

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

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

MOTION RECORD

(re approval of sale transaction and ancillary matters)
(motion returnable July 23, 2021)

July 14, 2021

CHAITONS LLP
5000 Yonge Street, 10th Floor
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Court-appointed Receiver**

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Court File No. CV-21-00663208-00CL

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

BETWEEN**KENSINGTON PRIVATE EQUITY FUND**

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
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R.S.O. 1990, C. C-43, AS AMENDED**

NOTICE OF MOTION

(re approval of sale transaction and ancillary matters)
(motion returnable July 23, 2021)

RSM CANADA LIMITED (“**RSM**”), in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of O2 Industries Inc. (the “**Debtor**”), will make a motion to a Judge of the Commercial List on Friday July 23, 2021 at 9:30 a.m., or as soon after that time as the motion can be heard, by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by e-mailing Sam Rappos at samr@chaitons.com.

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

THE MOTION IS FOR:

- (a) an order:
- (i) approving the sale transaction (the "**Sale Transaction**") contemplated by the asset purchase agreement between the Receiver, the Debtor and 2841551 Ontario Limited ("**2841551**") made as of May 28, 2021 (the "**Asset Purchase Agreement**");
 - (ii) vesting in 2841551 or such other person(s) as it may designate in accordance with the Asset Purchase Agreement (the "**Purchaser**") the right, title and interest of the Debtor and the Receiver, if any, in and to the "Purchased Assets" (as defined in the Asset Purchase Agreement) (the "**Purchased Assets**"), free and clear of all claims and encumbrances upon delivery of a certificate by the Receiver to the Purchaser;
- (b) an order:
- (i) approving the First Report of the Receiver dated July 14, 2021 (the "**First Report**") and the conduct and activities of the Receiver described therein;
 - (ii) approving the fees and disbursements of the Receiver and its counsel Chaitons LLP, as set out in the First Report and the Fee Affidavits (as defined below);
 - (iii) approving the Receiver's interim Statement of Receipts and Disbursements as at July 2, 2021; and

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

THE GROUNDS FOR THE MOTION ARE:

Sale Procedures and Transaction

1. RSM was appointed as Receiver pursuant to the Court order dated May 27, 2021 (the “**Appointment Order**”).
2. The Appointment Order authorized the Receiver to, among other things, market and sell any or all of the property, assets and undertaking of the Debtor (the “**Property**”) pursuant to sale procedures approved by the Court (the “**Sale Procedures**”).
3. The Appointment Order also authorized the Receiver to execute a stalking horse sale agreement with 2841551 (the “**Stalking Horse Agreement**”) and approved the Stalking Horse Agreement as the stalking horse bid pursuant to and for the purposes of the Sale Procedures.
4. The Sale Procedures provided for, among other things, a bid deadline of 5:00 pm EST on July 8, 2021 (the “**Bid Deadline**”).
5. As detailed in the First Report, the Receiver carried out an extensive marketing of the Property in accordance with the Sale Procedures.
6. As of the Bid Deadline, no offers, other than the Stalking Horse Agreement, were submitted for the Property.

7. The Receiver is of the view that the Asset Purchase Agreement, which is substantially in the same form as the Stalking Horse Agreement, should be approved by the Court, as:
 - (a) the Property has been adequately exposed to the market based on the steps taken by the Receiver pursuant to the Sale Procedures; and
 - (b) the Asset Purchase Agreement represents the only offer received for the Property.

Approval of Fees and Disbursements

8. Pursuant to paragraph 23 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 24 of the Appointment Order, the Receiver and its counsel shall pass their accounts before the Court.
9. The Receiver is of the view that the fees and disbursements charged are reasonable.
10. The Receiver requests that the Court approve its fees and disbursements, along with those of its counsel, as detailed in the First Report and the Affidavit of Bryan Tannenbaum sworn July 13, 2021 and the Affidavit of Maya Poliak sworn July 14, 2021 (collectively, the “**Fee Affidavits**”).

General

11. The First Report and the appendices thereto, including the pre-filing report of RSM dated May 26, 2021.
12. The Fee Affidavits.

13. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
14. The *Bankruptcy and Insolvency Act* (Canada) and the *Courts of Justice Act* (Ontario).
15. The equitable and inherent jurisdiction of the Court.
16. Such other grounds as counsel may advise and this Honourable Court may permit.

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

1. The First Report and the appendices thereto, including without limitation the Fee Affidavits; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

July 14, 2021

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TO: THE SERVICE LIST

**Lawyers for RSM Canada Limited,
Court-appointed Receiver**

SCHEDULE “A”**Zoom Meeting**

<https://us02web.zoom.us/j/82132713099?pwd=ZkV3UTBPUnRqRjNodExnQmo2a1grdz09>

Meeting ID: 821 3271 3099

Passcode: 248431

One tap mobile

+13462487799,,82132713099#,,, *248431# US (Houston)

+16465588656,,82132713099#,,, *248431# US (New York)

Dial by your location

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

Meeting ID: 821 3271 3099

Passcode: 248431

Find your local number: <https://us02web.zoom.us/u/kbGIpNGSY9>

Court File No. CV-21-00663208-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION
(re approval of sale transaction and
ancillary matters)
(motion returnable July 23, 2021)

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Lawyers for RSM Canada Limited,
Court-appointed Receiver

TAB 2

Court File No. CV-21-00663208-00CL

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

BETWEEN:

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**FIRST REPORT OF THE RECEIVER OF
O2 INDUSTRIES INC.**

July 14, 2021

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I. INTRODUCTION

1. Pursuant to an application made by Kensington Private Equity Fund (the “**Agent**”), by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 27, 2021 (the “**Appointment Order**”), RSM Canada Limited was appointed as receiver (the “**Receiver**”), without security, of all of the assets, undertakings and properties of O2 Industries Inc. (“**O2**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.

2. The Appointment Order authorizes the Receiver to, among other things:
 - (a) market the Property pursuant to the sale procedures (the “**Sale Procedures**”) attached to the Receiver’s pre-filing report (the “**Pre-Filing Report**”);
 - (b) execute an asset purchase agreement among the Receiver, the Debtor and 2841551 Ontario Limited (the “**Stalking Horse Bidder**”), substantially in the form attached to the Pre-Filing Report, to serve as the stalking horse bid for purposes of the Sale Procedures (the “**Stalking Horse Bid**”);
 - (c) monitor the business of the Debtor;
 - (d) control the Debtor’s cash receipts and disbursements; and
 - (e) cause the Debtor to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) with the consent of the Agent and without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; 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.
- 3. The Appointment Order provides that the Receiver shall not (a) manage or operate the business of the Debtor, or (b) take possession or control of any Property of the Debtor other than the Funds in the Post Receivership Accounts (each as defined in the Appointment Order). Moreover, nothing in the Appointment Order is to be construed as resulting in the Receiver being an officer, director, employer, responsible person or operator in respect of the Debtor or its business within the meaning of any statute, regulation or law (including the common law) for any purpose whatsoever.
- 4. The Appointment Order and other Court documents have been posted on the Receiver's website, which can be found at rsmcanada.com/o2-industries.
- 5. The Receiver has retained the firm of Chaitons LLP ("**Chaitons**") to act as the Receiver's independent legal counsel.

II. PURPOSE OF REPORT

- 6. The purpose of this first report to the Court (the "**First Report**") is to:

- (a) report to the Court on the activities of the Receiver from the date of its appointment to July 14, 2021;
- (b) provide background information about the Property;
- (c) provide the Court with information on the marketing of the Property as well as the results of the Sale Procedures conducted by the Receiver;
- (d) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period May 27, 2021 to July 2, 2021 (the "**R&D**"); and
- (e) seek an order:
 - (i) approving the sale transaction (the "**Transaction**") contemplated by the Asset Purchase Agreement dated as of May 28, 2021 between the Receiver, the Debtor and the Stalking Horse Bidder (the "**APA**") and approving and ratifying the execution of the APA by the Receiver and the Debtor, with such further minor amendments thereto as the Receiver and the Buyer (as defined below) may agree;
 - (ii) vesting in the Stalking Horse Bidder or such other person(s) as the Stalking Horse Bidder may designate in accordance with the APA (the "**Buyer**") all of the right, title and interest of the Debtor to the Purchased Assets (as defined in the APA), free and clear of all Encumbrances other than Permitted Encumbrances (both as defined in the APA), upon closing of the Transaction and the delivery of a Receiver's certificate to the Buyer;

- (iii) approving the First Report and the Receiver's conduct and activities described herein;
- (iv) approving the R&D;
- (v) approving the fees of the Receiver and Chaitons for the period ending June 30, 2021 and May 31, 2021, respectively.

III. TERMS OF REFERENCE

7. In preparing this First Report and making the comments herein, the Receiver has relied upon certain information from third-party sources (collectively, the "**Information**"). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

IV. BACKGROUND

9. The Debtor is an Ontario company that designs and sells personal respirators for consumer, healthcare, and military/law enforcement markets.

10. Kensington Capital Partners Limited (together with its affiliates and managed funds, "**Kensington**"), is a Canadian alternative asset management firm that holds a portfolio of global private equity investments. The Agent is an investment fund managed by Kensington.
11. The Agent is a secured creditor of O2 pursuant to three convertible promissory notes issued by the Debtor to the Agent and a general security agreement. The Debtor is indebted to the Agent in the amount of US\$2,030,574.29 as of May 25, 2021 (inclusive of accrued interest to that date but exclusive of expenses, costs, and other charges).
12. The Debtor is in default on its obligations to the Agent.
13. On May 14, 2021, the Agent delivered (i) a demand letter to the Debtor declaring all obligations owing by the Debtor to the Agent to be due and payable and demanding payment in full of the obligations, and (ii) a Notice of Intention to Enforce Security.
14. On May 18, 2021, the Debtor waived its rights to the notice period provided for in the Notice of Intention to Enforce Security and consented to the immediate enforcement of the Agent's security, including the appointment of a receiver.
15. The Agent sought the appointment of the Receiver pursuant to a Notice of Application dated May 25, 2021.
16. On May 27, 2021, the Court issued the Appointment Order appointing RSM Canada Limited as the Receiver.

