertaking at any time owned, leased or licenced by the Debtor or in which the Debtor at any time has any right or interest or to which the Debtor is or may at any time become entitled (other than the property, assets and undertaking of the Debtor validly pledged or assigned or subjected to a valid mortgage, charge, hypothec or Security Interest by subsection 1(a), (b), (c), (d) or (e) hereof and subject to the exceptions hereinafter contained); and
 - (g) all Proceeds arising from the property, assets and undertaking of the Debtor referred to in this Section 1, together with insurance proceeds and any other payment representing indemnity or compensation for loss of expropriation or damage thereto.
2. The Security Interest hereby created shall not extend or attach to: (i) any property held in trust by the Debtor and lawfully belonging to others; or (ii) any property of the Debtor that constitutes consumer goods for the personal use of the Debtor; or (iii) the last day of the term of any lease, (oral or written) or agreement therefor, now held or hereafter acquired by the Debtor, whether falling within the general or particular description of the Collateral, shall be excluded from the scope of the Security Interest but the Debtor shall stand possessed of the reversion of one day remaining in the Debtor in respect of such term upon trust to assign or dispose of the same to any Person acquiring such term upon the enforcement of the Security Interest.
3. Despite any other provision of this Agreement, the Security Interest shall not attach to any Contractual Right to the extent that the granting of the Security Interest therein would constitute a breach of, or permit any Person to terminate such Contractual Right, but the Debtor shall hold its interest in each such Contractual Right in trust for the Bank and shall, after the Security Interest shall have

become enforceable, specifically assign each such Contractual Right to the Bank, or as the Bank may otherwise direct. The Debtor agrees that it shall, upon the request of the Bank, whether before or after the Security Interest has become enforceable, use all commercially reasonable efforts to obtain any consent required to permit any such Contractual Right to be subjected to the Security Interest, and the Security Interest shall attach to such Contractual Right following the receipt of such consent.

4. Despite any other provision of this Agreement, the interests granted to the Bank pursuant to this Agreement in the Debtor's existing and after-acquired trademarks shall be limited to the Bank's Security Interests therein.

B. Attachment

5. The Debtor warrants and acknowledges that subject to the provisions of Sections 2 and 3 above the Debtor and the Bank intend the Security Interest in existing Collateral to attach upon the execution of this Agreement; that value has been given by the Bank to the Debtor; that the Debtor has rights in such existing Collateral; the Debtor and the Bank have not postponed the time for attachment of the Security Interest on existing Collateral and that the Security Interest shall attach to existing Collateral upon the execution of this Agreement and that the Debtor and the Bank intend the Security Interest in hereafter acquired Collateral to attach at the same time as the Debtor acquires rights in such after acquired Collateral.

C. Investment Collateral

6. Whenever any Investment Collateral is a Security that is a Certificated Security, an Uncertificated Security or a Security Entitlement, the Debtor shall, or shall cause the issuer of such Investment Collateral to, or shall cause the securities intermediary that holds such Investment Collateral to, take all steps as are necessary to give exclusive control over such Investment Collateral to the Bank in a manner satisfactory to the Bank.
7. All certificates representing Investment Collateral may remain registered in the name of the Debtor, but the Debtor shall, promptly at the request of the Bank, duly endorse such certificates in blank for transfer or execute stock powers of attorney in respect thereof and deliver such certificates or powers of attorney to the Bank; in either case with signatures guaranteed and with all documentation being in form and substance satisfactory to the Bank. Upon the request of the Bank:
 - (a) the Debtor shall promptly cause the Investment Collateral to be registered in the name of the Bank or its nominee, and the Bank is hereby appointed the irrevocable attorney (coupled with an interest) of the Debtor with full power of substitution to cause any or all of the Investment Collateral to be registered in the name of the Bank or its nominee;
 - (b) the Debtor shall promptly cause each securities intermediary that holds any Investment Collateral that is a Security Entitlement to record the Bank as the entitlement holder of such Investment Collateral; and
 - (c) the Debtor shall promptly:
 - (i) cause a Security Certificate to be issued for any Investment Collateral that is in the form of an Uncertificated Security or a Security Entitlement;
 - (ii) endorse such Security Certificate in blank;
 - (iii) deliver such Security Certificate to the Bank; and
 - (iv) take all other steps necessary to give exclusive control over such Certificated Security to the Bank, in a manner satisfactory to the Bank.
8. Until further notice is given by the Bank to the Debtor terminating such rights of the Debtor, the Debtor shall be entitled to exercise all voting rights attached to the Investment Collateral and give consents, waivers and ratifications in respect thereof; provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be prejudicial to the interests of the Bank or which would have the effect of reducing the value of the Investment Collateral as security for the Indebtedness, or imposing any restriction on the transferability of any of the Investment Collateral. All such rights of the Debtor to vote and give consents, waivers and ratifications shall cease immediately upon receipt by the Debtor of such notice by the Bank.
9. All dividends, distributions, interest and other income in respect of Investment Collateral and all proceeds received by the Debtor in respect of Investment Collateral may be received by the Debtor in the ordinary course and distributed in the ordinary course to the Debtor's shareholder or shareholders until further notice by the Bank. Upon receipt by the Debtor of such notice, the Debtor shall not be entitled to retain or distribute to its shareholder or shareholders any such dividends, distributions, interest or other income or proceeds and, if any such amounts are received by the Debtor after the Debtor receives such notice by the Bank, the Debtor shall hold such amounts in trust, as trustee for the Bank, and the Debtor shall forthwith pay such amounts to the Bank, to be applied to reduce the Indebtedness or, at the option of the Bank, to be held as additional security for the Indebtedness.

10. The responsibility of the Bank in respect of any Investment Collateral held by the Bank shall be limited to exercising the same degree of care which it gives valuable property of the Bank at the Bank's office where such Investment Collateral is held. The Bank shall not be bound under any circumstances to realize on any Investment Collateral or allow any Investment Collateral to be sold, or exercise any option or right attaching thereto, or be responsible for any loss occasioned by any sale of Investment Collateral or by the retention or other refusal to sell the same; nor shall the Bank be obliged to collect or see to the payment of interest or dividends thereon but, subject to section 9, all such interest and dividends, if and when received by the Debtor, shall be held by the Debtor in trust for the Bank and shall be forthwith paid to the Bank.

D. Representations and Warranties of Debtor

11. The Debtor hereby represents and warrants to the Bank that:

- (a) the Debtor has the capacity and authority to incur the Indebtedness, to create the Security Interest and to execute and deliver and perform its obligations under this Agreement;
- (b) the execution and delivery of this Agreement and the performance by the Debtor of its obligations hereunder (including, without limitation, the repayment of the Indebtedness) have been duly authorized by all necessary proceedings;
- (c) this Agreement constitutes a legal, valid and binding obligation of the Debtor, enforceable against the Debtor in accordance with its terms subject only to bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting creditors' rights and the discretion exercisable by courts of competent jurisdiction in respect of the availability of equitable remedies;
- (d) the Collateral is genuine and except for the Security Interest and any Permitted Encumbrances, the Collateral is owned by the Debtor free from any mortgage, charge, lien, pledge, security interest or other encumbrance or claim whatsoever;
- (e) the jurisdiction in which the Debtor is located for purposes of the PPSA and under which the Debtor is incorporated, continued, amalgamated or otherwise organized is the Province or Territory identified in **Schedule "A"** of this Agreement;
- (f) the Debtor does not keep tangible Collateral at any location(s) except the location(s) listed in **Schedule "A"** hereto other than tangible Collateral in transit to or from such locations;
- (g) the Debtor has made all necessary filings, registrations and recordations to protect all of its right, title and interest in the presently held Intellectual Property including all relevant renewals; and all such filings, registrations and recordations have been duly and properly made and are in full force and effect and are not subject to dispute by any governmental authority or agency;
- (h) all Contractual Rights relating to or affecting the presently held Intellectual Property are in good standing;
- (i) the Debtor owns directly or is entitled to use by Contractual Right or otherwise all of the presently held Intellectual Property;
- (j) no litigation is pending or threatened which contains allegations respecting the validity, enforceability, infringement or ownership of any of the Intellectual Property, including any of right, title or interest of the Debtor in the presently held Intellectual Property;
- (k) **Schedule "C"** hereto contains a complete and accurate list of all of the presently registered Intellectual Property of the Debtor, including all registered patents, trademarks and copyrights of the Debtor; and
- (l) the Debtor has no Contractual Right which, because of the granting of the Security Interest therein, would be breached or could be terminated, except for any such Contractual Rights if any, identified to the Bank in writing, which schedule contains an accurate description of all such Contractual Rights, the parties thereto, and any provisions thereof which would be so breached or which would result in such a termination right.

E. Covenants and Agreements of Debtor

12. The Debtor hereby covenants and agrees with the Bank that at all times while this Agreement remains in effect, it shall:

- (a) pay or perform the Indebtedness when due;
- (b) not without the prior written consent of the Bank sell or dispose of any of the Collateral in the ordinary course of business or otherwise (provided however that the Inventory of the Debtor may be sold or disposed of in the ordinary course of the Debtor's business and for the purpose of carrying on the same) and if the amounts on or in respect of the Collateral or Proceeds thereof shall be paid to the Debtor, the Debtor shall receive the same in trust for the Bank and forthwith pay over the same to the Bank upon request;

- (c) not without the prior written consent of the Bank create or permit any Encumbrances upon or assign or transfer as security or pledge or hypothecate as security the Collateral except to the Bank;
- (d) at all times have and maintain insurance over the Collateral against risks of fire (including extended coverage), theft, and such risks as the Bank may reasonably require in writing, containing such terms, in such form, for such periods and written by such companies as may be reasonably satisfactory to the Bank. The Debtor shall duly pay all premiums and other sums payable for maintaining such insurance and shall cause the insurance money thereunder to be payable to the Bank as its interest hereunder may appear and shall, if required, furnish the Bank with certificates or other evidence satisfactory to the Bank of compliance with the foregoing insurance provisions. In the event that the Debtor fails to pay all premiums and other sums payable in accordance with the foregoing insurance provision, the Bank may make such payments to be repayable by the Debtor on demand and any such payments made by the Bank shall comprise part of the Indebtedness and be secured hereby;
- (e) keep the Collateral in good condition and repair according to the nature and description thereof, and the Bank may, whenever it deems necessary, either in person or by agent, inspect the Collateral and the reasonable cost of such inspection shall be paid by the Debtor and comprise part of the Indebtedness and be secured hereby and the Bank may make repairs as it deems necessary and the cost thereof shall be paid by the Debtor and comprise part of the Indebtedness and be secured hereby;
- (f) duly pay all taxes, rates, levies, assessments and other impositions and charges of every nature and kind which may now or hereafter be lawfully levied, assessed or imposed on or in respect of the Debtor or the Collateral (or any of it), including those which could result in the creation of a statutory lien or deemed trust or other Encumbrance affecting the Debtor or the Collateral, as and when the same become due and payable;
- (g) permit the Bank, at any time, whether before or after the Security Interest shall have become enforceable, to notify any account debtor of the Debtor of the Security Interest, require such account debtor to make payment to the Bank, take control of any Proceeds of Collateral and may hold all amounts received from any account debtor and any Proceeds as part of the Collateral and as security for the Indebtedness;
- (h) make and maintain all filings, registrations and recordations necessary or desirable to protect its right, title and interest in the Collateral, including all filings, registrations and recordations necessary or desirable in respect of patents, trade-marks, copyrights and industrial designs included in the Intellectual Property;
- (i) defend the Collateral against any actions, claims and demands of any Person (other than the Bank) claiming the Collateral (or any of it) or an interest therein;
- (j) maintain its corporate existence and file or cause to be filed any returns, documents or other information necessary to preserve such corporate existence;
- (k) notify the Bank of any loss or damage to the Collateral, any change in any information provided in this Agreement (including the schedules hereto) or any actual or potential claim or Encumbrance affecting the Debtor, the Collateral or the Security Interest;
- (l) prevent any Collateral from becoming an accession to any personal property not subject to the Security Interest, or becoming affixed to any real property;
- (m) deliver to the Bank, at the Bank's request, duly endorsed and/or accompanied by such assignments, transfers, powers of attorney or other documents as the Bank may request, all items of the Collateral comprising Chattel Paper, Instruments, Investment Collateral and Documents of Title;
- (n) pay, on demand by the Bank, all costs and expenses (including all legal fees on a full indemnity basis) incurred by the Bank in the preparation, perfection, administration and enforcement of this Agreement (including expenses incurred in considering, protecting or improving the Bank's position, or attempting to do so, whether before or after default) and all such costs and expenses shall bear interest at the highest rate applicable to the Indebtedness, shall form part of the Indebtedness and shall be secured by the Security Interest;
- (o) preserve the Debtor's rights, powers, licences, privileges, franchises and goodwill, comply with all applicable laws, regulations and orders (including environmental laws, regulations and orders) affecting the Debtor or the Collateral and conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest and the business and undertaking of the Debtor;
- (p) without limiting the generality of any of the forgoing, perform all covenants required of the Debtor under any Contractual Right relating to or affecting the Intellectual Property (or any of it), including promptly paying all required fees, royalties and taxes, to maintain each and every item of Intellectual Property in full force and effect, and vigorously protect, preserve and maintain all of the value of, and all of the right, title and interest of the Debtor in, all Intellectual Property, by way of the prosecution of or defence against suits concerning the validity, infringement, enforceability or ownership of the Intellectual Property (or any of it) or otherwise; and