V. RECEIVER'S ACTIVITIES TO DATE

A. Monitoring and Control of Cash Receipts and Disbursements

17. The Appointment Order provides that the Receiver is to monitor the business of the Debtor and control the Debtor's cash receipts and disbursements. Subsequent to its appointment, the Receiver arranged for:
- (a) the Debtor to grant the Receiver access to O2's online banking platform in order for the Receiver to view the daily activity in the Debtor's three Canadian bank accounts set up at The Toronto-Dominion Bank (the "**TD Accounts**");
 - (b) the Debtor to provide to the Receiver on a weekly basis a printout of the activity in the Debtor's bank account at a branch of The Toronto-Dominion Bank ("**TD Bank**") located in the United States;
 - (c) the Debtor to set up the Receiver as an approver of O2's electronic funds payments and wire transfers from the TD Accounts;
 - (d) the Debtor to submit to the Receiver for review a list of disbursements for payment with copies of supporting invoices;
 - (e) the Receiver to attend O2's regular management meetings to obtain updates on various matters and answer any questions with respect to the receivership proceedings; and

- (f) the Debtor to provide the Receiver with the Debtor's updated cash flow projections on a weekly basis showing actual results and forecast activity to the end of August 2021.
18. The Appointment Order provides that all funds received or collected by the Debtor or the Receiver from and after the making of the Appointment Order from any source whatsoever is to be deposited into one of more new accounts to be opened by the Receiver. The Receiver has set up two trust accounts (one in Canadian currency and one in US currency) at Bank of Montreal (the "**BMO Accounts**") for the receivership administration. Subject to the Debtor's cash requirements, cash collections are transferred from the TD Accounts to the BMO Accounts on a weekly basis.
19. The Receiver has not taken possession or control of any property of the Debtor other than the funds transferred from the TD Accounts to the BMO Accounts.

B. Employee Claims

20. The Debtor advised the Receiver that ten former employees were owed termination pay by O2. The Receiver sent information on the Wage Earner Protection Program ("**WEPP**") to the nine employees who are eligible to apply for payment by WEPP.
21. Two of the employees who are owed termination pay and one other former employee advised the Receiver that they are also owed wages, vacation pay and/or reimbursement for expenses. With management's assistance, the

Receiver has reviewed and determined whether any of the amounts claimed are valid claims against the Debtor.

C. Statutory Notices

22. On June 4, 2021, the Receiver sent a Notice and Statement of Receiver pursuant to Section 245(1) of the *Bankruptcy and Insolvency Act* (Canada) to the known creditors of the Debtor (the “**245 Notice**”). A copy of the 245 Notice is attached hereto as **Appendix “B”**.

VI. MARKETING OF THE PROPERTY

23. The Appointment Order authorizes the Receiver to solicit bids for a sale transaction in respect of all or certain of the property, assets and undertakings of the Debtor pursuant to the Sale Procedures. The Sale Procedures provide for 2841551 Ontario Limited, who the Receiver understands is related to Kensington, to act as the stalking horse bidder in the sale process and to submit an asset purchase agreement for the acquisition of substantially all of the business and assets of the Debtor. On May 28, 2021, the Receiver, the Debtor and the Stalking Horse Bidder executed the Stalking Horse Bid, which constituted a qualified bid under the Sale Procedures.
24. The Sale Procedures and the key provisions of the Stalking Horse Bid are described in detail in the Pre-filing Report. A copy of the Pre-Filing Report is attached as **Appendix “C”** to this report.

25. The timeline for execution of the Sale Procedures is summarized in the table below:

Milestone	Deadline
Commencement of Sale Process	Promptly following the granting of the Appointment Order
Bid Deadline	5:00 p.m. EST on July 8, 2021
Auction Date (if applicable)	July 15, 2021
Approval Hearing Date	July 22, 2021
Outside Date	July 30, 2021

26. The Receiver commenced its marketing of the Property on May 27, 2021 by sending an information sheet summarizing the acquisition opportunity (the “**Teaser**”) to 35 prospective purchasers identified by the Debtor. From June 2 to June 9, 2021, the Teaser was sent to 85 additional parties identified by the Receiver.
27. The Receiver set up an online data room with information on O2’s business and assets to which parties who signed a Confidentiality Agreement (“**CA**”) were given access.
28. On June 1, 2021, an advertisement of the acquisition opportunity was published in the national edition of the National Post (the “**National Post Ad**”).
29. On June 14, 2021, notice of the acquisition opportunity was included in the Assets for Sale section of the weekly e-newsletter *Insolvency Insider* distributed to restructuring professionals, including trustees, lawyers, lenders and other interested parties (the “**Insolvency Insider Ad**”).

30. Copies of the Teaser, the National Post Ad and Insolvency Insider Ad are attached as **Appendix “D”** to this report.

31. In total, 130 distinct parties were contacted by or contacted the Receiver. Of the 130 parties, 15 parties requested a CA and 10 parties signed back the CA and were given access to the online data room set up by the Receiver.

VII. NO OTHER OFFERS RECEIVED

32. As of 5:00 p.m. on July 8, 2021, despite the extensive marketing efforts described above, no offers, other than the Stalking Horse Bid, were submitted for the Property.

33. As no offers were submitted for the Property other than the Stalking Horse Bid, the Stalking Horse Bid is the successful bid pursuant to the Sale Procedures.

VIII. THE TRANSACTION AND THE APA

34. A copy of the APA is attached as **Appendix “E”** to this report. The APA provides for, *inter alia*, the following (defined terms are as set out in the APA):

- (a) the Purchase Price payable to the Receiver for the Purchased Assets shall be (collectively, the “**Purchase Price**”):
 - (i) the payment or assumption of the Priority Claims;
 - (ii) the payment of the Cure Costs;
 - (iii) the release and discharge from the Senior Secured Obligations; and

- (iv) the payment of the amount of CDN\$100,000, estimated by the Receiver to be the aggregate fees, disbursements and expenses of the Receiver for the period from the Closing Time to the Discharge Date (the **“Estimated Fees”**);
 - (b) the Buyer shall pay and satisfy the Purchase Price on the Closing Date as follows:
 - (i) payment in cash or assumption of the Priority Claims;
 - (ii) payment in cash of all Cure Costs;
 - (iii) payment of the Estimated Fees in cash to the Receiver; and
 - (iv) the irrevocable release and discharge by the Kensington Lenders of the Debtor and the Receiver from the Senior Secured Obligations; and
 - (c) the Buyer acknowledges and agrees that, except as expressly set forth in the APA, the Purchased Assets and the business related thereto are purchased and the assumed liabilities are assumed by the Buyer on an *“as is, where is”* basis.
35. Subject to Closing, the Buyer agrees to assume, pay, discharge, perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Debtor with respect to the Purchased Assets (collectively, the **“Assumed Liabilities”**), which Assumed Liabilities consist solely of:

- (a) all obligations and liabilities under the Assigned Agreements to the extent first arising and relating to the period on or after the Closing Date;
- (b) all obligations and liabilities related to the operation of the Purchased Assets on or after the Closing Date; and
- (c) the Assumed Employee Obligations, being comprised of:
 - (i) all liabilities for salary, wages, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date; and
 - (ii) all liabilities for vacation pay entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date.

IX. APPROVAL OF THE TRANSACTION

36. The Receiver undertook the sale process in accordance with the Court-approved Sale Procedures. The marketing process was appropriate for the type of business and assets in question and provided sufficient market exposure to the Property. Notice of the sale of the Property was sent to 130 parties, and the sale of the Property was advertised in the National Post newspaper.
37. As a result of the marketing efforts undertaken, 10 parties executed the CA and were given access to the Receiver's data room.

38. The Receiver is of the view that sufficient efforts were made to obtain a price in excess of the Stalking Horse Bid and that the marketing process was conducted fairly, in accordance with the Court approved Sale Procedures, and the best outcome was achieved under the circumstances. The length of the marketing process was appropriate.
39. The Receiver regards the Transaction as the best and only available transaction for the Debtor in its current circumstances. The Transaction is the most advantageous transaction to the creditors of the Debtor, taking into account the ongoing costs being incurred, including the interest continuing to accrue on the Debtor's indebtedness to the Agent. The Transaction provides the Agent with an opportunity to recover its loan, as the alternative recourse would be a liquidation of the Debtor's assets that would result in a significant shortfall to the Agent. The Receiver therefore recommends that this Court grant an Order approving the Transaction, authorizing the Receiver to carry out the terms of the APA, and vesting title in the Purchased Assets to the Buyer upon the closing of the Transaction.

X. SECURED OR PRIORITY CLAIMS

40. The following is a list of the parties that have registered financing statement against the Debtor under Ontario's Personal Property Security Registration System as of July 13, 2021 (the "**PPSA Search**").

Name of Registrant	Description
KENSINGTON PRIVATE EQUITY FUND	INVTRY., EQUIP., ACCTS, OTHER, MV INCL.
1537638 ONTARIO LIMITED (“1537638”)	EQUIPMENT - TOSHIBA E-STUDIO 2010AC S/N CNAK24843 AND CNAK24835 AND ACCESSORIES
THE TORONTO-DOMINION BANK	INVTRY., EQUIP., ACCTS, OTHER, MV INCL.

A copy of the PPSA Search is attached as **Appendix “F”** to this report.

41. Management of the Debtor has informed the Receiver that the TD registration secures obligations of the Debtor under certain corporate credit cards issued by TD Bank. The credit card indebtedness was reduced to \$0 as of May 27, 2021 and management advises that any balances on the credit cards will be kept current.
42. Management has advised the Receiver that 1537638’s registration relates to two leased photocopiers. The Debtor released the two photocopiers to 1537638 on June 17, 2021.
43. The Receiver has obtained a written opinion from Chaitons that, subject to standard qualifications and limitations, the Security provided to the Agent is perfected, valid and enforceable against the Debtor in accordance with its terms.

XI. RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

44. Attached as **Appendix “G”** is the Receiver’s Interim Statement of Receipts and Disbursements (the “**R&D**”) for the period May 27, 2021 to July 2, 2021 (the “**Period**”). During the Period, receipts were \$116,039, consisting of transfers from O2 to the Receiver of funds received or collected by the Debtor from and after the

making of the Appointment Order or required to fund the Receiver's expenses. Disbursements were \$69,480.

45. The Receiver has requested an advance of US\$350,000 from the Agent under the Receiver's Borrowing Charge for the purpose of funding the business of O2 and the fees and expenses of the Receiver in the execution of the Receiver's duties and powers. As of the date of this report, funding has not yet been received.
46. Attached as **Appendix "H"** is the Debtor's Cash Flow for the period May 27, 2021 to July 2, 2021 (the "**Debtor's Cash Flow Results**") which sets out the Debtor's operating costs and receivership costs. During the Period, the Debtor's receipts were US\$124,513 and disbursements were US\$308,822.

XII. PROFESSIONAL FEES

47. The Receiver's accounts for the period ending June 30, 2021 total \$86,612.50 in fees, plus HST of \$11,259.63 for a total amount of \$97,872.13 (the "**Receiver's Accounts**"). A copy of the Receiver's Accounts, together with a summary of the accounts, the total billable hours charged per the accounts, and the average hourly rate charged per the accounts, is set out in the Affidavit of Bryan A. Tannenbaum sworn July 13, 2021 attached hereto as **Appendix "I"**.
48. The account of the Receiver's counsel, Chaitons, totals \$17,147.50 in fees and \$2,229.18 in HST for a total of \$19,376.38 for the period ending May 31, 2021 (the "**Chaitons Account**"). A copy of the Chaitons Account, together with a summary of the personnel, hours and hourly rates described in the Chaitons Account, is set

out in the Affidavit of Maya Poliak sworn July 14, 2021, 2021 attached to this report as **Appendix “J”**.

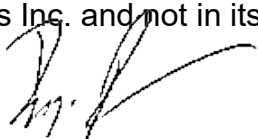
XIII. CONCLUSION

49. The Receiver respectfully requests that the Court make an Order:
- (a) approving the Transaction and authorizing and directing the Receiver to carry out the terms of the APA, together with any further minor amendments thereto as the Receiver and the Buyer may agree;
 - (b) vesting in the Buyer all of the right, title and interest of the Debtor in and to the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances, upon closing of the Transaction and the delivery of a Receiver's certificate to the Buyer;
 - (c) approving the First Report and the Receiver's conduct and activities to July 14, 2021;
 - (d) approving the R&D; and
 - (e) approving the Receiver's Accounts and the Chaitons Account.

All of which is respectfully submitted to this Court as of this 14th day of July, 2021.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
O2 Industries Inc. and not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

APPENDIX A

Court File No. CV-21-00663208-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 27TH

JUSTICE CONWAY

)

DAY OF MAY, 2021

)



KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

RECEIVERSHIP ORDER

THIS APPLICATION made by Kensington Private Equity Fund (the “**Applicant**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing RSM Canada Limited (“**RSM**”), as receiver (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of O2 Industries Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Richard Nathan sworn May 25, 2021 and the Exhibits thereto and the pre-filing report of RSM in its capacity as proposed Receiver dated May 26, 2021 (the “**Pre-Filing Report**”), and on hearing the submissions of counsel for the Applicant and RSM, no one appearing for the Debtor although duly served, and on reading the consent of RSM to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER’S POWERS

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

- (a) to market the Property pursuant to the sale procedures attached to the Pre-Filing Report (the “**Sale Procedures**”);
- (b) to monitor the business of the Debtor;
- (c) to control the Debtor’s cash receipts and disbursements;
- (d) to cause the Debtor 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;

- (e) 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;
- (f) to receive and collect all funds, monies, cheques, instruments, accounts and payments (collectively, "**Funds**") now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such Funds, including, without limitation, to enforce any security held by the Debtor;
- (g) with the consent of the Applicant, to cause the Debtor to settle, extend or compromise any indebtedness or claims owing to, or by, the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature, 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 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 cause the Debtor to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) with the consent of the Applicant and without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$200,000; 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* (the “PPSA”) or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (k) subject to the Sale Procedures, 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;
- (l) 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;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property; and
- (n) 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, including the Debtor, and without interference from any other Person.

4. **THIS COURT ORDERS** that, notwithstanding anything to the contrary in this Order, the Receiver shall not (a) manage or operate the business of the Debtor, or (b) take possession or control of any Property of the Debtor other than the Funds in the Post Receivership Accounts (as defined below). Nothing in this Order shall be construed as resulting in the Receiver being an officer, director, employer, responsible person or operator in respect of the Debtor or its business

within the meaning of any statute, regulation or law (including the common law) for any purpose whatsoever.

SALE PROCEDURES

5. **THIS COURT ORDERS** that the Sale Procedures are hereby approved, subject to any amendments to the Sale Procedures that may be made in accordance therewith.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to carry out the Sale Procedures and to take such steps and execute such documentation, whether in the Receiver's name or in the name and on behalf of the Debtor, as may be necessary or incidental to the Sale Procedures.

7. **THIS COURT ORDERS** that the Receiver and the Debtor are hereby authorized to execute an asset purchase agreement among the Receiver, the Debtor and 2841551 Ontario Limited (the "**Stalking Horse Bidder**"), substantially in the form attached to the Pre-Filing Report, with such amendments or modifications as the Stalking Horse Bidder and the Receiver may agree (the "**Stalking Horse Agreement**"). The transaction contemplated pursuant to the Stalking Horse Agreement is hereby approved as the Stalking Horse Bid pursuant to and for purposes of the Sale Procedures, provided that nothing herein approves the sale or vesting of any Property to the Stalking Horse Bidder and that the sale and vesting of any Property pursuant to the Stalking Horse Agreement shall be considered by this Court on a subsequent motion made to this Court if the Stalking Horse Bidder is the Successful Bidder pursuant to the Sale Procedures.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

8. **THIS COURT ORDERS** that the Receiver shall have unfettered access to any Property or Records (as defined below) of the Debtor that the Receiver shall request for the purpose of fulfilling its duties under this Order.

9. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, representatives, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all

of the foregoing, collectively, being “Persons” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control and shall grant immediate and continued access to the Property to the Receiver as the Receiver may request.

10. **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, information technology, cloud storage, software and physical facilities relating thereto, provided however that nothing in this paragraph 10 or in paragraph 11 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.

11. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage (including any cloud system), 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.

12. **THIS COURT ORDERS** that the Debtor shall provide each of the relevant landlords with notice of the Debtor'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 Debtor'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

13. **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

14. **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 the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or 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

16. **THIS COURT ORDERS** that no Person shall discontinue, suspend, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, licence or permit in favour of, for the benefit of, or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

17. **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 Debtor, and that the Debtor shall be entitled to the continued use of its 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

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

EMPLOYEES

19. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Debtor, or the Receiver on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA or otherwise, 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

20. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall be permitted to disclose personal information of identifiable individuals to prospective purchasers or bidders and their advisors in connection with the Sale Procedures, 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

21. **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

22. **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

23. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts (including statutory, deemed and constructive trusts), liens, charges and encumbrances, statutory or otherwise (collectively, “**Encumbrances**”), in favour of any Person, but subject to (a) sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and (b) any security interest in the Property that has been perfected prior to the date hereof by (i) PPSA registration number 20210111 1943 1531 1528 in favour of The

Toronto-Dominion Bank, and (ii) PPSA registration number 20201203 0949 1862 6319 in favour of 1537638 Ontario Limited (collectively, the “**Perfected Security Interests**”).

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

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

FUNDING OF THE RECEIVERSHIP

26. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant, or another Person with the prior written consent of the Applicant, 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 \$700,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the business of the Debtor or 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 Encumbrances in favour of any Person, but subordinate in priority to the Receiver’s Charge, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, and the Perfected Security Interests.

27. **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.

28. **THIS COURT ORDERS** that the Receiver is at liberty to and shall 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.

29. **THIS COURT ORDERS** that until all obligations in respect of a particular Receiver’s Certificate (a “**Prior Issued Certificate**”) shall have been repaid in full, the obligations under any Receiver’s Certificate issued subsequent in time to the Prior Issued Certificate shall rank subordinate in priority to the obligations under the Prior Issued Certificate, unless otherwise agreed to by the holder of the Prior Issued Certificate.

SERVICE AND NOTICE

30. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (Ontario) (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04. Subject to Rule 3.01(d), 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: <http://www.rsmcanada.com/o2-industries>.

31. **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 electronic message to the Debtor’s creditors or other interested parties and their advisors at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by (i) electronic message or personal delivery shall be deemed to be received on the date of transmission or delivery, as applicable, (ii) courier shall be deemed to be received on the next business day following the date of forwarding thereof, or (iii) ordinary mail shall be deemed to be received on the third business day after mailing. For greater certainty, any such electronic

distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

32. **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.

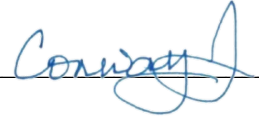
33. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or a jurisdiction outside Canada 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.

35. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal or 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.

36. **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.

37. **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, the Applicant and any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in blue ink, appearing to read 'Conway J.', is written above a horizontal line.

SCHEDULE “A”
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the “**Receiver**”) of the assets, undertakings and properties of O2 Industries Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 27, 2021 (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.

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__.

RSM Canada Limited, solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 243(D) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.
51985, c. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

KENSINGTON PRIVATE EQUITY FUND - and - **O2 INDUSTRIES INC.**

Applicant

Respondent

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

Proceedings commenced at Toronto

RECEIVERSHIP ORDER

GOODMANS LLP

Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

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Tel: 416.979.2211
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Lawyers for the Applicant

APPENDIX B



RSM Canada Limited

Licensed Insolvency Trustee

11 King St W
Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160

F +1 416 480 2646

www.rsmcanada.com

**NOTICE AND STATEMENT OF RECEIVER
(SECTION 245(1) AND 246(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT (CANADA))**

In the matter of the receivership of O2 Industries Inc. (the “**Company**”)

The receiver gives notice and declares that:

1. On the 27th day of May, 2021, RSM Canada Limited was appointed as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of the Company, an insolvent company that is described below:

Description	Book Value
Cash and cash equivalents	\$ 454,795
Accounts receivable	178,589
Income taxes recoverable	85,890
Prepaid expenses and deposits	961,990
Inventory	7,803,116
Due from related parties	50,713
Due from subsidiaries	132,803
Property, plant and equipment	379,978
	\$ 10,047,873

The amounts above reflect the book values recorded on the Company’s internal balance sheet as at April 30, 2021, converted to CAD at a rate of \$1.2073, and do not reflect the estimated realizable value which is considered to be much lower.

2. The undersigned became a receiver in respect of the Company by virtue of being appointed by the Ontario Superior Court of Justice - Commercial List.
3. The undersigned commenced the exercise of its powers in respect of that appointment on the 27th day of May, 2021.
4. The following information relates to the receivership:
 - a) Registered Head Office of the Debtors: 151 Charles Street West, Suite 100, Kitchener, Ontario
 - b) Principal line of business: Designer and distributor of respiratory protection products.