- (q) give the Bank at least 10 Business Days advance notice in writing of any proposed change to the Debtor's name, location, or its governing jurisdiction.
13. The Debtor shall at all times and from time to time do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered any such further act, deed, transfer, assignment, assurance, document or instrument as the Bank may reasonably require for the better granting, mortgaging, charging, assigning, hypothecating and transferring unto the Bank the property, assets and undertaking hereby subjected or intended to be subject to the Security Interest or which the Debtor may hereafter become bound to mortgage, charge, assign, hypothec, transfer or subject to the Security Interest in favour of the Bank for the better accomplishing and effectuating of this Agreement and the provisions contained herein and each and every officer of the Bank is irrevocably appointed, coupled with an interest, to execute in the name and on behalf of the Debtor any document or instrument for the said purposes.
14. The Debtor shall permit the Bank at any time, either in person or by agent, to inspect the Debtor's books and records pertaining to the Collateral. The Debtor shall at all times upon request by the Bank furnish the Bank with such information concerning the Collateral and the Debtor's affairs and business as the Bank may reasonably request including, without limitation, lists of Inventory and Equipment and lists of Accounts showing the amounts owing upon each Account and securities therefor and copies of all financial statements, books and accounts, invoices, letters, papers and other documents in any way evidencing or relating to the Accounts.
15. The Debtor acknowledges and agrees that:
- (a) in the event it amalgamates with any other corporation or corporations, it is the intention of the parties hereto that the term 'Debtor' when used herein shall apply to each of the amalgamating corporations and to the amalgamated corporation, that this Agreement shall continue in full force and effect and shall be binding on the amalgamated corporation, such that the Security Interest granted hereby:
- (i) shall continue to charge all Collateral of the Debtor and extend and attach to 'Collateral' (as that term is herein defined) owned by each of the other amalgamating corporations and the amalgamated corporation at the time of amalgamation and to any 'Collateral' thereafter owned or acquired by the amalgamated corporation; and
- (ii) shall continue to secure the 'Indebtedness' (as that term is herein defined) of each of the amalgamating corporations including the Debtor and the amalgamated corporation to the Bank at the time of amalgamation and any 'Indebtedness' of the amalgamated corporation to the Bank thereafter arising.
- (b) The term "**Indebtedness**" shall include all such Indebtedness of the Debtor, the other amalgamating corporations and the amalgamated corporation.
- (c) The term "**Collateral**" shall include all such property, assets and undertaking of the Debtor, the other amalgamating corporations and the amalgamated corporation.
- (d) All defined terms and other provisions of this Agreement shall be deemed to have been amended to reflect such amalgamation, to the extent required by the context.
- (e) The parties agree to execute and deliver all such further documents and assurances as may be necessary or desirable in connection with the foregoing.

F. Default

16. Without prejudice to any right which the Bank may now or hereafter have to demand payment of any of the Indebtedness at any time, the Indebtedness shall, at the option of the Bank, become payable and the Security Interest shall become enforceable in each and every of the following events:
- (a) if the Debtor defaults in the payment of any of the Indebtedness when due;
- (b) the death or a declaration of incompetency by a court of competent jurisdiction with respect to the Debtor, if an individual;
- (c) if there occurs an Event of Default (as defined by the Credit Agreement) or if the Debtor defaults in the observance or performance of any covenant, written agreement or undertaking heretofore or hereafter given by the Debtor to the Bank, whether contained herein or not;
- (d) if an order is made or a resolution passed for the winding-up, liquidation or dissolution of the Debtor, or if a petition is presented or filed for the winding-up of the Debtor, whether pursuant to the *Winding-up and Restructuring Act* (Canada) or otherwise;

- (e) if the Debtor ceases or threatens to cease to carry on business or makes a bulk sale of its assets, or if a Receiver or trustee for the Debtor or any of its property or assets is appointed (whether privately or by court order);
 - (f) if the Debtor becomes insolvent or commits or threatens to commit any act of bankruptcy or if the Debtor makes an assignment or proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy or if a bankruptcy petition is filed or presented against the Debtor or if the Debtor otherwise becomes subject to proceedings under the *Bankruptcy and Insolvency Act* (Canada), *Companies' Creditors Arrangement Act* (Canada), the *Winding Up and Restructuring Act*, the or any other bankruptcy, insolvency or analogous law in any jurisdiction for relief as a debtor;
 - (g) if any proceedings with respect to the Debtor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or if the Debtor seeks relief or consents to the filing of a petition against it under any law which involves any compromise of any creditor's rights against the Debtor;
 - (h) if an execution or any other process of any court becomes enforceable against the Debtor or if a distress or analogous process is initiated or levied against or upon the Collateral or any part thereof;
 - (i) if the Debtor permits any sum which has been admitted as due by the Debtor or is not disputed to be due by it and which forms or is capable of being made a charge on any Collateral in priority to the Security Interest to remain unpaid after proceedings have been taken to enforce such charge;
 - (j) if any representation or warranty made by the Debtor or any of its officers, employees or agents to the Bank shall be false or inaccurate in any material respect;
 - (k) if the Debtor defaults in the observance or performance of any provision relating to the indebtedness or liability of the Debtor to any creditor or other Person, other than the Bank, and thereby enables such creditor or other Person to demand payment of such indebtedness; or
 - (l) if any licence, permit or approval required by any law, regulation or governmental policy or any governmental agency or commission for the operation by the Debtor of its business shall be withdrawn or cancelled.
17. The Bank may in writing waive any breach by the Debtor of any of the provisions contained herein or any default by the Debtor in the observance or performance of any covenant or condition required by the Bank to be observed or performed by the Debtor; provided that no act or omission by the Bank in the premises shall extend to or be taken in any manner whatsoever to affect any subsequent breach or default or the rights resulting therefrom.

G. Remedies of the Bank

18. Whenever the Security Interest shall have become enforceable as described in Section 16 above, and so long as it shall remain enforceable, the Bank may proceed to realize the Security Interest and the Collateral and to enforce its rights by doing any one or more of the following:
- (a) entering upon the Collateral and any lands and premises where any Collateral is or may be located;
 - (b) taking possession of Collateral by any method permitted by law;
 - (c) occupying any lands and premises owned or occupied by the Debtor and using all or any part of such lands and premises and the Equipment and other Collateral located thereon;
 - (d) leasing, selling, licensing or otherwise disposing of the whole or any part or parts of the Collateral;
 - (e) collecting, selling or otherwise dealing with any Accounts or other amounts receivable of the Debtor, including notifying any person obligated to the Debtor in respect of an Account, Chattel Paper, Investment Collateral or Instrument to make payment to the Bank of all present and future amounts due thereon;
 - (f) taking steps and expending such monies as it considers necessary or desirable in its sole discretion to maintain, preserve and protect the Collateral, including making payments on account of other security interests affecting the Collateral; provided that the Bank shall have no obligation to take any such actions or make any such expenditures; but any such amounts paid by the Bank shall be added to the Indebtedness and shall be secured by the Security Interest;
 - (g) collecting any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on such business;

- (h) exercising all voting rights attached to any Collateral constituting Investment Collateral (whether or not registered in the name of the Bank or its nominee) and giving or withholding all consents, waivers and ratifications in respect thereof and otherwise acting with respect thereto as though it were the absolute owner thereof;
 - (i) exercising any and all rights of conversion, exchange, subscription or any other rights, privileges or options pertaining to any Collateral constituting Investment Collateral as if it were the absolute owner thereof including the right to exchange at its sole discretion any and all of such Investment Collateral upon the merger, consolidation, reorganization, recapitalization or other readjustment of any issuer thereof, or upon the exercise by any issuer of any right, privilege or option pertaining to any such Investment Collateral, and in connection therewith, to deposit and deliver any such Investment Collateral with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as it may determine in its sole discretion, all without liability except to account for property actually received by it;
 - (j) complying with any limitation or restriction in connection with any proposed sale or other disposition of Collateral constituting Investment Collateral as may be necessary in order to comply with applicable law or regulation or any policy imposed by any stock exchange, securities commission or other governmental or regulatory authority or official, and the Debtor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, and the Bank shall not be liable or accountable to the Debtor for any discount in the sale price of any such Investment Collateral which may be given by reason of the fact that such Investment Collateral are sold in compliance with any such limitation or restriction;
 - (k) carrying on the business of the Debtor or any portion thereof;
 - (l) exercising any and all of the rights and remedies granted pursuant to the PPSA and any other applicable legislation, or otherwise available at law or in equity including by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity;
 - (m) demanding, commencing, continuing or defending any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and giving valid and effectual receipts and discharges therefor and to compromise or give time for the payment or performance of all or any part of the accounts or other amounts receivable of the Debtor or any other obligation of any third party to the Debtor;
 - (n) borrowing money for the maintenance, preservation or protection of the Collateral or for the carrying on of the business of the Debtor, and charge and grant further security interests in the Collateral in priority to the Security Interest or otherwise, as security for the money so borrowed;
 - (o) accepting the Collateral in satisfaction of the Indebtedness;
 - (p) appointing by instrument in writing a Receiver or Receivers of the Collateral or any part thereof;
 - (q) bringing proceedings in any court of competent jurisdiction for the appointment of a Receiver or Receivers or for the sale of the Collateral or any part thereof; and
 - (r) filing such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relating to the Debtor or the Collateral.
19. Any Receiver appointed by the Bank may be any Person or Persons (including one or more officers or employees of the Bank), and the Bank may remove any Receiver so appointed and appoint another or others instead. Any such Receiver may exercise any and all of the rights, remedies and powers of the Bank provided in this Agreement including, without limitation, the power to take possession of the Collateral or any part thereof and to carry on the business of the Debtor, further charge the Collateral in priority to the Security Interests as security for money so borrowed, and sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as the Receiver shall determine. The Bank shall not be responsible for the actions, errors or omissions of any Receiver it appoints and any such Receiver shall be deemed to act as agent for the Debtor for all purposes, including the occupation of any lands and premises of the Debtor and in carrying on the Debtor's business, unless the Bank expressly specifies in writing that the Receiver shall be agent for the Bank for one or more purposes. Without limiting the generality of the foregoing, for the purposes of realizing upon the Security Interest, any Receiver may sell, lease, or otherwise dispose of Collateral as agent for the Debtor or as agent for the Bank as the Bank may specify in writing in its sole discretion. The Debtor agrees to ratify and confirm all actions of any Receiver appointed by the Bank acting as agent for the Debtor, and to release and indemnify the Receiver in respect of all such actions.
20. Without limiting the ability of the Bank or any Receiver to dispose of Collateral in any other manner, the Debtor agrees that any sale, lease or other disposition of the Collateral hereunder may be completed by public auction, public tender or private contract, with or without notice, with or without advertising and with or without any other formality (except as required by law), all of which are hereby waived by the Debtor to the fullest extent permitted by applicable law. Any such disposition of Collateral may involve all or part of the Collateral and may be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as the

Bank or any Receiver appointed by the Bank may, in its sole discretion, deem advantageous and may take place whether or not the Bank or any such Receiver has taken possession of such Collateral. Any purchaser or lessee of Collateral may be a customer of the Bank.

21. The Bank shall not be liable for any delay or failure to enforce any rights, powers or remedies available to it or to institute any proceedings for such purposes.
22. No right, power or remedy of the Bank (whether granted herein or otherwise) shall be exclusive of or dependent on or merge in any other right, power or remedy, but all such rights, powers and remedies may from time to time be exercised independently or in combination.
23. The Debtor agrees, without diminishing the covenant in section 12(n) above, and in furtherance thereof, to pay to the Bank, forthwith on demand by the Bank, all costs and expenses incurred by the Bank in connection with the exercise by the Bank of its rights, powers and remedies hereunder, including:
 - (a) any costs and expenses incurred by the Bank in taking, holding, moving, storing, recovering, possessing, repairing, processing, preparing for disposition or disposing of Collateral;
 - (b) any legal fees and expenses incurred by the Bank in enforcing its rights, powers and remedies, including those incurred in connection with any proceedings taken for the purpose of enforcing its rights, powers and remedies hereunder or otherwise relating to the non-payment or non-performance of any Indebtedness;
 - (c) the cost of borrowing amounts as hereinbefore provided (for the purpose of carrying on the Debtor's business or otherwise), including, the principal amount or any such amount borrowed, all interest thereon and fees relating thereto; and
 - (d) all costs and expenses of or incurred by any Receiver, agent or consultant appointed by the Bank (including any legal fees and expenses incurred by any such Receiver, agent or consultant).

All such sums shall bear interest at the highest rate applicable to the Indebtedness, shall form part of the Indebtedness and shall be secured by the Security Interest.

24. Any and all payments made in respect of the Indebtedness from time to time and moneys realized from any Collateral (including moneys realized on any enforcement of this Agreement) may be applied to such part or parts of the Indebtedness as the Bank may see fit, and the Bank shall at all times and from time to time have the right to change any appropriation as the Bank may see fit and to re-apply the same on any other part or parts of the Indebtedness as the Bank may see fit, notwithstanding any previous application by whomsoever made.
25. The Debtor shall remain liable for all Indebtedness that is outstanding following realization of all or any part of the Collateral.
26. The Bank may pay the whole or any part of any liens, taxes, rates, charges or Encumbrances now or hereafter existing in respect of any Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Indebtedness, shall bear interest at the highest rate applicable to the Indebtedness, and shall be secured by the Security Interest. Whenever the Bank pays any such lien, tax, rate, charge or Encumbrance, it shall be entitled to all the equities and securities of the Person or Persons so paid and is hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.
27. If the Debtor fails to perform or comply with any covenant or other obligation of the Debtor under this Agreement, the Bank may, but need not, perform or otherwise cause the performance or compliance of such covenant or other obligation, provided that any performance or compliance undertaken by the Bank will not constitute a waiver, remedy or satisfaction of such failure. The costs and expenses of the Bank incurred in connection with any such performance or compliance shall be payable by the Debtor to the Bank on demand, form part of the Indebtedness, bear interest at the highest rate applicable to the Indebtedness and be secured by the Security Interest.
28. The term 'Receiver' as used in this Agreement includes a receiver and manager, a receiver, a liquidator, a custodian, monitor, or consultant whether appointed by the Bank by instrument in writing or appointed pursuant to a court order.

H. Rights of the Bank

29. The Debtor grants to the Bank the right to set off against any and all accounts, credits or balances maintained by it with the Bank, the aggregate amount of any of the Indebtedness (or any portion thereof) when the same shall become due and payable whether at maturity, upon acceleration of maturity thereof or otherwise.

30. The Bank, without exonerating in whole or in part the Debtor, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from and may otherwise deal with the Debtor and all other Persons and securities as the Bank may see fit.
31. The Bank may, without the consent of the Debtor, assign, transfer and deliver any of the Indebtedness, or the Security Interests, or any security or any documents or instruments held by the Bank in respect thereof to any transferee provided that no such assignment, transfer or delivery shall release the Debtor from any of the Indebtedness; and thereafter the Bank shall be fully discharged from all responsibility with respect to the Indebtedness and security, documents and instruments so assigned, transferred or delivered. Such transferee shall be vested with all powers and rights of the Bank under such security, documents or instruments but the Bank shall retain all rights and powers with respect to any such security, documents or instruments not so assigned, transferred or delivered. The Debtor shall not assign any of its rights or Indebtedness hereunder without the prior written consent of the Bank.

I. Miscellaneous

32. This Agreement is in addition to, not in substitution for and shall not be merged in any other agreement, security, document or instrument now or hereafter held by the Bank or existing at law in equity or by statute. This Agreement is in addition to and not in substitution for any other security now or hereafter held by the Bank and shall be general and continuing security notwithstanding that the Indebtedness shall be at any time or from time to time fully satisfied or paid.
33. Nothing herein shall obligate the Bank to make any advance or loan or further advance or loan or to renew any note or extend any time for payment of any indebtedness of the Debtor to the Bank.
34. This Agreement shall be binding upon the Debtor and its heirs, legatees, trustees, executors, administrators, successors and assigns including any successor by reason of amalgamation of or any other change in the Debtor and shall enure to the benefit of the Bank and its successors and assigns.
35. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from this Agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.
36. The headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
37. This Agreement, if signed by a party using electronic signatures or other electronic means to signify agreement which is acceptable to the other party, shall be valid and binding notwithstanding the absence of a hand-written original signature. Any notice, demand, statement or other communication permitted or required to be given hereunder shall be in writing (including electronically) and may be effectively given by delivering it to the address(es) hereinafter set forth or by sending the same electronically if the party's electronic/email address is provided below, or by facsimile to such address(es). Any notice, demand or other communication so given prior to 5:00p.m. (Toronto time) on a Business Day by personal delivery, electronically or by fax shall be deemed to have been given, received and made on such Business Day and if so given after 5:00p.m. (Toronto time) on a Business Day or a day which is not a Business Day, shall be deemed to have been given, received and made on the next following Business Day. The addresses of the parties for the purposes hereof shall be:

- (a) in the case of the Bank, addressed as follows:

HSBC Bank Canada
4550 Hurontario Street
Mississauga, ON L5R 4E4
Attention: Vips Patel
Fax Number: 905-568-8386
Email: vips.patel@hsbc.ca

- (b) in the case of the Debtor, addressed as follows:

DMI Exim Limited
10 Falconer Drive, Suite 3
Mississauga, Ontario L5N 3L8
Attention: Vinay Gupta
Email: vinay@dmixim.com

Either party may from time to time notify the other, in accordance with the provisions hereof, of any change of address which thereafter, until changed by like notice, shall be the address of such party for all purposes of this Agreement.

38. Where any provision or remedy contained or referred to in this Agreement is prohibited, modified or altered by the laws of any Province or Territory of Canada which governs that aspect of this Agreement and the provision or remedies may be waived or excluded by the Debtor in whole or in part, the Debtor hereby waives and excludes such provision to the fullest extent permissible by applicable law.
39. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. For the purpose of legal proceedings this Agreement shall be deemed to have been made in the said Province and to be performed there and the courts of that Province shall have jurisdiction over all disputes which may arise under this Agreement and the Debtor hereby irrevocably and unconditionally attorns and submits to the non-exclusive jurisdiction of such courts, provided always that nothing herein contained shall prevent the Bank from proceeding at its election against the Debtor in the Courts of any other Province, country or jurisdiction.
40. References such as “**this Agreement**”, “**hereof**”, “**herein**”, “**hereto**” and like references refer to this Agreement and any schedules, exhibits or appendices attached hereto from time to time, or described as comprising a part of this Agreement (all of which schedules, exhibits and appendices form a part of this Agreement) and not to any particular section, subsection, paragraph or other subdivision of this Agreement.
41. The word “**Debtor**”, the personal pronoun “**it**” or “**its**” and any verb relating thereto and used therewith shall be read and construed as required by and in accordance with the context in which such words are used. The term “**successors**” shall include, without limiting its meaning, any corporation resulting from the amalgamation of a corporation with another corporation. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).
42. Nothing herein (including the definition and use of the term Permitted Encumbrances) is intended or shall be deemed to subordinate the Security Interest to any Permitted Encumbrance or any other lien, charge, mortgage, security interest, hypothec or encumbrance affecting all or any portion of the Collateral.
43. Unless otherwise expressly provided in this Agreement, if any matter in this Agreement is subject to the determination, consent or approval of the Bank or is to be acceptable to the Bank, such determination, consent, approval or determination of acceptability will be in the sole discretion of the Bank, which means the Bank shall have sole and unfettered discretion, without any obligation to act reasonably. If any provision in this Agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. When used in the context of a general statement followed by a reference to one or more specific items or matters, the term “**including**” shall mean “**including, without limitation**” and the use of the term “**includes**” shall mean “**includes, without limitation**”.
44. In the event that any day, on or before which any action is required to be taken hereunder, is not a Business Day, then such action shall be required to be taken on or before the first Business Day immediately thereafter.
45. Time shall be of the essence of this Agreement.
46. Upon full, final and indefeasible payment and fulfillment by the Debtor, its successors or permitted assigns, of all Indebtedness and provided that the Bank is then under no obligation (conditional or otherwise) to make any further loans, advances or extend any other type of credit to the Debtor or to any other Person, the payment of which is secured, directly or indirectly, by this Agreement, the Bank shall, upon request in writing by the Debtor, delivered to the Bank at the Bank’s address as set out in section 37 hereof and at the Debtor’s expense, discharge this Agreement.
47. The Bank may in writing, which may be provided electronically, (and not otherwise) waive any default by the Debtor in the observance or performance of any provision of this Agreement; provided that no waiver by the Bank shall extend to or be taken in any manner whatsoever to affect any subsequent default, whether of the same or a different nature, or the rights resulting therefrom.
48. The Debtor agrees that the Bank may from time to time provide information concerning this Agreement (including a copy hereof), the Collateral and the Indebtedness to any Person the Bank in good faith believes is entitled thereto pursuant to applicable law.
49. The Debtor acknowledges having received an original executed copy of this Agreement and hereby waives, to the fullest extent permitted by applicable law, receipt of a copy of any financing statement or financing change statement filed at any time in respect of this Agreement or any verification statement in respect of the same.

50. This Agreement and any amendment, supplement, restatement or termination may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed an original and all of which, taken together, shall constitute one and the same agreement. Any party hereto may deliver an executed copy of this Agreement electronically or by facsimile to the other parties hereto.
51. The Debtor by its signature of this Agreement on the one hand and the Bank by making this Agreement available to the Debtor on the other hand acknowledge having expressly required it to be drawn up in the English language. *La soussignée par sa signature de ce cautionnement d'une part et la Banque en mettant ledit cautionnement à la disposition des garants d'autre part reconnaissent avoir expressément exigé qu'il soit rédigé en langue anglaise.*

This Agreement has been duly executed by the Debtor on the 29th day of April, 2021.

DMI EXIM LIMITED

Per: 

Name: Vinay Gupta

Title: President

I have authority to bind the Corporation.