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

- c) The approximate amounts owed by the Debtors to the creditors who appear to hold a security interest include:

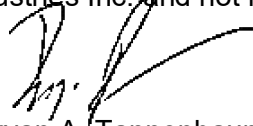
Kensington Private Equity Fund	\$2,416,068.08
1537638 Ontario Limited	\$9,132
Toronto-Dominion Bank	Nil

5. A list of creditors of the Company and the amount owed to each creditor by the Company is attached to this notice. This list has been compiled from information available to the Receiver, including information provided by the Debtors, a search of the Personal Property Security Registration System (Ontario) and limited enquiries by the Receiver, and has not been audited or verified by the Receiver and may not include all creditors. The fact that persons are receiving this notice or are included on the creditors list does not mean that it has been determined that they are a creditor or that if they are a creditor, that their claim is admitted in the amount set out on that list.
6. The Receiver is currently inviting offers for the purchase of the business and assets of the Company, pursuant to a Court approved sales process.
7. Contact person for the Receiver:
- Brenda Wong
RSM Canada Limited
11 King Street West
Suite 700, PO Box 27
Toronto, Ontario M5H 4C7
Telephone: 647-727-3621
Facsimile: 647-730-1345
E-mail: brenda.wong@rsmcanada.com
8. Additional information: A copy of the receivership order is posted on the Receiver's website at <http://www.rsmcanada.com/o2-industries>. Other pertinent public information will be posted to this website as that information becomes available.

Dated at Toronto this 4th day of June, 2021.

RSM CANADA LIMITED

In its capacity as Court Appointed Receiver of
O2 Industries Inc. and not in its personal capacity



Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

**RSM CANADA LIMITED
IN THE MATTER OF THE RECEIVERSHIP OF
O2 INDUSTRIES INC.**

LIST OF CREDITORS

SECURED CREDITORS

Kensington Private Equity Fund	\$ 2,416,068.08
1537638 Ontario Limited (OE Canada Inc.)	9,132.00
Toronto-Dominion Bank	-
Total	<u>\$ 2,425,200.08</u>

OTHER CREDITORS

4384679 Canada Inc. - Tristar Gym	\$ 9,413.32
Abell Pest Control Inc.	146.90
Aird & Berlis LLP	7,285.93
Amphenol NEXUS Technologies	11,599.50
Anjola Tunde Ojo	1,493.60
APC Filtration	50,426.25
Association of the United States Army	1,195.23
Attentive Mobile Inc.	6,017.57
Baidu (Hong Kong) Limited	5,121.13
Barb and Peter Whitby Sr	79,000.00
Bereskin & Parr	117,870.00
BPA Hope Inc.	13,373.93
BPI Construction Inc.	50,000.00
CanadaPost	588.33
CBSC Capital Inc	694.97
Clearbanc	825,180.66
Combat Sports Agency Ltd	68,496.00
Conestogo Electric Inc.	6,886.22
CPX Interactive	12,720.11
Crestview Strategy Inc.	37,078.15
Custom Filter	49,289.77
DBCFS	23,336.02
Digital GTM Futures	25,839.20
Disruptive Management	6,036.50
District M	27,505.71
Dueck, Sauer, Jutzi & Null LLP	3,775.20
Dustin Wiebe	2,843.27
Eclipse Innovations	560.00
Employees - Termination Pay	42,982.42
Enercents Group	1,612.34
ENSO Group Ltd.	24,146.00
Ernst & Young LLP	27,487.26
Ethical Profiling Ltd.	5,505.61
Expeditors Canada, Inc.	3,399.64
Federal Express Canada Corporation	37.40
FedEx Trade Networks Transport & Brokerage (Canada) Inc.	46,497.46
Gowling WLG (Canada) LLP	223,736.58
Greenlight Guru	32,125.05

**RSM CANADA LIMITED
IN THE MATTER OF THE RECEIVERSHIP OF
O2 INDUSTRIES INC.**

LIST OF CREDITORS

Hollywood Intl. Place Inc.	6,036.50
Huge Toronto	466,488.76
HUGE USD	19,331.29
Innomar Strategies	16,667.50
Iron Mountain	493.81
James Zhang	42,000.00
Jane Graydon	58,946.38
JCDecaux Airport, Inc.	108,656.99
Joel Graydon	43,753.81
LabTest Certification Inc.	1,412.50
Lalaso Limited	4,226.72
Leader Corporate Management Consulting (Shanghai) Co., Ltd	17,951.47
Leaf Group, Ltd.	15,091.25
LiveIntent Inc	139,046.56
Lucid Intent Entertainment	17,998.45
Macias Commercial Cleaning	5,139.24
Maya Heat Transfer Technologies Ltd	15,678.75
Millbrook Tactical Inc.	4,411.52
Minister of Finance	1.00
Minuteman Press	7,211.65
My IT Guy Corp.	15,547.36
National Research Council of Canada	10,396.00
Neo Worldwide Ltd.	97,322.70
OE Canada Inc.	752.38
OHM Industrial Designer Inc. - Graham Hills	5,662.10
One Nine Strategies Inc.	53,110.00
Ontario Centres of Excellence	125,000.00
Ontario Together Fund Grant (c/o Ministry of Economic Development, Job Creation and Trade Communications Branch)	1.00
Open City	18,746.70
P3 Digital LLC	24,146.00
Paul Thompson Ltd.	15,820.00
Pentomic	14,831.75
Peter Whitby	1,715.71
Peter Whitby Jr	67,669.81
Propaganda	44,670.10
Propaganda - GBP	21,210.93
Proud Sky	9,084.93
Publisher First, Inc. dba Freestar	14,391.02
Roddy Comsultin, llc	23,389.77
Rotary Digital, LLC	965.84
Russell A. Farrow Limited	96.05
Sean Stockholm	360.00
Shipbob	25,435.83
Shopify	250,430.14
Sid Lee Inc. (Toronto)	279,836.80
Sigma Worldwide LLC (c/o Blake, Cassels & Graydon LLP)	1.00
SJ Consulting Group Inc.	156,889.69

**RSM CANADA LIMITED
IN THE MATTER OF THE RECEIVERSHIP OF
O2 INDUSTRIES INC.**

LIST OF CREDITORS

Snap Pea	19,087.57
SnapPay Inc.	33.01
Superior Felt & Filtration	5,179.32
T1 Advertising LLC	3,018.25
Taboola, Inc.	80,217.53
TD Bank - CEBA Loan	60,000.00
Terrazign Inc.	85,311.61
The Product Taylor	1,419.56
The Street Inc.	233,914.38
Thomas Publishing Company LLC	8,088.91
TRADENG Inc.	19,740.55
Trident Security International Inc.	487.11
TSM Talk Shop Media	29,538.16
TULIP.IO INC.	35,850.00
U-Freight America	5,713.57
U-Freight HK US	3,060.81
Uline	2,915.43
Uncrate	6,036.50
US Federal Drug Authority Potential Non-Compliance	1.00
Veneable LLP	36,219.00
Vera Barros	575.60
William Harney	38,747.06
Win-Leader Corp	8,079.50
Workplace Safety and Insurance Board	1.00
Total	<u><u>\$ 4,802,566.40</u></u>

The above list of creditors has been compiled from information available to the Receiver and has not been audited or verified by the Receiver and may not include all creditors. The fact that persons are included on the creditors list does not mean that it has been determined that they are a creditor or that if they are a creditor, that their claim is admitted in the amount set out on the list.

The amounts in this creditor listing are recorded in CAD. Any amounts converted have used the conversion rates of 1.2073 for USD and 1.7124 for GBP as per the Bank of Canada rates as at May 27, 2021, the date of the Receiver's appointment.

Supplementary Mailing List

O2 Industries Inc.
Office of the Superintendent of Bankruptcy
Canada Revenue Agency
Department of Justice Canada
Chaitons LLP
Goodmans LLP

APPENDIX C

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

-and-

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, c. C.43, AS AMENDED**

**PRE-FILING REPORT OF RSM CANADA LIMITED,
IN ITS CAPACITY AS PROPOSED RECEIVER OF THE RESPONDENT**

May 26, 2021

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I. INTRODUCTION

1. Kensington Private Equity Fund is making an application to this Court for the appointment of RSM Canada Limited (“**RSM**”) as the receiver, without security, of all of the assets, undertakings and properties of O2 Industries Inc. (“**O2**” or the “**Debtor**”) with limited powers.
2. RSM has consented to act as receiver (the “**Receiver**”) if appointed by this Court.
3. RSM is filing this report (the “**Pre-filing Report**”) in its capacity as proposed Receiver (the “**Proposed Receiver**”).
4. The affidavit of Richard Nathan sworn on May 25, 2021 and filed in support of the Applicant’s application provides, *inter alia*, the Applicant’s background, including the reasons for the commencement of these proceedings (the “**Affidavit**”).
5. The principal purpose of these proceedings is to market and sell the business and assets of the Debtor.
6. Pursuant to the draft receivership order, the powers of the Receiver include the following:
 - to market the Property (as defined therein) pursuant to the sale procedures and the stalking horse sale agreement attached to this Pre-Filing Report (the “**Sale Procedures**”);
 - to monitor the business of the Debtor; and
 - to control the Debtor’s cash receipts and disbursements.
7. The draft receivership order also provides that the Receiver shall not (a) manage or operate the business of the Debtor, or (b) take possession or control of any

Property of the Debtor other than the Funds in the Post Receivership Accounts (as defined in the draft receivership order).

Purpose of Report

8. The purpose of this Pre-filing Report to the Court is to provide information to the Court on the proposed Sale Procedures and the proposed stalking horse agreement referred to therein (the “**Stalking Horse Agreement**”).

Terms of Reference

9. In preparing this report and making the comments herein, the Proposed Receiver has relied upon information provided by the Applicant (the “**Information**”). Certain of the information contained in this Pre-filing Report may refer to, or is based on, the Information. Since the Information has been provided by other parties, the Proposed Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Proposed Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Proposed Receiver expresses no opinion or other form of assurance in respect of the Information.
10. Capitalized terms not defined in this Pre-filing Report are as defined in the Affidavit.
11. Unless otherwise stated, all dollar amounts contained in the Pre-filing Report are expressed in US dollars.

II. BACKGROUND

12. The Pre-filing Report should be read in conjunction with the Affidavit. Certain of the information provided in the Affidavit has not been included herein in order to avoid unnecessary duplication.
13. The Debtor is an Ontario company that designs and sells personal respirators for consumer, healthcare, and military/law enforcement markets.
14. Kensington Capital Partners Limited (together with its affiliates and managed funds, "**Kensington**"), is a Canadian alternative asset management firm that holds a portfolio of global private equity investments. The Applicant, Kensington Private Equity Fund (the "**Agent**"), is an investment fund managed by Kensington.
15. The Agent is a secured creditor of O2, the respondent in this application pursuant to three convertible promissory notes issued by the Debtor to the Agent and a general security agreement. The Debtor is currently indebted to the Agent in the amount of US\$2,030,574.29 as of May 25, 2021 (inclusive of accrued interest but exclusive of expenses, costs and other charges).
16. The Debtor is in default on its obligations to the Agent.
17. On May 14, 2021, the Applicant delivered a letter to the Debtor declaring all obligations owing by the Debtor to the Agent to be due and payable and demanding payment in full of the obligations, together with Notice of Intention to Enforce Security.
18. On May 18, 2021, the Debtor waived its rights to the notice period provided for in the Notice of Intention to Enforce Security and consented to the immediate enforcement of the Agent's security, including the appointment of a receiver.