Schedule 'A'

Location of the Debtor:

The Debtor is incorporated under the laws of the Province of Ontario

Debtor's Places of Business:

10 Falconer Drive, Suite 3, Mississauga, Ontario L5N 3L8

Locations of Collateral:

10 Falconer Drive, Suite 3, Mississauga, Ontario L5N 3L8

Schedule 'B'

Permitted Encumbrances:

NIL

Schedule 'C'

Intellectual Property of Debtor:

NIL

This is **Exhibit “G”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor

Properties

PIN 19287 - 0005 LT *Interest/Estate* Fee Simple
Description UNIT 5, LEVEL 1, PEEL CONDOMINIUM PLAN NO. 287 ; PT BLKS G, H & I PL 548, PT 1
 43R10656, MORE FULLY DESCRIBED IN SCHEDULE 'A' OF DECLARATION LT839260
 ; MISSISSAUGA
Address 3 UNIT
 10 FALCONER DR
 MISSISSAUGA

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name DMI EXIM LIMITED
Address for Service 10 FALCONER DRIVE
 Suite # 3
 MISSISSAUGA, ONTARIO
 L5N 3L8

I, Vinay Gupta, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name HSBC BANK CANADA
Address for Service 4550 Hurontario Street
 Mississauga, Ontario
 L5R 4E4

Statements

Schedule: See Schedules

Provisions

Principal \$575,000.00 *Currency* CDN
Calculation Period SEE SCHEDULE
Balance Due Date ON DEMAND
Interest Rate SEE SCHEDULE
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms 9916
Insurance Amount Full insurable value
Guarantor

Signed By

Tammy B. Stubbins 2900-390 Bay Street acting for Signed 2021 05 07
 Toronto Chargor(s)
 M5H 2Y2

Tel 416-867-2285

Fax 416-869-0321

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

BEBER PROFESSIONAL CORPORATION 2900-390 Bay Street 2021 05 07
 Toronto
 M5H 2Y2

Tel 416-867-2285

Fax 416-869-0321

Fees/Taxes/Payment

Statutory Registration Fee	\$65.30
Total Paid	\$65.30

File Number

Chargee Client File Number : 21/1076

SCHEDULE

1. Whereas **DMI EXIM LIMITED**, (hereinafter called the "Customer") is obligated to the Chargee. If more than one person is named above, the term "Customer" means all and any one or more of them and the liabilities of the Customer (as hereinafter defined) means the liabilities of all or any one or more of them to the Chargee.
2. And Whereas the Chargor has at the request of the Chargee agreed to give this Charge as a continuing collateral security for payment and satisfaction to the Chargee of all obligations, debts and liabilities, present and future, direct or indirect, absolute or contingent, matured or not, extended or renewed at any time owing by the Customer to the Chargee or remaining unpaid by the Customer to the Chargee heretofore or hereafter incurred or arising and whether incurred by or arising from agreement or dealings between the Chargee and the Customer or from any agreement or dealings with any third party by which the Chargee may be or become in any manner whatsoever a creditor of the Customer or however otherwise incurred or arising anywhere within or outside Canada and whether the Customer be bound alone or with another or others and whether as principal or surety and any ultimate unpaid balance thereof and whether the same is from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again (such obligations, debts and liabilities being hereinafter called the "liabilities") but it being agreed that this Charge at any one time will not secure that portion of the aggregate principal component of the liabilities outstanding at such time which exceeds the sum of **Five Hundred, Seventy Five Thousand Dollars** (\$575,000.00).
3. Provided this Charge to be void upon the Chargor, their heirs, executors, administrators, successors or assigns or any of them, paying on demand to the Chargee, its successors or assigns, the ultimate balance of the liabilities, the principal component of such liabilities not exceeding the sum of **Five Hundred, Seventy Five Thousand Dollars** (\$575,000.00) together with interest on the liabilities at the Prime Interest Rate per annum in effect from time to time plus three per centum (3.00%) per annum, calculated and payable monthly as well after as before maturity, default and judgment, with interest on overdue interest at the same rate as on the principal sum, and all other amounts payable by the Chargor hereunder and paying any taxes, rates, levies, charges or assessments upon the said lands no matter by whom or what authority imposed and observing and performing all covenants, provisos and conditions herein contained. For the purposes hereof, Prime Interest Rate is the annual rate of interest in effect from time to time as announced from time to time by the Chargee then in effect as a reference rate for determining interest rates on Canadian dollar loans in Canada.
4. It is Agreed By and Between the Parties Hereto as follows:
 - (a) That no part of any liabilities of the Customer to the Chargee existing at the date of this Charge or incurred or arising thereafter, shall be deemed to be unsecured by this Charge;
 - (b) That this Charge is and shall be a continuing collateral security to the Chargee for the amount of such liabilities and interest as herein provided and shall be deemed to be taken as security for the ultimate balance of such liabilities; **and** these presents shall not, nor shall anything herein contained operate so as to create any merger or discharge of any debt owing to the Chargee or of any lien, bond, promissory note, bill of exchange or other security held by or which may hereafter be held by the Chargee from the Chargor or from the Customer or from any other person or persons and this Charge shall not in any way prejudicially affect any security held or which may hereafter be held by the Chargee for the said liabilities or any part thereof, or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Chargee for or on account of the said liabilities or any part or parts thereof, nor shall the remedies of the Chargee in respect thereof be prejudiced or delayed in any manner whatsoever by the taking of this Charge;
 - (c) That any and all payments made in respect of the said liabilities and interest and the moneys or other proceeds realized from the sale of any securities held therefor including this Charge may be applied and reapplied notwithstanding any previous application on such part or parts of such liabilities or interest as the Chargee may see fit or may be held unappropriated in a separate collateral account for such time as the Chargee may see fit;
 - (d) That the Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities and guarantees from and give the same and any and all existing securities and guarantees up to, may abstain from taking

securities or guarantees from or from perfecting securities or guarantees of, may accept compositions from and may otherwise deal with the Chargor, the Customer and all other persons securities and guarantees as the Chargee may see fit without prejudicing the rights of the Chargee under this Charge; and

- (e) That the taking of judgment in respect of the said liabilities or any instrument or instruments now or hereafter representing or evidencing the said liabilities or under any of the covenants herein or in any such instrument contained or implied shall not operate as a merger of the said liabilities or such instrument, instruments or covenants nor affect the Chargee's right to interest at the rate and times herein provided nor effect nor prejudice any rights or remedies given to the Chargee by the terms hereof.
5. In the event one or more of the Chargors is not also the Customer, each such Chargor which is not also the Customer (hereinafter in this paragraph called "such Chargor") jointly and severally covenants with the Chargee as follows:
- (a) This charge and the covenants, provisos, obligations and agreements on the part of the Chargor herein contained shall be the continuing obligations and liability of each such Chargor and shall cover all the liabilities and obligations of the Chargor hereunder and shall apply to and shall secure any ultimate balance of the moneys secured or intended to be secured hereby;
- (b) The Chargee shall not be bound to exhaust its recourse against the Customer or others or any securities (which term when used in this Paragraph 5 includes guarantees) it may at any time hold before being entitled to payment from each such Chargor of the moneys hereby secured and such Chargor renounces to all benefits of discussion and division;
- (c) This Charge and the liabilities and obligations of each such Chargor hereunder shall not be affected by the death or loss or diminution of capacity of the Customer or of any such Chargor or by any change in the name of the Customer or in the membership of the Customer's firm through the death or retirement of one or more partners or the introduction of one or more other partners or otherwise, or by the acquisition of the Customer's business by a corporation, or by any change whatsoever in the objects, capital, structure or constitution of the Customer, or by the Customer or the Customer's business being amalgamated with a corporation or corporations, or wound up or its corporate existence terminated but shall notwithstanding the happening of any such event continue to exist and apply to the full extent as if such event had not happened.
- (d) This Charge shall not be considered as wholly or partially satisfied by the payment or liquidation at any time or times of any sum or sums of money for the time being due or remaining unpaid to the Chargee and all dividends, compositions, proceeds of security valued and payments received by the Chargee from the Customer or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of any such Chargors to claim in reduction of his liability under this Charge the benefit of any such dividends, compositions, proceeds or payments or any securities held by the Chargee or proceeds thereof, and none of such Chargors shall have the right to be subrogated in any rights of the Chargee until the Chargee shall have received payment in full of all liabilities;
- (e) All of the moneys hereby secured or intended to be secured hereby shall be deemed to form part of the liabilities and obligations of each such Chargor notwithstanding any lack or limitations of status or of power, incapacity or disability of the Customer or of the directors, partners or agents thereof, or that the Customer may not be a legal or suable entity, or any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or creditors, or in the taking or registering of this Charge or any other securities, the whole whether known to the Chargee or not; and all the moneys secured hereby or intended to be secured hereby shall be recoverable from each such Chargor as sole or principal debtor in respect thereof and shall be paid to the Chargee on demand with interest and accessories; and
- (f) Each such Chargor shall be bound by any account settled between the Chargee and the Customer, and if no such account has been so settled immediately before demand of payment hereunder any account stated by the Chargee shall be accepted by such Chargor and each of them as conclusive evidence of the amount which at the date of the account so stated is due by the Customer to the Chargee or remains unpaid by the Customer to the Chargee.

This is **Exhibit “H”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor

RUN NUMBER : 205
RUN DATE : 2023/07/24
ID : 20230724125331.29

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(2976)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

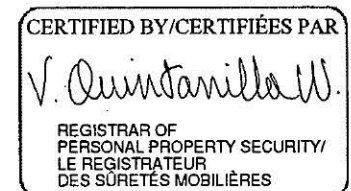
TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : DMI EXIM LIMITED
FILE CURRENCY : 23JUL 2023

ENQUIRY NUMBER 20230724125331.29 CONTAINS 7 PAGE(S), 3 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THORNTON GROUT FINNIGAN LLP - ROXANA MANEA
100 WELLINGTON STREET WEST
TORONTO ON M5K 1K7

CONTINUED... 2



(crlj6 05/2022)



RUN NUMBER : 205
RUN DATE : 2023/07/24
ID : 20230724125331.29

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(2977)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : DMI EXIM LIMITED
FILE CURRENCY : 23JUL 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
783716364

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	1		20220607 0824 1532 4496	P PPSA	03

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME

DEBTOR NAME : BUSINESS NAME : DMI EXIM LIMITED

ADDRESS : 3 10 FALCONER DRIVE MISSISSAUGA ON L5N 3L8 ONTARIO CORPORATION NO. :

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
	26DEC1974	VINAY		GUPTA

DEBTOR NAME : BUSINESS NAME :
ADDRESS : 1687 SUMMERGROVE CRESCENT MISSISSAUGA ON L5M 3Z6 ONTARIO CORPORATION NO. :

SECURED PARTY / LIEN CLAIMANT : BMW CANADA INC.
ADDRESS : 50 ULTIMATE DRIVE RICHMOND HILL ON L4S 0C8

COLLATERAL CLASSIFICATION		CONSUMER	MOTOR VEHICLE	AMOUNT	DATE OF	NO FIXED	
GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	INCLUDED	MATURITY OR	MATURITY DATE
X		X	X	X	33145.35	X	

MOTOR VEHICLE	YEAR	MAKE	MODEL	V.I.N.
	2018	BMW	X1 XDRIVE28I	WBXHT3C32J5L25628

GENERAL COLLATERAL DESCRIPTION :

REGISTERING AGENT : D + H LIMITED PARTNERSHIP
ADDRESS : 2 ROBERT SPECK PARKWAY, 15TH FLOOR MISSISSAUGA ON L4Z 1H8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF PERSONAL PROPERTY SECURITY / LE REGISTREUR DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)



RUN NUMBER : 205
RUN DATE : 2023/07/24
ID : 20230724125331.29

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(2978)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : DMI EXIM LIMITED
FILE CURRENCY : 23JUL 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
779943699

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	01	002		20220126 1936 1531 4502	P PPSA	10

02 DEBTOR NAME
03 BUSINESS NAME
04 ADDRESS
05 DATE OF BIRTH
06 FIRST GIVEN NAME
07 INITIAL
08 SURNAME

ONTARIO CORPORATION NO.
ON L5N 3L8

02 DEBTOR NAME
03 BUSINESS NAME
04 ADDRESS
05 DATE OF BIRTH
06 FIRST GIVEN NAME
07 INITIAL
08 SURNAME

ONTARIO CORPORATION NO.

08 SECURED PARTY / LIEN CLAIMANT
09 ADDRESS
10 COLLATERAL CLASSIFICATION

ON L5R 4E4

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
				X	X		

11 MOTOR VEHICLE
12 YEAR MAKE MODEL V.I.N.

13 GENERAL COLLATERAL DESCRIPTION
"ALL DOCUMENTS OF TITLE, CERTIFICATES, INVOICES, STATEMENTS, TRANSPORTATION DOCUMENTS OR SIMILAR INSTRUMENTS AND THE GOODS REPRESENTED THEREBY, IN EACH CASE WHICH ARE AT ANY TIME IN ACTUAL OR

16 REGISTERING AGENT
D+H LIMITED PARTNERSHIP
17 ADDRESS SUITE 200, 4126 NORLAND AVENUE BURNABY BC V5G 3S8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF PERSONAL PROPERTY SECURITY / LE REGISTREUR DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)



RUN NUMBER : 205
RUN DATE : 2023/07/24
ID : 20230724125331.29

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(2979)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : DMI EXIM LIMITED
FILE CURRENCY : 23JUL 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
779943699

01 CAUTION FILING PAGE NO. OF PAGES TOTAL REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
02 02 002 20220126 1936 1531 4502

02 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 BUSINESS NAME ONTARIO CORPORATION NO.
04 ADDRESS

05 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 BUSINESS NAME ONTARIO CORPORATION NO.
07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT
09 ADDRESS

10 COLLATERAL CLASSIFICATION CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO. FIXED MATURITY DATE

11 MOTOR VEHICLE YEAR MAKE MODEL V.I.N.

13 GENERAL COLLATERAL DESCRIPTION CONSTRUCTIVE POSSESSION OF THE SECURED CREDITOR OR HELD IN TRUST FOR, OR TO THE ORDER OF, THE SECURED CREDITOR."