III. THE SALES PROCESS

19. As part of its application for the Receivership Order, the Applicant is seeking approval for the proposed Sale Procedures pursuant to which the Receiver will solicit proposals for the sale of all or certain of the Property.
20. The Sale Procedures contemplates the marketing of the Property by the Receiver.
21. In order to set a floor price and ensure that only serious offers are received for the purchase of the Property, 2841551 Ontario Limited, who the Receiver understands is related to Kensington, is proposing to act as the stalking horse bidder in the sale process (the “**Stalking Horse Bidder**”) and has prepared a form of asset purchase agreement for the acquisition of substantially all of the business and assets of the Debtor (the “**Stalking Horse Agreement**”).
22. The Stalking Horse Agreement, a copy of which is attached to this report as **Appendix “A”**, is described below.

IV. STALKING HORSE AGREEMENT

23. The key provisions of the Stalking Horse Agreement are set out below (defined terms are as set out in the Stalking Horse Agreement):
 - (i) the Purchase Price payable to the Receiver for the Purchased Assets shall be equal to the sum of the following amounts (collectively, the “**Purchase Price**”):
 - (a) Priority Claims;
 - (b) the Cure Costs;
 - (c) the Senior Secured Obligations; and

-
- (d) the amount of CDN\$100,000, estimated by the Receiver to be the aggregate fees, disbursements and expenses of the Receiver for the period from the Closing Time to the Discharge Date (the “**Estimated Fees**”);
- (ii) the Stalking Horse Bidder shall pay and satisfy the Purchase Price on the Closing Date as follows:
- (a) payment in cash or assumption of the Priority Claims;
 - (b) payment in cash of all Cure Costs;
 - (c) payment of the Estimated Fees in cash to the Receiver; and
 - (d) the irrevocable release and discharge by the Kensington Lenders of the Company and the Receiver from the Senior Secured Obligations;
- (iii) the Stalking Horse Bidder will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder);
- (iv) the Stalking Horse Bidder acknowledges and agrees that, except as expressly set forth in the sale agreement, the purchased assets and the business related thereto are purchased and the assumed liabilities are assumed by the Stalking Horse Bidder on an “AS IS, WHERE IS” basis;
- (v) the assets being purchased are all of the right, title, benefit and interest of the Receiver and the Debtor in, to and under, or relating to, the assets, property and undertaking owned or used or held for use in connection with the Business (the “**Purchased Assets**”) including the following properties, assets and rights:
- a) Cash;

-
- b) Purchased Contracts;
 - c) Purchased Equipment;
 - d) Purchased Inventory and Supplies;
 - e) Intellectual Property;
 - f) Insurance;
 - g) Goodwill;
 - h) Warranty Rights;
 - i) Books and Records;
 - j) Authorizations;
 - k) Real Property Leases;
 - l) Personal Property Leases;
 - m) Prepaid Expenses;
 - n) IT Systems;
 - o) Actions;
 - p) Related Party Amounts; and
 - q) Tax refunds.

but, in each case excludes any Excluded Assets;

(vi) the Purchased Assets will not, and will not be deemed to, include any of the following assets of the Company (collectively, the “**Excluded Assets**”):

- a) Receivables;

- b) Excluded Contracts;
- c) Excluded Equipment;
- d) Excluded Inventory and Supplies;
- e) Employee Plans;
- f) original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Company, in each case that do not relate to the Business or the Purchased Assets;
- g) all of the Company's rights and benefits under the Stalking Horse Agreement and the Transaction;
- h) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period or in furtherance of or in connection with the Transaction, or otherwise in compliance with the terms of the Stalking Horse Agreement;
- i) shares, partnership or joint venture interests and any other securities of any Person owned or held by the Company or any of its affiliates, including the shares of Hangzhou Oxygen Technology Co. Ltd. owned by the Company;
- j) all minute books, share ledgers, corporate seals and stock certificates

of the Company; or

- k) any other assets as may be expressly designated by the Stalking Horse Bidder in writing prior to Closing.

24. Subject to Closing, the Stalking Horse Bidder agrees to assume, pay, discharge, perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Company with respect to the Purchased Assets (collectively, the “**Assumed Liabilities**”), which Assumed Liabilities consist solely of:

- (a) all obligations and liabilities under the Assigned Agreements to the extent first arising and relating to the period on or after the Closing Date;
- (b) all obligations and liabilities related to the operation of the Purchased Assets on or after the Closing Date; and
- (c) the Assumed Employee Obligations, being comprised of:
 - (i) all liabilities for salary, wages, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date; and
 - (ii) all liabilities for vacation pay entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date.

V. PROPOSED RECEIVER'S VIEW OF THE STALKING HORSE AGREEMENT

25. The Proposed Receiver is of the view that a "Stalking Horse" sales process is appropriate in this proceeding in that, among other things, the process provides assurance to the marketplace that, notwithstanding the receivership, the operations of the business will continue following the closing of the Transaction.
26. While the Proposed Receiver is not in a position at this time to conclude that the purchase price set out in the Stalking Horse Agreement is the most advantageous to the stakeholders in this proceeding, it does establish a "floor price" for the assets. In addition, as there is no "break fee" provided for in the Stalking Horse Agreement in the event that the Stalking Horse Bidder is not the Successful Bidder, there is no additional amount that will be required to be paid to the Stalking Horse Bidder in the event the Stalking Horse Bidder is not the Successful Bidder.

VI. THE SALE PROCEDURES

27. Capitalized terms used in this section of this Pre-filing Report are as defined in the Sale Procedures a copy of which is attached hereto as **Appendix "B"**, unless otherwise defined.
28. The Proposed Receiver, if the Receivership Order is granted, seeks approval to implement the Sale Procedures that, if approved, will establish the procedures for the sales and marketing process pursuant to which the Receiver will seek offers superior to the Stalking Horse Agreement for the Property, and will set out the requirements for the submission of offers by interested parties.

-
29. The Sale Procedures contemplate that parties which execute a Confidentiality Agreement, will be given access to information in the confidential Data Room.
30. A Potential Bidder, other than the Stalking Horse Bidder, that wishes to deliver a bid shall deliver a written binding offer for a Transaction (a “**Bid**”) to the Receiver so as to be received by the Receiver no later than 5:00 pm (Eastern Time) on July 8, 2021 (the “**Bid Deadline**”).
31. A Bid will be deemed to be a “**Qualified Bid**” only if the Bid complies with the following:
- it includes an executed Definitive Agreement, together with a blackline against the Stalking Horse Agreement, describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the purchase price (the “**Purchase Price**”), and the structure and financing of the proposed Transaction;
 - the Transaction shall, on closing, provide cash proceeds, in immediately available funds, sufficient to pay in full in cash the aggregate of the Priority Claims plus the Senior Secured Obligations, plus US\$160,000;
 - it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;
 - it fully discloses any conditions or approvals required to consummate the Bid and the time period within which the Bidder expects to satisfy such conditions or obtain such approvals;

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- it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
 - it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court and (ii) thirty (30) calendar days following the Bid Deadline (the “**Irrevocable Bid Date**”), provided that if such Potential Bidder’s Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;
 - it includes or is accompanied by evidence satisfactory to the Receiver of the financial ability of the Potential Bidder to consummate the Transaction contemplated by the Bid;
 - it is not conditioned on the outcome of unperformed due diligence or obtaining financing;
 - it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Receiver) payable to the order of the Receiver, in trust, in an amount equal to 15% of the Purchase Price in the Bid, which Deposit is to be held by the Receiver and dealt with in accordance with the Sale Procedures;
 - it includes a commitment to close the Transaction contemplated by the Bid by no later than July 30, 2021 (the “**Outside Date**”);
 - it contains such other information as may reasonably be requested by the Receiver; and
 - it is received prior to the Bid Deadline.

-
32. In the event that the Receiver determines that no Qualified Bids are received, the Receiver is to promptly proceed to seek Court approval of the Stalking Horse Bid as the Successful Bid and, provided that such Court approval is granted, proceed to complete the Transaction contemplated by the Stalking Horse Agreement.
33. The Receiver will (a) review and evaluate the Stalking Horse Bid and each Qualified Bid, and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Stalking Horse Bidder or the Qualified Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to the Sale Procedures. Any Successful Bid will be subject to approval by the Court.
34. If one or more Qualified Bids, in addition to the Stalking Horse Bid, is received by the Bid Deadline, the Receiver will proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each Qualified Bidder who each will be invited by the Receiver to attend the Auction (each, an “**Auction Bidder**”). There are to be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. The Stalking Horse Bidder constitutes an Auction Bidder in all circumstances in which an Auction is conducted.
35. If an Auction is conducted, it is to be conducted in accordance with the following procedures:
- The Auction shall commence at a time to be designated by the Receiver on July 15, 2021 (the “**Auction Date**”) at the Toronto offices of the Receiver or by electronic communication means (including videoconference, teleconference or such other reasonable means as the Receiver deems

appropriate) and will continue thereafter until completed, subject to such adjournments as the Receiver may consider appropriate;

- The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
- Except as otherwise permitted in the Receiver's discretion, only the Receiver and the Auction Bidders, and in each case their respective professional advisors, will be entitled to attend the Auction. Each Auction Bidder will appear at the Auction through a duly authorized representative that will be designated by the Auction Bidder as its spokesperson;
- Except as otherwise set forth in the Sale Procedures, the Receiver may waive and/or employ and announce at the Auction additional procedures that are reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with the Sale Procedures, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Receiver's judgement, to result in the solicitation of the highest and best offer;
- Not less than two (2) Business Days prior to the Auction, the Receiver will (i) identify the highest or otherwise best Qualified Bid or Stalking Horse Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments valued at not

less than US\$75,000 in excess of the Opening Bid or such other amounts to be determined by the Receiver prior to, and announced at, the Auction. Each Auction Bidder will, if requested by the Receiver, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;

- All Auctions Bidders shall have the right, at any time during the Auction, to request that the Receiver announce to all Auction Bidders, subject to any potential new bids, the then-current highest or otherwise best bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any questions such Auction Bidder may have on the then-current highest or otherwise best bid;
- Each Auction Bidder will be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids;
- The Auction will continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction will be closed and the Auction Bidder that submitted the highest or otherwise best bid will be designated as the Successful Bidder; and
- Upon selection of a Successful Bidder, the Successful Bidder will, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder's bid and any modifications submitted and agreed to during the Auction.