16 REGISTERING AGENT ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF PERSONAL PROPERTY SECURITY / LE REGISTREUR DES SÛRETÉS MOBILIÈRES

(crj1fv 05/2022)



RUN NUMBER : 205
RUN DATE : 2023/07/24
ID : 20230724125331.29

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(2980)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : DMI EXIM LIMITED
FILE CURRENCY : 23JUL 2023

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
771636267

00
01 CAUTION FILING PAGE NO. OF PAGES TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
SCHEDULE NUMBER UNDER PERIOD
001 1 20210416 1647 1590 9166 P PPSA 10

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME

04 ADDRESS 3 FALCONER DRIVE, SUITE 3 MISSISSAUGA ON L5N 3L8
ONTARIO CORPORATION NO.

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / HSBC BANK CANADA
09 LIEN CLAIMANT ADDRESS 4550 HURONTARIO STREET MISSISSAUGA ON L5R 4E4

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE
X X X X X

11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING BEBER PROFESSIONAL CORPORATION
17 AGENT ADDRESS 2900-390 BAY ST. TORONTO ON M5H 2Y2

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 6

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTREUR
DES SÛRETÉS MOBILIÈRES

(crj11v 05/2022)



RUN NUMBER : 205
RUN DATE : 2023/07/24
ID : 20230724125331.29

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(2981)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : DMI EXIM LIMITED
FILE CURRENCY : 23JUL 2023

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER		
01	001	1		20210907 1532 1590 4144			
21	RECORD REFERENCED	FILE NUMBER	771636267				
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS	CORRECT PERIOD		
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME			
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	DMI EXIM LIMITED				
25	OTHER CHANGE REASON/ DESCRIPTION	AMEND DEBTOR ADDRESS TO 10 FALCONER DRIVE, SUITE 3, MISSISSAUGA, ONTARIO L5N 3L8					
02/05	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME		
03/06	DEBTOR/ TRANSFEREE	BUSINESS NAME					
04/07	ADDRESS	ONTARIO CORPORATION NO.					
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE					
08	ADDRESS						
09	COLLATERAL CLASSIFICATION						
10	CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	DATE OF MATURITY	NO. FIXED OR MATURITY DATE
11	MOTOR VEHICLE GENERAL	YEAR	MAKE	MODEL	V. I. N.		
12	VEHICLE DESCRIPTION						
13	GENERAL DESCRIPTION						
14	COLLATERAL DESCRIPTION						
15	REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT	BEBER PROFESSIONAL CORPORATION					
16	ADDRESS	2900-390 BAY ST. TORONTO ON M5H 2Y2					

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

7

CERTIFIED BY/CERTIFIÉES PAR
V. Quintanilla W.
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(cr)2fv 05/2022

Ontario 

RUN NUMBER : 205
RUN DATE : 2023/07/24
ID : 20230724125331.29

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

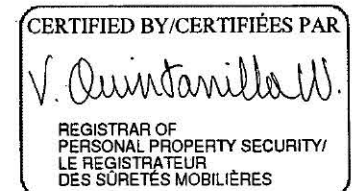
REPORT : PSSR060
PAGE : 7
(2982)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : DMI EXIM LIMITED
FILE CURRENCY : 23JUL 2023

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
783716364	20220607 0824 1532 4496			
779943699	20220126 1936 1531 4502			
771636267	20210416 1647 1590 9166	20210907 1532 1590 4144		

4 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(crfj6 05/2022)

This is **Exhibit “I”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor

Personal & Confidential

June 8, 2023

Via Electronic Mail (vinay@dmixim.com) and Courier

DMI Exim Limited
Unit 3, 10 Falconer Drive
Mississauga, ON L5L 3L8

Attention: Vinay Gupta

Dear Sir:

Re: Indebtedness of DMI Exim Limited (the “Borrower”) to HSBC Bank Canada (the “Bank”)

We are the lawyers for the Bank with respect to the above matter.

We refer to credit facilities (the “**Credit Facilities**”) made available by the Bank to the Borrower pursuant to the facility letter dated February 7, 2022, as amended on July 11, 2022 (as amended, the “**Facility Letter**”). Capitalized terms not otherwise defined in this letter have the meaning given to those terms in the Facility Letter.

As at June 7, 2023, the Borrower is indebted to the Bank in connection with the Facility Letter in the principal amount of USD \$21,915,317.08 and CAD \$518,001.54 as set out in Schedule “A”, plus accrued interest to date, and interest and costs to the date of repayment (the “**Indebtedness**”).

The Borrower is in default of its obligations to the Bank under the terms of the Facility Letter, including as follows:

- (a) contrary to section 6.4 of the Facility Letter, the Borrower failed to repay advances made under the PSL Facility when due; and
- (b) contrary to section 7.4 of the Facility Letter, the Borrower failed to repay advances made under the POSTSL Facility when due.

In addition, all of the Credit Facilities are repayable on demand. The Bank is entitled to exercise all of its rights and remedies against the Borrower including, without limitation, terminating the Credit Facilities and taking steps to enforce the Security.

On behalf of the Bank, we hereby demand payment from the Borrower of the Indebtedness, together with interest thereon accruing on the Indebtedness at the rates set out in Schedule “A”, and all costs, including legal fees and disbursements, incurred by the Bank to the date of payment in full.

We also enclose a Notice of Intention to Enforce Security delivered to you in accordance with the Bankruptcy and Insolvency Act (Canada). If you consent to the Bank enforcing its rights and remedies without further delay, please date and execute the copy of the Consent attached to the enclosed Notice of Intention to Enforce Security and return same to the undersigned by email or facsimile forthwith.

If payment of the Indebtedness is not made by 4:00 pm on June 19, 2023, the Bank will take such steps as it deems appropriate to ensure repayment of the Indebtedness.

Yours truly,

Thornton Grout Finnigan LLP



Alexander Soutter

Encl.

SCHEDULE “A”

Principal Indebtedness of DMI Exim Limited to HSBC Bank Canada as at June 7, 2023

Facility	Principal Balance
Operating Loan Facility	US\$4,942,552.30
Capital Loan Facility	CA\$517,500.08
Letter of Guarantee Facility	US\$1,013,546.33
Foreign Exchange Facility	US\$105,601.83
Draft/Bill Discounting Facility, Pre-Shipment Seller Loan Facility and Post-Shipment Seller Loan Facility (combined limit of US\$21,000,000)	US15,853,571.60
MasterCard	CA\$501.46 US\$45.00
Total Outstanding	CA\$518,001.54 US\$21,915,317.08

E. & O. E.

**NOTICE OF INTENTION TO ENFORCE SECURITY
PURSUANT TO SECTION 244 OF THE
BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

To: DMI Exim Limited (the “Company”)

Take notice that:

1. HSBC Bank Canada (the “**Bank**”), a secured creditor, intends to enforce its security on the property of the Company described below:

- (a) all present and after-acquired real and personal property of the Company; and
- (b) all proceeds of the foregoing collateral.

2. The security that is to be enforced is in the form of:

- (a) a General Security Agreement dated April 29, 2021;
- (b) a Charge/Mortgage in the principal amount of CAD \$575,000.00 registered on May 7, 2021 in the Land Registry Office for the Land Titles Division of Peel (LRO#43) as Instrument No. PR3829822, on title to the property municipally known as Unit 3, 10 Falconer Dr., Mississauga, Ontario (the “**Property**”), and more specifically described as:
 - (i) PIN19287-0005 (LT): UNIT 5, LEVEL 1, PEEL CONDOMINIUM PLAN NO. 287; PT BLKS G, H & I PL 548, PT 1 43R10656, MORE FULLY DESCRIBED IN SCHEDULE ‘A’ OF DECLARATION LT839260; MISSISSAUGA;
- (c) a General Assignment of Rents and Leases dated April 29, 2021 registered on title to the Property on May 7, 2021 in the Land Registry Office for the Land Titles Division of Peel (LRO#43) as Instrument No. PR3829823; and
- (d) an assignment of insurance, including but not limited to an assignment of the Company’s rights pursuant to EDC insurance policy number SE104327

(collectively, the “**Security**”).

3. As at June 7, 2023, the total principal amount of the indebtedness secured by the Security is USD \$21,915,317.08 and CAD \$518,001.54 (the “**Indebtedness**”), plus accrued interest to date, and interest and costs incurred by or charged to the Bank to the date of payment.

4. The secured creditor will not have the right to enforce the security until the expiry of the 10-day period after this notice is sent, unless the Company consents to an earlier enforcement.

Dated at Toronto, Ontario, this 8th day of June, 2023.

HSBC BANK CANADA
by Thornton Grout Finnigan LLP, its solicitors herein

Per:



Alexander Soutter

Email: asoutter@tgf.ca

File no. 100-461

CONSENT

TO: HSBC BANK CANADA (the “Bank”)

FROM: DMI EXIM LIMITED (the “Company”)

The Company acknowledges receipt of a Notice of Intention to Enforce Security delivered by the Bank.

For consideration received, the receipt and sufficiency of which are hereby irrevocably acknowledged, the Company hereby consents to the immediate enforcement by the Bank of the security held by it from the Company, and for the same consideration waives completely all rights to any delay by or any further notice from the Bank with respect to the enforcement of the Bank’s security and the exercise of the other remedies of the Bank against the Company.

DATED at _____, Ontario, this _____ day of June, 2023.

DMI EXIM LIMITED

Per: _____

Name:

Title:

I have the authority to bind the Company.

This is **Exhibit “J”** referred to in the
Affidavit of Brian Pettit sworn remotely
by Brian Pettit stated as being located in
the Town of Aurora, in York Region,
in the Province of Ontario,
before me at the City of Toronto,
in the Province of Ontario, this 28th day of July, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Mississauga
Court No. 32-2956516
Estate No. 32-2956516

In the Matter of the Notice of Intention to make a proposal of:

DMI EXIM LIMITED

Insolvent Person

GRANT THORNTON LIMITED

Licensed Insolvency Trustee

Date of the Notice of Intention:

June 19, 2023

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the Bankruptcy and Insolvency Act;

Pursuant to subsection 69. (1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: June 19, 2023, 14:45

E-File/Dépôt Electronique

Official Receiver

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton, Ontario, Canada, L8R3P7, (877)376-9902

Canada

District of: Ontario
Division No. 09 - Mississauga
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Notice of Intention to make a Proposal of
DMI EXIM LIMITED
of the City of Mississauga, in the Province of Ontario

Take notice that:

1. I, DMI EXIM LIMITED, an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. Grant Thornton Limited of 11 th Floor, 200 King Street West, Box 11, Toronto, ON, M5H 3T4, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Toronto in the Province of Ontario, this 19th day of June 2023.

Vinay Gupta

DMI EXIM LIMITED
Insolvent Person

To be completed by Official Receiver:

Filing Date

Official Receiver

District of: Ontario
Division No. 09 - Mississauga
Court No.
Estate No.

- FORM 33 -

Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the Matter of the Notice of Intention to make a Proposal of
DMI EXIM LIMITED
of the City of Mississauga, in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
ADM AGRI INDUSTRIES	900-167 Lombard Avenue Winnipeg MB R3B 0V3		497,339.43
AGRILINK SOLUTIONS INC	5500 North Service Rd Burlington ON L7L 6W6		548,825.63
BMW FINANCIAL SERVICES	50 Ultimate Drive Richmond Hill ON L4S 1P4		16,000.00
CEBA LOAN	Sudbury tax centre Post Office Box 20000, Station A Sudbury ON P3A 5C1		40,000.00
CRA	Sudbury Tax Centre PO Box 20000, Station A Sudbury ON P3A 5C1		962,976.00
DMI EXIM LIMITED	PAYROLL EXPENSES 10 FALCONER DR UNIT 3 Mississauga ON L5N3L8		28,457.42
EDC	150 Slater Street Ottawa ON K1A 1K3		29,626.88
HSBC	4550 Hurontario Street Mississauga ON L5R 4E4		29,441,837.02
VITERRA CANADA INC	2625 Victoria Ave. Regina SK S4T 7T9		384,078.14
Total			31,949,140.52

Vinay Gupta

DMI EXIM LIMITED
Insolvent Person

Court No.

File No.

In the Matter of the Notice of Intention to make a
Proposal of
DMI EXIM LIMITED
of the City of Mississauga, in the Province of Ontario

Form 33
Notice of intention to make a proposal

Trustee: Robert Stelzer
License: 3442
Email: Rob.Stelzer@ca.gt.com

Grant Thornton Limited - Licensed Insolvency
Trustee
11 th Floor, 200 King Street West, Box 11
Toronto ON M5H 3T4
Phone: (416) 366-0100 Fax: (416) 360-4948

This is **Exhibit “K”** referred to in the Affidavit of Brian Pettit sworn remotely by Brian Pettit stated as being located in the Town of Aurora, in York Region, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, this 28th day of July, 2023 in accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely.



A Commissioner for taking affidavits, etc.
ALEXANDER SOUTTER
Barrister & Solicitor

District of Ontario
Division No. 09 — Mississauga
Court No. 32-2956516
Estate No.: 32-2956516

Form 35

**IN THE MATTER OF THE DIVISION I PROPOSAL OF
DMI EXIM LIMITED
PROPOSAL**

WHEREAS DMI Exim Limited (the “**Debtor**”) filed a Notice of Intention to Make a Proposal with the Office of the Superintendent of Bankruptcy on June 19, 2023.

AND WHEREAS Grant Thornton Limited has agreed to act as the Debtor’s proposal trustee (in such capacity, the “**Proposal Trustee**”).

AND WHEREAS the Debtor has agreed to make this Proposal, which would result in better recoveries for creditors than they would receive in a bankruptcy, to be distributed to the Debtor’s creditors in the event that the Proposal is accepted by the requisite majorities of creditors and approved by the Court.

NOW THEREFORE the Debtor submits to its creditors the following proposal.

ARTICLE 1 — DEFINITIONS

1.1 Definitions

In this Proposal, the following words and phrases shall have the following respective meanings:

- a) “Act” means the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (as amended).
- b) “Approval Date” means the date on which both of the following have occurred: (i) the Proposal has been approved by the Requisite Majority, and (ii) the Approval Order has been issued, has not been stayed, there is no outstanding appeal of the Approval Order and the time for appealing the Approval Order has lapsed.
- c) “Approval Order” means an order of the Court, in form and substance satisfactory to the Debtor and the Proposal Trustee approving and sanctioning this Proposal in accordance with the provisions hereof and of the Act.
- d) “Bankruptcy Proceeding” means an immediate liquidation of the Debtor’s remaining assets and distribution of such proceeds in a bankruptcy proceeding under the Act.
- e) “Business Day” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario.
- f) “Cash Fund” means an amount to be agreed upon and be paid to the Trustee in accordance with this Proposal to be distributed in accordance with this Proposal.

- g) “Claims” means any right of any Person against the Debtor in connection with any indebtedness, liability or obligation of any nature whatsoever, including, without limitation, claims that are liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, present, future, known, unknown, disputed, undisputed or whether by guarantee, by surety, by subrogation or otherwise incurred and whether or not such a right is executory in nature, including, for greater certainty: (i) any claim against the Debtor for indemnification by any Director or Officer; and (ii) any right of any Person against the Debtor arising pursuant to sections 65.11 or 65.2 of the Act.
- h) “Court” means the Ontario Superior Court of Justice.
- i) “Creditor” means any Person having a Proven Claim, secured, unsecured or otherwise, and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person.
- j) “Crown Priority Claims” means all Claims of Her Majesty in Right of Canada or a Province that were outstanding on the Filing Date and are of a kind that could be subject to a demand under:
- i. subsection 224(1.2) of the Income Tax Act;
 - ii. any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, or an employee's premium, or employer's premium, as defined in the Employment Insurance Act, and of any related interest, penalties or other amounts; or
 - iii. any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum:
 - (A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act; or
 - (B) is of the same nature as a contribution under the Canada Pension Plan if the province is a “province providing a comprehensive pension plan” as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a “provincial pension plan” as defined in that subsection.
- k) “D&O Claim” means the right of any Person against one or more of the Directors or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or

anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, including any right of contribution or indemnity, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer.

- l) “Directors and Officers” means the current and former directors and officers of the Debtor, in such capacities, and “Director” or “Officer” means any one of them.
- m) “Disputed Claim” means any Claim or D&O Claim which has been received by the Proposal Trustee in accordance with the terms of this Proposal and the Act, but has not been accepted as proven in accordance with section 135 of the Act or which is being disputed in whole or in part by the Proposal Trustee, or any other person entitled to do so and has not been resolved by agreement or by Order of the Court. [
- n) “Effective Date” means the date that is two (2) Business Days following the satisfaction of the conditions listed in Article 6 of this Proposal. The Cash Fund must be paid to the Proposal Trustee by the Effective Date.
- o) “Employee” means a Person who performed work for the Debtor for wages under the terms of an employment agreement and does not include Persons engaged as dependent contractors or independent contractors.
- p) “Employee Priority Claims” means Claims of employees and former employees of amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) of the Act if the Debtor became bankrupt on the Filing Date, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt’s business during the same period.
- q) “Filing Date” means June 19, 2023.
- r) “Final Dividend Notice” as the meaning given to it in Article 3.1 of this Proposal.
- s) “HSBC” means HSBC Bank Canada, which is the major secured creditor of the Debtor.
- t) “HSBC Secured Claim” means the claim of HSBC pursuant to its loan and security agreements with the Debtor for all amounts owing, and includes, for greater certainty, the charge/mortgage held by HSBC in respect of the Debtor’s real property, less any amount in respect of which HSBC files as an unsecured claim in this Proposal, which shall be considered as the value of HSBC’s security thereunder for purposes of this Proposal and shall be considered as a Secured Claim.
- u) “HSBC Unsecured Claim” means the claim of HSBC to be filed as an Unsecured Claim in the Proposal, and which shall be considered as an Unsecured Claim for purposes of this Proposal.

- v) “Inspectors” means those inspectors duly appointed pursuant to the terms of the *Act*, as provided for in the Proposal.
- w) “Meeting of Creditors” means the meeting of Creditors scheduled to consider and vote on the Proposal, and any adjournment thereof.
- x) “Meeting Date” means the date of the Meeting of Creditors selected by the Proposal Trustee.
- y) “Official Receiver” means a federal government employee in the office of the Superintendent of Bankruptcy who, among other things, accepts and reviews documents that are filed in proposals made under the Act.
- z) “Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.
- aa) “Post-Filing Claim” means a claim arising in respect of goods supplied, services rendered or other consideration given to the Debtor, in the ordinary course of business, subsequent to the Filing Date and before the Approval Date.
- bb) “Professional Fees” means, collectively, the fees and disbursements of the Proposal Trustee, and the Proposal Trustee’s legal counsel.
- cc) “Proof of Claim” means the form to be delivered by the Creditors to the Proposal Trustee in accordance with the Act.
- dd) “Proposal” means this proposal, as may be further varied, amended, modified or supplemented in accordance with the provisions hereof and the Act.
- ee) “Proposal Trustee” has the meaning given to it in the recitals.
- ff) “Proven Claim” means the amount or any portion of a Claim or D&O Claim that is accepted as proven by the Proposal Trustee pursuant to section 135 of the Act and determined for distribution purposes in accordance with the provisions of the Act or any applicable orders from the Court, and also the HSBC Secured Claim and HSBC Unsecured Claim.
- gg) “Related Person” means "related persons" (as defined in Section 4(2) of the Act) to the Debtor.
- hh) "Released D&O Claims" means all D&O Claims that are released pursuant to Article 9 of this Proposal.
- ii) “Requisite Majority” means a majority in number and two-thirds in value of all Proven Claims of Creditors entitled to vote, who are present and voting at the Creditors' Meeting (whether in person, by proxy or by voting letter) in accordance with the voting procedures established by this Proposal and the Act.

- jj) “Secured Claim” means a Claim by a Person in respect of which valid security is held. For greater certainty, this Proposal is not made to Secured Creditors.
- kk) “Superintendent’s Levy” has the meaning given to it in Section 147 of the Act.
- ll) “Unsecured Claim” means a Proven Claim by a Creditor for which no security is held.

1.2 Time

All times expressed in this Proposal are local time Toronto, Ontario, unless otherwise stipulated. Time is of the essence in this Proposal.

1.3 Monetary References

All references to currency and to “\$” are to Canadian dollars, unless otherwise indicated.

ARTICLE 2 — PURPOSE AND EFFECT OF PROPOSAL

2.1 Overview of Proposal

This Proposal is made only to Unsecured Creditors. Secured Creditors are unaffected by this Proposal.

The objective of this Proposal is to provide for (a) the assistance of the Debtor to realize on the collateral subject to the security held by HSBC, being primarily accounts receivable due from overseas payors, and (b) the payment of a one-time lump sum amount (Cash Fund) to the Debtor's Unsecured Creditors, to be paid by the Effective Date.

This Proposal is designed to allow the Debtor to distribute funds to the Unsecured Creditors in a manner that will result in the Unsecured Creditors receiving more than would be recovered in a Bankruptcy Proceeding. In a Bankruptcy Proceeding, it is likely that Unsecured Creditors would receive nothing and that only secured creditors would receive any recovery on their claims. In the event that the Proposal is implemented, the result of payments to Creditors is superior to a Bankruptcy Proceeding for Creditors.

This Proposal provides for the payment in full of Crown Priority Claims as required by s. 60(1.1) of the Act, however the Debtor does not believe that any such Crown Priority Claims exist. All Employee Priority Claims required by s. 60(1.3) of the Act are required to be paid by this Proposal.

2.2 Proposed Payments / Contributions

The Cash Fund will be paid as a one-time lump sum to the Proposal Trustee by the Effective Date. The Cash Fund will be available for distribution in accordance with Article 2.4 of the Proposal.

2.3 Proposed Distribution

The Cash Fund will be disbursed by the Proposal Trustee by the Effective Date in accordance with the terms of the Proposal, as follows:

- (a) Professional Fees. Subject to any applicable provisions of the Act, the Professional Fees will be paid in full, as they become due.
- (b) Crown Priority Claims. All Crown Priority Claims that were outstanding as at the Filing Date, if any, shall be paid in full to Her Majesty in right of Canada or a Canadian province or territory, as applicable, within six months after the issuance of the Proposal Approval Order.
- (c) Superintendent's Levy: The Superintendent's Levy will be paid in full.
- (d) Employee Priority Claims. Employee Priority Claims will also be paid in full, as required by the Act.
- (e) Unsecured Creditors. All other Unsecured Claims, that are not paid pursuant to (a) through (d) of this Article 2.4 (including, for the avoidance of doubt, all D&O Claims that are Proven Claims) will receive a *pari passu* distribution of the remainder of the Distribution Funds after the payments are made (or corresponding reserves taken) for the distributions in (a) through (d).

Effect of Payments

Upon the Debtor making the payments to the Proposal Trustee in accordance with Article 2.2 hereof, the Debtor, their respective successors and assigns, and their respective directors shall be deemed to have fully satisfied the terms of this Proposal.

2.4 Persons Affected

The Proposal provides for a full and final release and discharge of all Unsecured Claims and Released D&O Claims and a settlement of and consideration for all Unsecured Claims against the Debtor.

The Proposal will become effective at 12:01 a.m. (Toronto time) on the Approval Date in accordance with its terms and shall be binding on and enure to the benefit of the Debtor and other Persons, except for Secured Creditors, directly or indirectly named or referred to in or subject to the Proposal.

On the Effective Date in accordance with the terms of this Proposal and in accordance with the provisions of the Approval Order, the treatment of all Unsecured Claims and Released D&O Claims shall be final and binding on the Debtor, the Officers and Directors, all Unsecured Creditors (and their respective heirs, executors, administrators, legal and personal representatives, successors and assigns), and all Unsecured Claims and Released D&O Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Debtor, and the Directors and Officers shall thereupon have no further obligation whatsoever in respect of the Unsecured Claims and Released D&O Claims; provided that nothing herein releases the Debtor or any other Person from their obligations to make distributions in the manner and to the extent provided for in the Proposal, and provided further that such discharge and release of the Debtor and the Directors and Officers shall be without prejudice to the right of a Person in respect of a Disputed Claim to prove such Disputed Claim in accordance with the Act so that such Disputed Claim may become a Proven Claim.