-
36. For all purposes of the Sale Process, the Stalking Horse Bidder will be entitled to credit bid all or any portion of the Senior Secured Obligations, at the face value of such obligations. In the event that the Receiver designates a Qualified Bid, the Stalking Horse Bidder will have the right, as part of an Auction, to supplement its Stalking Horse Bid with additional cash or other consideration such that the revised Stalking Horse Bid includes aggregate consideration in excess of the amount of the Senior Secured Obligations and the Priority Claims.
37. Following the determination of the Successful Bid, the Receiver will apply to Court for an order approving a Successful Bid, which Approval Motion, subject to Court availability, shall be held on or prior to July 22, 2021 (the “**Approval Hearing Date**”).
38. The Receiver will implement the Successful Bid by no later than the Outside Date.
39. The Sale Procedures will be posted to the Receiver’s website. Any potential interested party that contacts the Receiver will be invited to participate in the Sale Procedures.
40. In the Proposed Receiver’s view, the Sale Procedures:
- (a) are consistent with sale procedures used in other Court-supervised stalking horse sales processes;
 - (b) provide a reasonable opportunity for competing bidders to submit offers superior to the Stalking Horse Agreement;
 - (c) are sufficient to generate the highest and best offer; and
 - (d) are reasonable and appropriate in the circumstances.

VII. SECURITY OPINION

41. The Proposed Receiver has received, as at the date of this report, a verbal opinion from Chaitons LLP, independent counsel the Proposed Receiver proposes to retain if the Receivership Order is granted, that, subject to standard qualifications and limitations, the Security provided to the Agent is perfected, valid and enforceable in accordance with its terms.

VIII. CONCLUSION

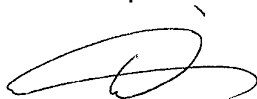
42. Based on the foregoing, subject to the Receivership Order being granted, the Proposed Receiver respectfully recommends that the Court make an Order approving:

- (i) the Stalking Horse Agreement; and
- (ii) the Sale Procedures.

All of which is respectfully submitted to this Court as of this 26th day of May, 2021.

RSM CANADA LIMITED

In its capacity as Proposed Receiver
of O2 Industries Inc.
and not in its personal capacity



For: Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

A

ASSET PURCHASE AGREEMENT

RSM CANADA LIMITED
in its capacity as the court-appointed receiver of
O2 INDUSTRIES INC., and not in its personal or corporate capacity

as the Receiver

- and -

2841551 ONTARIO LIMITED

as the Buyer

- and -

O2 INDUSTRIES INC.

as the Company

Made as of [●], 2021

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of [●], 2021

AMONG:

RSM CANADA LIMITED, in its capacity as the court-appointed receiver of the Company (the “**Receiver**”), and not in its personal or corporate capacity

- and -

2841551 ONTARIO LIMITED, a corporation organized under the laws of the Province of Ontario (the “**Buyer**”)

- and -

O2 Industries Inc., a corporation incorporated under the laws of the Province of Ontario (the “**Company**”)

RECITALS:

- A. The Company is presently indebted to the Kensington Lenders pursuant to the Promissory Notes and the Assignment and Agency Agreement.
- B. The Buyer, an affiliate of the Kensington Lenders, wishes to purchase certain of the assets and property of the Company as detailed herein.
- C. The Kensington Lenders intend to bring an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) seeking an order (the “**Appointment Order**”) appointing the Receiver as receiver of all the assets, undertakings and properties of the Company, approving the Sale Procedures, and designating this Agreement as the stalking horse agreement for purposes of the Sale Procedures.
- D. Subject to the designation of the Transaction as the Successful Bid pursuant to the Sale Procedures, the granting of the Approval Order and the other conditions set forth herein, the Receiver has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase, acquire, assume and accept from the Receiver and the Company, the Purchased Assets and the Assumed Liabilities, on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**Actions**” means any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Company related to the Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of the Company in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered by the Company prior to the Closing Time;
- (b) “**affiliate**” has the same meaning as “affiliate” under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended;
- (c) “**Agreement**” means this purchase agreement and all Appendices, Exhibits and Schedules attached hereto, in each case as the same may be supplemented, amended, restated or replaced from time to time; and the expressions “Article”, “Section”, “Schedule” and “Exhibit” followed by a number or letter mean and refer to the specified Article, Section, Schedule or Exhibit of this Agreement;
- (d) “**Applicable Law**” means any statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority that applies in whole or in part to the Company, the Transaction, the Purchased Assets, the Receiver or the Buyer;
- (e) “**Appointment Order**” has the meaning given to it in the recitals of this Agreement;
- (f) “**Approval Order**” means an approval and vesting order of the Court, *inter alia*, (i) approving the Transaction, and (ii) effective upon the delivery of the Receiver’s Vesting Certificate to the Buyer, vesting in the Buyer all of the right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances, which order shall be in form and substance acceptable to the Receiver and the Buyer;
- (g) “**Assigned Agreements**” means, collectively, the Purchased Contracts, the Real Property Leases and the Personal Property Leases;
- (h) “**Assignment and Agency Agreement**” means the Assignment and Agency Agreement dated May 10, 2021 between the Company and the Kensington Lenders;

- (i) “**Assignment Order**” means an order of the Court authorizing and approving the assignment of a Consent Required Agreement, which order shall be in form and substance acceptable to the Receiver and the Buyer;
- (j) “**Assumed Employee Obligations**” has the meaning given to it in Section 9.2;
- (k) “**Assumed Liabilities**” has the meaning given to it in Section 3.1;
- (l) “**Authorizations**” means all orders, permits, approvals, waivers, licences or authorizations of any Governmental Authority issued to or in respect of the Company, the Business or the Purchased Assets;
- (m) “**Books and Records**” means all books, records, operating manuals, engineering standards, designs, specifications, sales books, customer and supplier lists, and export of the Company’s databases for the assets, books of account, employee personal records of Transferred Employees, Tax records and books and other sales and business records relating or pertaining to the Business or the Purchased Assets;
- (n) “**Business**” means the business now carried on by the Company, comprising the designing, manufacturing, marketing and sale of reusable respirators and related ancillary products;
- (o) “**Business Day**” means any day of the year on which national banking institutions in Toronto, Ontario are open to the public for conducting business and are not required or authorized by Applicable Law to close;
- (p) “**Buyer**” has the meaning given to it in the preamble to this Agreement;
- (q) “**Cash**” means all cash and cash equivalents, bank accounts and bank balances, monies in possession of banks and other depositories, refunds or rebates, term deposits and similar cash property, in each case of the Company, and includes (i) Cash held by or for the benefit of the Company at the Closing Time, and (ii) Cash received by the Company, or held by or for the benefit of the Company, from and after the Closing Time that is received in respect of, or relates to, a Receivable in existence as of the Closing Time;
- (r) “**Closing**” means the completion of the Transaction pursuant to the terms and conditions of this Agreement at the time set forth in Section 8.1 and of all other transactions contemplated by this Agreement that are to occur concurrently with the sale and purchase of the Purchased Assets;
- (s) “**Closing Date**” means the date on which all of the conditions in Sections 7.1 to 7.3 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date, but subject to the satisfaction and waiver of such conditions), or such other date as may be agreed upon by the Receiver and the Buyer, provided however that the Closing Date shall be no later than the Outside Date;

- (t) “**Closing Time**” means 12:01 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Receiver and the Buyer agree that the Closing Time shall take place;
- (u) “**Company**” has the meaning given to it in the preamble to this Agreement;
- (v) “**Company Employees**” means the employees of the Company, whether full-time or part-time, on leave or on disability and including those on statutory or other absences, employed on the Closing Date;
- (w) “**Consent Required Agreement**” has the meaning given to it in Section 3.3;
- (x) “**Contract**” means any contract, agreement, lease, sublease, licence, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on the Company or any part of its assets or property (personal, real, tangible, intangible or otherwise) under Applicable Law;
- (y) “**Court**” has the meaning given to it in the recitals to this Agreement;
- (z) “**Cure Costs**” means, in respect of a Consent Required Agreement, the amount that the Buyer agrees to pay in satisfaction of any monetary defaults thereunder;
- (aa) “**Discharge Date**” means the date on which the Receiver is discharged as receiver of the Company pursuant to Court order;
- (bb) “**Employee Plans**” means all oral and written employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive or performance compensation, equity compensation, savings, severance or termination pay, retirement, supplementary retirement, registered or unregistered retirement savings, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, policy, agreement, practice, undertaking or arrangement, and every other oral or written benefit plan, program, policy, agreement, practice, undertaking or arrangement sponsored, maintained or contributed to or required to be contributed to by the Company for the benefit of the current or former directors, officers, employees, contractors, consultants and representatives of the Company in respect of the Business and/or their respective dependants or beneficiaries, by which the Company is bound or with respect to which the Company participates or has any actual or potential liability, other than statutory benefit plans which the Company is required to participate in or comply with, including the Canada Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;
- (cc) “**Encumbrance**” means any security interest, lien, prior claim, charge, hypothec, hypothecation, reservation of ownership, pledge, encumbrance, trust (including any statutory, constructive or deemed trust), mortgage or adverse claim of any nature or kind whatsoever;

- (dd) “**Estimated Fees**” has the meaning given to it in Section 2.4(d);
- (ee) “**Excluded Assets**” has the meaning given to it in Section 2.2;
- (ff) “**Excluded Assets Schedule**” means Schedule B to this Agreement;
- (gg) “**Excluded Contracts**” means all Contracts of the Company that are not Purchased Contracts;
- (hh) “**Excluded Equipment**” means all equipment and personal property, including fixed and tangible assets, machinery, chattels, furniture, computer hardware and other tangible assets listed on the Excluded Assets Schedule;
- (ii) “**Excluded Inventory and Supplies**” means any inventories of products and merchandise including raw materials, supplies, packaging, work in process and finished goods related to the Business which (a) are sold or otherwise disposed of during the Interim Period in the Ordinary Course, or (b) are listed on the Excluded Assets Schedule;
- (jj) “**Excluded Liabilities**” has the meaning given to it in Section 3.2;
- (kk) “**General Conveyance and Assumption Agreement**” means a general conveyance and assumption agreement with respect to the Purchased Assets and the Assumed Liabilities in form and substance acceptable to the Receiver and the Buyer, acting reasonably;
- (ll) “**General Security Agreement**” means the general security agreement dated as of March 31, 2021 between the Company and KPEF;
- (mm) “**Goodwill**” means the goodwill of the Business, including the right of the Buyer to represent itself as carrying on the Business in continuation of and in succession to the Company;
- (nn) “**Governmental Authority**” means: (i) any national, federal, provincial, state, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;
- (oo) “**GST/HST**” means goods and services tax payable under the GST/HST Legislation, including “harmonized sales tax”;
- (pp) “**GST/HST Legislation**” means Part IX of the *Excise Tax Act* (Canada);
- (qq) “**Insurance**” means (i) Contracts of insurance, insurance policies and insurance plans of the Company, to the extent transferable; (ii) any insurance proceeds net of any deductibles and retention recovered by the Company under all other

Contracts of insurance, insurance policies (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) and insurance plans during the Interim Period; and (iii) the full benefit of the Company's rights to insurance claims (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) relating to the Business and amounts recoverable in respect thereof net of any deductible;

- (rr) “**Intellectual Property**” means all rights, interests and benefits of the Company, through ownership, licensing or otherwise, in (i) any trademarks, trade names, business names, brand names, services marks, copyrights, trade secrets, industrial designs, inventions, patents, formulas, processes, know how, technology, manufacturing, engineering and other technical drawings and manuals, blue prints, research and development reports, technical information, technical assistance, engineering data, design and engineering specifications, telephone numbers, domain names, domain name registrations, website names and worldwide web addresses, social media accounts and social media handles and other communication addresses, and related goodwill, and (ii) any applications or registrations of the foregoing, issued patents, continuations in part, divisional applications or analogous rights therefor, in each case whether registered or not, including the Intellectual Property listed on the Purchased Assets Schedule;
- (ss) “**Interim Period**” means the period from and after the date hereof up to and including the Closing Date;
- (tt) “**IT Systems**” means all software (including source code and object code form), computer hardware, licenses, and documentation therefor and rights therein owned by the Company, and any other information technology systems owned or used by the Company, including, all electronic data processing systems, cloud services, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material;
- (uu) “**Kensington Lenders**” means, collectively, KPEF, Kensington Venture Fund II, L.P. and Kensington (Parallel) Venture Fund II, L.P.;
- (vv) “**KPEF**” means Kensington Private Equity Fund;
- (ww) “**Offered Employees**” has the meaning given to it in Section 9.1(a);
- (xx) “**Ordinary Course**” means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the recent past practices of the Person having regard to the recent circumstances leading up to and including the transactions contemplated by this Agreement and, as applicable, subject to the Appointment Order;

- (yy) “**Outside Date**” means July 30, 2021 or such later date as may be agreed by the Buyer and the Receiver;
- (zz) “**Parties**” means, collectively, the Receiver, the Buyer and the Company, and “**Party**” means any of them;
- (aaa) “**Permitted Encumbrances**” means the Encumbrances expressly listed as permitted Encumbrances in the Approval Order;
- (bbb) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, co-operative, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;
- (ccc) “**Personal Property Leases**” means all leases of personal or moveable property of the Company listed on the Purchased Assets Schedule;
- (ddd) “**Premises**” means the premises leased and occupied by the Company located at 5 Michael Street, Suite #2, Kitchener, Ontario, N2G 1L7;
- (eee) “**Prepaid Expenses**” means all prepaid expenses, including *ad valorem* Taxes, of the Company, and all deposits of the Company with any Person, including any supplier, public utility, lessor under any Personal Property Lease or Real Property Lease, or Governmental Authority;
- (fff) “**Priority Claims**” means any liabilities, obligations or claims, other than the Receiver’s Borrowings Obligations, that rank in priority to the Promissory Notes Obligations pursuant to Applicable Law;
- (ggg) “**Promissory Notes**” means, collectively, (A) the convertible promissory note dated March 31, 2021 in the principal amount of \$1,001,216.44 issued by the Company to KPEF, (B) the convertible promissory note dated April 13, 2021 in the principal amount of \$650,000 issued by the Company to KPEF, and (C) the convertible promissory note dated May 10, 2021 in the principal amount of \$350,000 issued by the Company to KPEF, in each case as amended, supplemented, amended and restated, replaced or otherwise modified from time to time;
- (hhh) “**Promissory Notes Obligations**” means all obligations of any kind or nature owing to the Kensington Lenders, including all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to the Promissory Notes, the General Security Agreement, and the Assignment and Agency Agreement;
- (iii) “**Purchase Price**” has the meaning given to it in Section 2.4;
- (jjj) “**Purchased Assets**” has the meaning given to it in Section 2.1;

- (kkk) **“Purchased Assets Schedule”** means Schedule A to this Agreement;
- (lll) **“Purchased Contracts”** means the Contracts listed on the Purchased Assets Schedule;
- (mmm) **“Purchased Equipment”** means all equipment and personal property owned by the Company wherever located, including all fixed and tangible assets, machinery, chattels, tooling, furniture, computer hardware and other tangible assets, but excluding Excluded Equipment;
- (nnn) **“Purchased Inventory and Supplies”** means all of the Company’s inventory, merchandise, samples and supplies, including raw materials, work in process, finished goods, and packaging and shipping supplies, but excluding Excluded Inventory and Supplies;
- (ooo) **“Real Property Leases”** means the Company’s leasehold interest in the leases, agreements to lease, subleases or licences listed on the Purchased Assets Schedule;
- (ppp) **“Receivables”** means all future payments made by cash, cheque, automatic clearing houses, direct or pre-authorized debit, wire transfer, electronic money transfers, PayPal money transfers, credit card, debit card, charge card or other forms of payment related to the Business, including for goods, services or facilities provided by the Company but excluding, for greater certainty, Related Party Amounts;
- (qqq) **“Receiver”** has the meaning given to it in the recitals to this Agreement;
- (rrr) **“Receiver’s Borrowings Obligations”** means all obligations of any kind or nature owing by the Receiver to any Kensington Lender or its affiliate that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements;
- (sss) **“Receiver’s Vesting Certificate”** means the Receiver’s certificate contemplated by the Approval Order;
- (ttt) **“Receivership Proceedings”** means the proceedings in respect of the Company commenced pursuant to the Appointment Order;
- (uuu) **“Related Party Amounts”** means any indebtedness, liabilities or other amounts owed or payable to the Company from current or former directors, officers, employees or shareholders of the Company;
- (vvv) **“Representatives”** means, in respect of any Party, its and its affiliates’ directors, officers, employees, agents and advisors (including financial and legal advisors);

- (www) “**Sale Procedures**” means the procedures for the conduct of a sale process in respect of the business and assets of the Company approved by the Court pursuant to the Appointment Order, which procedures shall be in substantially the form attached hereto as Schedule C or otherwise in form and substance acceptable to the Receiver and the Buyer;
- (xxx) “**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations;
- (yyy) “**Successful Bid**” shall have the meaning given to it in the Sale Procedures;
- (zzz) “**Tax**” and “**Taxes**” means all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, including (a) those levied on, or measured by, or referred to as income, gross receipts, earnings, profits, capital, corporate, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, license, franchising, real or personal property, payroll, employment, wage, employer health, social services, severance, utility, occupation, premium, windfall, education and social security taxes, all surtaxes, all custom duties and import and export taxes, all license, franchise and registration fees and all employment and unemployment insurance, health insurance and Canada and other government pension plan premiums, workers’ compensation levies, and retirement contributions, including those imposed by any Governmental Authority, and (b) any liability for the payment of any amount of the type described in the immediately preceding clause (a) as a result of being a “transferee” (within the meaning of section 160 of the Tax Act or any other Applicable Laws) of another taxpayer or entity or a member of a related, non-arm’s length, affiliated or combined group;
- (aaaa) “**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time;
- (bbbb) “**Tax Refunds**” means the benefit of the Company to any Tax refunds (including in respect of any overpayment of Taxes), rebates or credits (including refundable credits) payable or paid to the Company, net of any amounts withheld by any Governmental Authority having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Company to any claim or right of the Company to any such refund, rebate, or credit in respect of Taxes, including in any case any interest thereon received or receivable from any Governmental Authority, but for greater certainty, only to the extent that such refund, rebate or credit relates to a taxable period ending on or before the Closing Date or, in respect of a taxable period that includes but does not end on the Closing Date, the portion thereof up to and including the Closing Date;
- (cccc) “**Transaction**” means the purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement and any of the other transactions contemplated by this Agreement;

- (dddd) **“Transferred Employees”** means solely those Offered Employees who accept the offer of employment made by the Buyer or its affiliate(s) pursuant to Section 9.1 and who actually commence employment with the Buyer or its affiliates on their first scheduled shift after Closing;
- (eeee) **“Transfer Taxes”** has the meaning given to it in Section 2.8(a);
- (ffff) **“Warranty Rights”** means all warranty, product guarantee or similar rights against manufacturers, contractors or suppliers relating to any of the Purchased Assets, to the extent the foregoing are transferable to the Buyer.

1.2 Appendices and Schedules

The following Schedules form part of this Agreement:

Schedule A	Purchased Assets Schedule
Schedule B	Excluded Assets Schedule
Schedule C	Sale Procedures

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Interpretations

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States dollars.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.8 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the Receiver and the Buyer. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law, Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of or in connection with this Agreement or the Transaction or any part thereof, including all matters of construction, validity and performance, as well as the rights and obligations of the Parties hereunder or thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the courts of the Court for the resolution of any such disputes arising under or in connection with this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.8 shall be deemed effective service of process on such Party.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, the Receiver and the Company agree to sell, assign, transfer and convey to the Buyer, and the Buyer agrees to purchase, assume and accept from the Receiver and the Company, free and clear of all Encumbrances other than Permitted Encumbrances, all of the right, title, benefit and interest of the Receiver and the Company in, to and under, or relating to, the assets, property and undertaking owned or used or held for use in connection with the Business (the “**Purchased Assets**”), including the following properties, assets and rights:

- (a) Cash;
- (b) Purchased Contracts;
- (c) Purchased Equipment;
- (d) Purchased Inventory and Supplies;
- (e) Intellectual Property;
- (f) Insurance;
- (g) Goodwill;
- (h) Warranty Rights;
- (i) Books and Records;
- (j) Authorizations;
- (k) Real Property Leases;
- (l) Personal Property Leases;
- (m) Prepaid Expenses;
- (n) IT Systems;
- (o) Actions;
- (p) Related Party Amounts; and
- (q) Tax Refunds,

but, for greater certainty, in each case excluding any Excluded Assets.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets shall not, and will not be deemed to, include any of the following assets of the Company (collectively, the “**Excluded Assets**”):

- (a) Receivables;
- (b) Excluded Contracts;
- (c) Excluded Equipment;
- (d) Excluded Inventory and Supplies;

- (e) Employee Plans;
- (f) original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Company, in each case that do not relate to the Business or the Purchased Assets;
- (g) all of the Company's rights and benefits under this Agreement and the Transaction;
- (h) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period or in furtherance of or in connection with the Transaction, or otherwise in compliance with the terms of this Agreement;
- (i) shares, partnership or joint venture interests and any other securities of any Person owned or held by the Company or any of its affiliates, including the shares of Hangzhou Oxygen Technology Co. Ltd. owned by the Company;
- (j) all minute books, share ledgers, corporate seals and stock certificates of the Company; or
- (k) any other assets as may be expressly designated by the Buyer in writing prior to Closing.