2.5 Post-Filing Claims

Post-filing Claims shall be paid in full by the Debtor in the ordinary course of business, on regular trade terms.

ARTICLE 3 — CLAIMS PROCESS

3.1 Claims Process

In order to be eligible to vote at the Meeting of Creditors, each Unsecured Creditor shall file a Proof of Claim with the Proposal Trustee in accordance with the applicable provisions of the Act, and shall specify every Unsecured Claim and every D&O Claim it asserts against the Debtor and/or the Directors and Officers, as applicable. Thereafter, the Proposal Trustee shall examine every Proof of Claim and determine whether such Unsecured Claims are Proven Claims or Disputed Claims, and whether such Unsecured Claims are Crown Priority Claims or Employee Priority Claims, as applicable.

In order to receive a distribution from the Cash Fund, an Unsecured Creditor must submit, or be deemed to have submitted, a Proof of Claim prior to the time the Proposal Trustee distributes funds in accordance with the Proposal and the Act.

In accordance with section 149 of the Act, prior to the final distribution from the Cash Fund, the Proposal Trustee shall give notice (the "**Final Dividend Notice**") to every Person with a Claim of which the Proposal Trustee has notice or actual knowledge but who did not file a Proof of Claim.

3.2 Claims for Voting Purposes

Each Unsecured Creditor shall be entitled to a single vote valued at the amount of its Unsecured Claim or a portion of its Claim, if any, that has been accepted by the Proposal Trustee for voting purposes without prejudice to the rights of the Debtor, the Proposal Trustee and the Unsecured Creditor to have the quantum of any Disputed Claim finally determined for the purposes of receiving its share of the Cash Fund, if any, or for the purposes of determining whether this Proposal was approved by the Requisite Majority.

Without limiting the foregoing, Disputed Claims shall be tracked by the Proposal Trustee as if such claims were Proven Claims but Disputed Claims will not be considered for the purposes of determining the Requisite Majority. The Proposal Trustee will report to the Court on the impact on the Requisite Majority had the Disputed Claims constituted accepted claims for voting purposes.

3.3 Disputed Claims

Any Unsecured Creditor with a Disputed Claim shall not be entitled to receive any distribution hereunder with respect to such Disputed Claim unless and until such Unsecured Claim becomes a Proven Claim. Distributions pursuant to Article 2.4 of this Proposal shall be made in respect of any Disputed Claim that is finally determined to be a Proven Claim.

3.4 Claims Bar

Any Person who does not file its Unsecured Claim or D&O Claim within thirty days of the issuance of the Final Dividend Notice, shall forever be barred from making a Unsecured Claim or D&O Claim or sharing in any dividend hereunder, subject to any exception set out in sections 149(2), (3), (4) and 150 of the Act, regardless of whether such Person was sent a Final Dividend Notice or whether such Person received such

Final Dividend Notice, provided that the Proposal Trustee shall be entitled, in its reasonable discretion, to waive strict compliance with this Article 3.6 in respect of specific Claims if such waiver would not materially prejudice the Creditors.

3.5 Classes of Creditors

There shall only be one class of Creditors for voting purposes comprised of Creditors holding Unsecured Claims that are Proven Claims. This Proposal is not made to Secured Creditors.

3.6 Set-Off

The law of set-off applies to all Unsecured Claims.

ARTICLE 4 — MEETING OF CREDITORS

4.1 Meeting of Creditors

The Meeting of Creditors will be held on the Meeting Date. Due to the uncertain duration of social-distancing measures currently mandated by provincial governments in response to the Covid-19 epidemic, the Meeting of Creditors will be held virtually, on such terms and parameters as the Proposal Trustee considers appropriate, with video and teleconference access for any Creditors who wish to virtually attend. The Proposal Trustee shall provide all known Creditors with the necessary connection, dial-in and other information about the Meeting of Creditors.

4.2 Voting Virtually

Persons virtually in attendance at the Meeting of Creditors by video or teleconference who are eligible to vote shall cast their vote in the manner prescribed by the Proposal Trustee. All votes will be recorded and tabulated by the Proposal Trustee, who may seek the assistance of the Court with respect to any dispute arising from or out of the tabulation of votes.

4.3 Proxies and Voting Letters

Proxies, as provided for in the Act indicating a Person authorized to act on behalf of a Creditor holding a Proven Claim, may be submitted to the Proposal Trustee at, or any time prior to, the commencement of the vote on the Proposal at the Meeting of Creditors.

Voting letters as provided for in the Act submitted to the Proposal Trustee prior to the Meeting of Creditors must indicate whether the Creditor wishes to cast its vote in favour of or against the Proposal. Voting letters that do not indicate either preference will be deemed to indicate a vote in favour of the Proposal.

4.4 Quorum

A quorum shall be constituted for the Meeting of Creditors or any adjournment thereof if there is one Creditor, entitled to vote, present virtually by video or teleconference, or by proxy or if one Creditor, entitled to vote, has submitted a voting letter in accordance with the provisions of the Act and this Proposal. If the requisite quorum is not virtually present at the Meeting of Creditors or if the Meeting of Creditors

has to be postponed for any reason, then the Meeting of Creditors shall be adjourned by the Proposal Trustee to such date, time and pursuant to such virtual parameters as determined by the Proposal Trustee.

4.5 Votes by Related Persons

Related Persons may vote against but not in favour of the Proposal.

4.6 Creditor Approval

In order to be approved, the Proposal must receive the affirmative vote of the Requisite Majority of each of the classes of Creditors.

ARTICLE 5 — MODIFICATION OF PROPOSAL

5.1 Modifications

Subject to the consent of the Proposal Trustee, at any time prior to the Meeting of Creditors or at any time prior to the date to which the Meeting of Creditors is adjourned, if it is adjourned, the Debtor reserves the right at any time to file any modification, amendment or supplement of and to the Proposal, by way of amended proposal, and file such amended proposal with the Official Receiver as soon as practical, in which case any such amended proposal or proposals shall, for all purposes, be and be deemed to be part of and incorporated into the Proposal.

At the Meeting of Creditors, the Proposal Trustee shall provide all Creditors in attendance with details of any modifications or amendments of and to the Proposal prior to the vote being taken to approve the Proposal. After the Meeting of Creditors (and both prior to and subsequent to the issuance of the Approval Order) and subject to the consent of the Proposal Trustee, the Debtor, with the consent of HSBC, may at any time and from time to time vary, amend, modify or supplement the Proposal if the Court determines that such variation, amendment, modification or supplement is of a minor, immaterial or technical nature or would not be materially prejudicial to the interest of any of the Creditors under the Proposal and is necessary in order to give effect to the substance of the Proposal or the Approval Order.

ARTICLE 6 — CONDITIONS

6.1 The implementation of the Proposal and distribution thereunder is subject to the satisfaction of the following conditions precedents:

- (a) The Approval Date has occurred;
- (b) The Cash Fund has been paid by the Debtor to the Proposal Trustee;
- (c) All other actions, documents and agreements necessary to implement the Proposal, in the reasonable judgment of the Proposal Trustee, shall have been effected and executed.

ARTICLE 7 — BINDING EFFECT

7.1 On the Effective Date, this Proposal will become effective and binding on and enure to the benefit of the Debtor the Directors and Officers and all creditors affected by this Proposal and all other

Persons named or referred to in, or subject to, this Proposal, and their respective heirs, executors, administrators and other legal representatives, successors and assigns.

ARTICLE 8 — INSPECTORS

- 8.1 At the Meeting of Creditors, the Creditors will be entitled to appoint one or more, but not exceeding five, Inspectors, whose powers shall be as follows:
- (a) advising the Proposal Trustee in respect of such matters as may be referred to the Inspectors by the Proposal Trustee;
 - (b) advising the Proposal Trustee concerning any dispute that may arise as to the validity of the Claims asserted in this Proposal;
 - (c) exercising all powers given to the Inspectors of a bankrupt estate appointed pursuant to the provisions of the Act; and
 - (d) altering or extending the time for payments to be made pursuant to this Proposal, but not the total amount paid.

The Inspectors shall not have liability to the Creditors or the Debtor for exercising any of the powers given to them under this Proposal or the Act.

ARTICLE 9 — RELEASES

9.1 Proposal Releases

On the Effective Date, the Debtor, the Debtor's employees and contractors, each Director and Officer of the Debtor, and their respective heirs and assigns, being herein referred to individually as a "**Released Party**" and all referred to collectively as "**Released Parties**", shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, orders, including for injunctive relief or specific performance and compliance orders, expenses, executions, encumbrances and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature, including claims for contribution or indemnity which any Unsecured Creditor or other Person may be entitled to assert, except for Claims of Secured Creditors which remain unaffected by this Proposal, including claims that are liquidated, unliquidated, fixed, contingent, matured, unmatured, legal, equitable, present, future, known, unknown, disputed, undisputed or whether by guarantee, by surety, by subrogation or otherwise incurred and whether or not such a right is executory in nature, including, for greater certainty, any Claim against the Debtor for indemnification by any Director or Officer, based in whole or in part on any act, omission, transaction, duty, responsibility, indebtedness, liability, obligation, negligence, breach of fiduciary duty, dealing or other occurrence existing or taking place on or prior to the Effective Date that constitute or are in any way relating to, arising out of or in connection with any Claims, and any indemnification obligations with respect thereto, the business and affairs of the Debtor whenever or however conducted, the administration and/or management of the Debtor, the Proposal, or any document, instrument, matter or transaction involving the Debtor taking place in connection with the Proposal (referred to collectively as the "**Released Claims**"),

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C46, as amended

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

Respondent

Court File No. CV-23-00703534-00CL

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

Proceedings commenced at Toronto, Ontario

AFFIDAVIT

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Lawyers for the Applicant, HSBC Bank Canada

TAB 3

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

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3,
as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c. C43, as amended

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

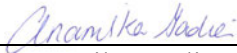
Respondent

CONSENT

KPMG INC. hereby consents to act as Court-appointed Receiver in this proceeding should
such an Order be granted by the Court.

Dated at Toronto, Ontario, this 27th day of July, 2023.

KPMG INC.

Per: 
Name: Anamika Gadia
Title: Senior Vice President

Per: 
Name: George Bourikas
Title: Vice President

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C46, as amended

HSBC BANK CANADA

- and -

DMI EXIM LIMITED

Applicant

Respondent

Court File No. CV-23-00703534-00CL

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

Proceedings commenced at Toronto, Ontario

CONSENT

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Lawyers for the Applicant, HSBC Bank Canada

TAB 4

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

**IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3,
as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c. C43, as amended**

THE HONOURABLE) TUESDAY, THE 1ST
)
JUSTICE PENNY) DAY OF AUGUST, 2023

B E T W E E N:

HSBC BANK CANADA

Applicant

- and -

DMI EXIM LIMITED

Respondent

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order: (a) 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 (“**CJA**”), appointing KPMG Inc. as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of DMI Exim Limited (the “**Debtor**”) including, but not limited to, the Debtor’s lands and premises municipally known as 10 Falconer Dr., Unit 3, Mississauga,

Province of Ontario and more specifically described in Schedule “A” hereto (the “**Real Property**”), acquired for, or used in relation to a business carried on by the Debtor (collectively, the “**Property**”); and (b) abridging the time for service of this Notice of Application and the materials filed in support of the application, authorizing service *via* electronic mail, and dispensing with further service thereof, was heard this day by videoconference in Toronto, Ontario, in accordance with the Guidelines to Determine Mode of Proceeding in Civil Proceedings, effective April 19, 2023.

ON READING the Affidavit of Brian Pettit sworn July 28, 2023, the Pre-Filing Report of the Receiver dated July 31, 2023, the Consent of KPMG Inc. to act as Receiver, and on hearing the submissions of counsel for the Applicant and those other parties listed on the counsel slip, no one else appearing although duly served as it appears from the Affidavit of Service of [NAME] sworn July [x], 2023,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein is hereby abridged and validated such 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, KPMG Inc. is hereby appointed Receiver, without security, of all of the Debtor’s Property, including, but not limited to, the Real Property described in Schedule “A” hereto, acquired for or used in relation to the business carried on by the Debtor, including all proceeds thereof.

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 Debtor, 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 Debtor;
- (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 Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, for any purpose pursuant to this Order;
- (i) to make claims pursuant to any policy of insurance issued in favour of the Debtor, 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 Debtor, 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,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000 provided that the aggregate consideration for all such transactions does not exceed \$500,000 and

(ii) with the approval of this Court in respect of any transaction in which the 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;

- (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 Debtor;
- (p) to continue to act as trustee in bankruptcy of the Debtor, take possession and control of the assets of such bankrupt for the purposes of this Receivership and to pay the costs of such a bankruptcy from the proceeds of the Receivership;

- (q) to enter into agreements with the trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) 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 Debtor, and without interference from any other Person.

RECEIVER'S LEGAL COUNSEL

4. **THIS COURT ORDERS** that the Receiver may retain legal counsel to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order. Such legal counsel may include Thornton Grout Finnigan LLP, the lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent legal counsel in respect of any legal advice or services where a conflict exists or may arise.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their 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.

6. **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 Debtor, 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.

7. **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.

8. **THIS COURT ORDERS** that 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

9. **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

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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 any or all of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, including, without limitation, licenses and permits, 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 Debtor to carry on any business which the Debtor are not lawfully entitled to carry on, (ii) exempt the Receiver or any or all of the Debtor 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

12. **THIS COURT ORDERS** that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 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 Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's 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 Debtor 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

14. **THIS COURT ORDERS** that all amounts standing to the credit of the Debtor in any account as at the date of this Order, together with 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**"). The Receiver may, without any further Order, make such interim distributions to the Applicant as the Receiver deems appropriate, up to the amount secured by its security and subject to the payment in full of any priority payables, with any surplus thereafter, net of any disbursements provided for herein, held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on behalf of the Debtor, 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

16. **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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **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

18. **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

19. **THIS COURT ORDERS** that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at its standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and their counsel shall be entitled to and is 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.

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

21. **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, and those of its counsel, incurred at the standard rates and charges of the Receiver, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty, and it is hereby empowered to borrow from the Applicant in respect of its costs and disbursements from time to time, and for its costs and disbursements in its capacity as trustee in bankruptcy for the Debtor, for the purpose of

funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The amounts of such borrowings shall be secured by the Applicant's security over the assets of the Debtor.

SERVICE AND NOTICE

23. **THIS COURT ORDERS** that the Guide Concerning Commercial List E-Service (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 <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) 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 <https://kpmg.com/ca/dmi>.

24. **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 Debtor's creditors or other interested parties at their respective addresses as last shown on the Debtor's records 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

25. **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.

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

27. **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.

28. **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.

29. **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 Debtor's estate with such priority and at such time as this Court may determine.

30. **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.

REGISTRATION ON TITLE

31. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Peel County (No. 43) accept this Order for registration on title to the Real Property described in Schedule "A" hereto.

32. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without need for entry and filing on the date hereof.

SCHEDULE "A"

Description of Real Property

PIN19287-0005 (LT): UNIT 5, LEVEL 1, PEEL CONDOMINIUM PLAN NO. 287; PT BLKS G, H & I PL 548, PT 1 43R10656, MORE FULLY DESCRIBED IN SCHEDULE 'A' OF DECLARATION LT839260; MISSISSAUGA.

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C46, as amended

HSBC BANK CANADA

- and -

DMI EXIM LIMITED

Applicant

Respondent

Court File No. CV-23-00703534-00CL

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

Proceedings commenced at Toronto, Ontario

**ORDER
(appointing Receiver)**

THORNTON GROUT FINNIGAN LLP
TD West Tower, Toronto-Dominion Centre
100 Wellington Street West
Suite 3200
Toronto, ON M5K 1K7

D.J. Miller (LSO #34393P)
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Lawyers for the Applicant, HSBC Bank Canada

TAB 5

Revised: January 21, 2014
~~s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver~~

~~Court File No.~~

Court File No. CV-23-00703534-00CL

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

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3,
as amended and section 101 of the *Courts of Justice Act*, RSO 1990, c. C43, as amended

<u>THE HONOURABLE</u>)	<u>TUESDAY, THE 1ST</u>
)	
THE HONOURABLE)	WEEKDAY, THE #
JUSTICE <u>JUSTICE PENNY</u>)	DAY OF MONTH, 20 <u>YR</u> DAY OF <u>AUGUST, 2023</u>

BETWEEN:

HSBC BANK CANADA

Applicant

PLAINTIFF[†]

Plaintiff

- and -

DMLEXIM LIMITED

[†]The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

~~DEFENDANT~~ Respondent

Defendant

**ORDER
(appointing Receiver)**

THIS ~~MOTION~~ APPLICATION made by the ~~Plaintiff~~² Applicant for an Order: (a) 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 ~~[RECEIVER'S NAME]~~ KPMG Inc. as receiver ~~[and manager]~~ (in such ~~capacities~~ capacity, the "Receiver"), without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~ DMI Exim Limited (the "Debtor") including, but not limited to, the Debtor's lands and premises municipally known as 10 Falconer Dr., Unit 3, Mississauga, Province of Ontario and more specifically described in Schedule "A" hereto (the "Real Property"), acquired for, or used in relation to a business carried on by the Debtor (collectively, the "Property"); and (b) abridging the time for service of this Notice of Application and the materials filed in support of the application, authorizing service via electronic mail, and dispensing with further service thereof, was heard this day ~~at 330 University Avenue,~~ by videoconference in Toronto, Ontario, in accordance with the Guidelines to Determine Mode of Proceeding in Civil Proceedings, effective April 19, 2023.

² ~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

ON READING the ~~affidavit of [NAME] sworn [DATE] and the Exhibits thereto~~ Affidavit of Brian Pettit sworn July 28, 2023, the Pre-Filing Report of the Receiver dated July 31, 2023, the Consent of KPMG Inc. to act as Receiver, and on hearing the submissions of counsel for ~~[NAMES], no one~~ the Applicant and those other parties listed on the counsel slip, no one else appearing ~~for [NAME]~~ although duly served as it appears from the ~~affidavit of service~~ Affidavit of Service of [NAME] sworn ~~[DATE] and on reading the consent of [RECEIVER'S NAME] to act as the Receiver,~~ July [x], 2023,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of ~~Motion~~ Application and the ~~Motion~~ Application Record herein is hereby abridged and validated³ ~~so~~ such that this ~~motion~~ 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, ~~[RECEIVER'S NAME]~~ KPMG Inc. is hereby appointed Receiver, without security, of all of the ~~assets, undertakings and properties of the Debtor~~ Debtor's Property, including, but not limited to, the Real Property described in Schedule "A" hereto, acquired for~~;~~ or used in relation to the business carried on by the Debtor, including all proceeds thereof ~~(the "Property")~~.

³ If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

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 Debtor, 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 Debtor;
- (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~~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 Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the ~~Receiver's~~Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to make claims pursuant to any policy of insurance issued in favour of the Debtor, 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 Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ 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;

~~⁴This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

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

(i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~; 250,000 provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~; 500,000 and

(ii) with the approval of this Court in respect of any transaction in which the 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,⁵ 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

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

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 Debtor;
- (p) to continue to act as trustee in bankruptcy of the Debtor, take possession and control of the assets of such bankrupt for the purposes of this Receivership and to pay the costs of such a bankruptcy from the proceeds of the Receivership;
- (q) ~~(p)~~ to enter into agreements with ~~any~~the trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (s) ~~(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 Debtor, and without interference from any other Person.

RECEIVER'S LEGAL COUNSEL

4. THIS COURT ORDERS that the Receiver may retain legal counsel to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order. Such legal counsel may include Thornton Grout Finnigan LLP, the lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent legal counsel in respect of any legal advice or services where a conflict exists or may arise.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. ~~4.~~ THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on ~~its~~their 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~~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~~Receiver's request.

6. ~~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 Debtor, 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~~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.

7. ~~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.

8. ~~7.~~ **THIS COURT ORDERS** that 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

9. ~~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

10. ~~9.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor 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 any or all of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, including, without limitation, licenses and permits, 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 Debtor to carry on any business which the Debtor ~~is~~are not lawfully entitled to carry on, (ii) exempt the Receiver or any or all of the Debtor 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

12. ~~11.~~ **THIS COURT ORDERS** that 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 Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. ~~12.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 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 Receiver, and that the Receiver shall be entitled to the continued use of the ~~Debtor's~~Debtor's 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 Debtor 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

14. ~~13.~~ **THIS COURT ORDERS** that all amounts standing to the credit of the Debtor in any account as at the date of this Order, together with 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~~). The Receiver may, without any further Order, make such interim distributions to the Applicant as the Receiver deems appropriate, up to the amount secured by its security and subject to the payment in full of any priority payables, with any surplus thereafter, 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

15. ~~14.~~ **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on ~~the Debtor's~~ behalf of the Debtor, 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

16. ~~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 Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. ~~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~~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

18. ~~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~~RECEIVER'S ACCOUNTS

19. ~~18.~~ **THIS COURT ORDERS** that the Receiver and its counsel ~~to the Receiver~~ shall be paid their reasonable fees and disbursements, in each case at ~~their~~its standard rates and charges, unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and their counsel ~~to the Receiver~~ shall be entitled to and ~~are~~is hereby granted a charge (the **"Receiver's" "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~~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.⁶

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

21. ~~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~~ and those of its counsel, 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

22. ~~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~~ \$ _____ (or such greater amount as this Court may by further Order authorize) at any time, at

⁶ Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

~~such rate or rates of interest as it deems advisable for such period or periods of time as it may~~
~~arrange~~ from the Applicant in respect of its costs and disbursements from time to time, and for its
costs and disbursements in its capacity as trustee in bankruptcy for the Debtor, 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.~~ amounts of such borrowings shall be secured by the Applicant's
security over the assets of the Debtor.

~~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

23. ~~25.~~ **THIS COURT ORDERS** that the ~~E-Service Protocol of the~~ Guide Concerning
Commercial List E-Service (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 ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~<https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) 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 URL: ~~'@'~~<https://kpmg.com/ca/dmi>.

24. ~~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 ~~Debtor's~~[Debtor's](#) creditors or other interested parties at their respective addresses as last shown on the [Debtor's](#) records ~~of the Debtor~~ 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

25. ~~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.

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

27. ~~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.

28. ~~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.

29. ~~31.~~ **THIS COURT ORDERS** that the ~~Plaintiff~~Applicant shall have its costs of this ~~motion~~application, up to and including entry and service of this Order, provided for by the terms of the ~~Plaintiff's~~Applicant's security or, if not so provided by the ~~Plaintiff's~~Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the ~~Debtor's~~Debtor's estate with such priority and at such time as this Court may determine.

30. ~~32.~~ **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.

REGISTRATION ON TITLE

31. **THIS COURT ORDERS AND DIRECTS** that, as soon as practicable, the Land Registry Office for the Land Titles Division of Peel County (No. 43) accept this Order for registration on title to the Real Property described in Schedule "A" hereto.

32. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without need for entry and filing on the date hereof.

SCHEDULE "A"

Description of Real Property

PIN19287-0005 (LT): UNIT 5, LEVEL 1, PEEL CONDOMINIUM PLAN NO. 287; PT BLKS G, H & I PL 548, PT 1 43R10656, MORE FULLY DESCRIBED IN SCHEDULE 'A' OF DECLARATION LT839260; MISSISSAUGA.

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SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

~~1. THIS IS TO CERTIFY that [RECEIVER'S NAME], the receiver (the "Receiver") of the assets, undertakings and properties [DEBTOR'S NAME] 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 (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number __ CL _____, 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 Toronto, Ontario.~~

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~~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__.

~~[RECEIVER'S NAME], solely in its capacity
-as Receiver of the Property, and not in its personal capacity~~

~~Per:~~

~~Name:~~

~~Title:~~

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 101 of the *Courts of Justice Act* as amended

HSBC BANK CANADA

- and -

DMLEXIM I

Applicant

Court File No.

[Link-to-previous setting changed from off in original to on in modified].

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL DIVISION)

Proceedings commenced

ORDER
(appointing Receiver)

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Summary report: Litera Compare for Word 11.3.0.46 Document comparison done on 7/28/2023 10:59:43 AM	
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<u>Move To</u>	0
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Table Delete	1
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Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	361

IN THE MATTER OF section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended, and section 101 of the *Courts of Justice Act*, RSO 1990, c C46, as amended

HSBC BANK CANADA

- and -

DMI EXIM LIMITED

Respondent

Applicant

Court File No. CV-23-00703534-00CL

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

Proceedings commenced at Toronto, Ontario

APPLICATION RECORD

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