2.3 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS RELATED THERETO ARE PURCHASED AND THE ASSUMED LIABILITIES ARE ASSUMED BY THE BUYER ON AN "AS IS, WHERE IS" BASIS AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED LIABILITIES, AND WITHOUT ANY RECOURSE TO THE RECEIVER OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS OR ADVISORS. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS RELATED THERETO AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE BUYER'S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE RECEIVER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Receiver in this Agreement or in any instrument furnished in

connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, latent defects, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded. The provisions of this Section 2.3 shall survive and not merge on Closing.

2.4 Purchase Price

The Purchase Price payable by the Buyer to the Receiver for the Purchased Assets shall be equal to the sum of the following amounts (collectively, the “**Purchase Price**”):

- (a) the Priority Claims;
- (b) the Cure Costs;
- (c) the Senior Secured Obligations; and
- (d) the amount of CDN\$100,000, estimated by the Receiver to be the aggregate fees, disbursements and expenses of the Receiver for the period from the Closing Time to the Discharge Date (the “**Estimated Fees**”).

2.5 Satisfaction of Purchase Price

The Buyer shall pay and satisfy the Purchase Price on the Closing Date as follows:

- (a) the Buyer shall pay in cash or shall assume the Priority Claims;
- (b) the Buyer shall pay in cash all Cure Costs;
- (c) the Buyer shall pay the Estimated Fees in cash to the Receiver; and
- (d) the Buyer shall cause the Kensington Lenders to irrevocably release and discharge the Company and the Receiver, as applicable, from the Senior Secured Obligations.

2.6 Adjustment for Estimated Fees

If the aggregate of the actual fees, disbursements and expenses incurred by the Receiver during the period from the Closing Time to the Discharge Date is (a) less than the Estimated Fees, any surplus shall be paid by the Receiver to the Buyer within three (3) Business Days of the Discharge Date, or (b) greater than the Estimated Fees, any deficiency shall be paid by the Buyer to the Receiver within three (3) Business Days of the Discharge Date.

2.7 Purchase Price Allocation

The Buyer shall, acting reasonably, prepare and deliver to the Receiver an allocation of Purchase Price among the Purchased Assets within 30 days following Closing. Such allocation shall be binding on the Buyer, the Receiver and the Company, and the Buyer, the Receiver and the Company will file all Tax returns in a manner consistent with such allocation.

2.8 Tax Matters

- (a) All amounts payable by the Buyer pursuant to this Agreement are exclusive of any GST/HST and all transfer, documentary, sales, use, registration and provincial sales Taxes arising in connection with the sale, conveyance, assignment and transfer of the Purchased Assets to the Buyer (collectively, “**Transfer Taxes**”). The Buyer will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder). The Parties will cooperate with each other in good faith and will use commercially reasonable efforts to assist the Buyer in mitigating such Taxes. If the Receiver is required by any Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer will pay such amounts to the Receiver concurrent with the payment of any consideration payable pursuant to this Agreement or, if arising after Closing, forthwith, and the Receiver will pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (b) At the Closing, the Parties shall jointly execute an election under Section 167 of the GST/HST Legislation to cause the sale of the Purchased Assets to take place on a HST-free basis under the GST/HST Legislation and the Buyer shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) At the Closing, the Parties shall, if applicable, execute jointly an election in prescribed form under Section 22 of the Tax Act and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date.
- (d) If requested by the Buyer, the Buyer and the Receiver and/or the Company (as applicable) shall jointly make and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of the applicable provincial Tax law, if applicable and available, in respect of the Buyer’s assumption of the Company’s obligations in respect of any deferred revenue of the Business (and, if such election is made, a portion of the Purchased Assets having a value equal to the elected amount shall be transferred by the Receiver to the Buyer for the assumption of such obligations by the Buyer), in either case in prescribed manner and within the prescribed time limits applicable to such election(s).
- (e) The Buyer shall be entitled to receive from the Receiver and/or the Company all Tax Refunds. The Buyer and the Receiver shall execute all documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax Refunds. The Receiver will promptly pay to the Buyer all such Tax Refunds.
- (f) The Buyer agrees to indemnify and save the Receiver harmless from and against all claims and demands for payment of all Transfer Taxes payable by the Buyer in connection with the purchase of the Purchased Assets, including penalties and

interest thereon and any liability or costs incurred as a result of any failure by the Buyer to pay such Taxes when due.

- (g) The Parties agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any inquiry of any Governmental Authority relating to Tax matters.

ARTICLE 3

ASSUMED LIABILITIES AND EXCLUDED LIABILITIES

3.1 Assumed Liabilities

Subject to Closing, the Buyer agrees to assume, pay, discharge, perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Company with respect to the Purchased Assets (collectively, the “**Assumed Liabilities**”), which Assumed Liabilities shall exclude the Excluded Liabilities and shall consist solely of:

- (a) all obligations and liabilities under the Assigned Agreements to the extent first arising and relating to the period on or after the Closing Date;
- (b) all obligations and liabilities related to the operation of the Purchased Assets on or after the Closing Date; and
- (c) the Assumed Employee Obligations.

3.2 Excluded Liabilities

Except as expressly assumed by the Buyer pursuant to Section 3.1, the Buyer shall not assume, accept or undertake any debt, obligation, duty or liability of the Company of any kind or nature whatsoever, whether accrued, contingent, known or unknown, express or implied, direct or indirect, liquidated or unliquidated, contingent or otherwise, and whether due or to become due (the “**Excluded Liabilities**”), which Excluded Liabilities, without limitation, shall include the following liabilities or obligations:

- (a) except as expressly included in Assumed Liabilities, all liabilities, obligations, present and future actions, causes of action, lawsuits, damages, judgements, executions or claims relating to or arising out of the conduct or operation of the Business or the Purchased Assets prior to the Closing Date, including all liabilities, obligations, claims and causes of action relating to or arising from breaches of contract, violations of Applicable Law, product liability, warranties, or tortious or illegal conduct;

- (b) all liabilities and obligations relating to the Excluded Assets;
- (c) all liabilities and obligations of the Company under the Assigned Agreements incurred or relating to the period prior to the Closing Date, except any Cure Costs agreed to by the Buyer in respect of Consent Required Agreements (which Cure Costs shall be paid by the Buyer in accordance with this Agreement);
- (d) indebtedness for borrowed money, including the Senior Secured Obligations;
- (e) all liabilities and obligations for (i) all Taxes of the Company for any Tax period; (ii) all Taxes relating to the Purchased Assets for periods (or any portion thereof) ending on or prior to the Closing Date, including any Taxes based upon operation, possession, use or ownership of the Purchased Assets, (iii) any Taxes in respect of any payments to Persons employed or retained in connection with the Business in respect of any period prior, and any related obligation to withhold or remit Taxes, even though a claim may be made after the Closing Date, and (iv) any Taxes relating to the Excluded Assets;
- (f) other than the Assumed Employee Obligations, all liabilities and obligations relating to the employment or the termination of the employment of the Company Employees (including Transferred Employees), including termination and severance obligations;
- (g) all liabilities, obligations or causes of action asserted or that may be asserted by (i) Sigma Worldwide, LLC, including in proceedings before the Ontario Superior Court of Justice bearing court file number CV-21-00660483-0000, and (ii) The Interpublic Group of Companies Canada, Inc. d/b/a Huge Canada, including in proceedings before the Ontario Superior Court of Justice bearing court file number CV-21-00659511-0000; and
- (h) any other obligations or liabilities expressly excluded from the Assumed Liabilities under this Agreement.

3.3 Consent Required Agreements

In the event that there are any Assigned Agreements or Authorizations that are not assignable in whole or in part to the Buyer without the consent, approval or waiver of any counterparty to such Assigned Agreement or issuer of such Authorization (each, a “**Consent Required Agreement**”):

- (a) the Parties shall, at the direction of the Buyer, use commercially reasonable efforts to obtain any such consent, approval or waiver in respect of a Consent Required Agreement;
- (b) if any consent, approval or waiver is not obtained for any Consent Required Agreement, the Receiver, if requested by the Buyer in its sole discretion, shall as soon as reasonably practicable bring a motion before the Court seeking the issuance of an Assignment Order with respect to each such Consent Required Agreement;

- (c) the determination as to whether to pay Cure Costs in order to obtain any required consent, approval or waiver, and the determination as to whether to seek an Assignment Order in respect of a Consent Required Agreement that, if granted, will necessitate the payment of Cure Costs, shall be made by the Buyer in its sole discretion;
- (d) the payment of any Cure Costs payable to obtain the consent, approval or waiver of any counterparty to an Assigned Agreement or as a condition to obtaining an Assignment Order in respect of any Consent Required Agreement shall be the responsibility of the Buyer; and
- (e) where any required consent, approval or waiver in respect of a Consent Required Agreement or, in the alternative, an Assignment Order in respect of such Consent Required Agreement, has not been obtained as of the Closing Time, nothing in this Agreement shall be construed as an assignment of such Consent Required Agreement, the Buyer shall have no responsibility whatsoever in respect of such Consent Required Agreement, and such Consent Required Agreement shall constitute an Excluded Asset for purposes of this Agreement.

3.4 Additions to Purchased Assets, Excluded Assets and Excluded Liabilities

Notwithstanding anything to the contrary herein, the Buyer shall have the right, at any time prior to the Closing Time, by notice in writing to the Receiver and without any adjustment to the Purchase Price, to deem (a)(i) any asset or agreement of the Company (including any asset or agreement that is otherwise identified herein as a Purchased Asset) to be an Excluded Asset, and (ii) any liability or obligation of the Company (including any liability or obligation that is otherwise identified herein as an Assumed Liability) to be an Excluded Liability, in each case for all purposes of this Agreement, in which case such Excluded Asset or Excluded Liability, as the case may be, shall not be assigned or transferred to or assumed by, and shall not vest in, the Buyer at Closing, and (b) any asset or agreement of the Company (including any asset or agreement that is otherwise identified herein as an Excluded Asset) to be a Purchased Asset for all purposes of this Agreement. The Schedules to this Agreement may be updated by the Buyer at any time prior to the Closing Time to reflect any actions taken by the Buyer pursuant to this Section 3.4. There shall be no adjustment to the Purchase Price as a result of any designation or modification of Purchased Assets, Excluded Assets, Assumed Liabilities or Excluded Liabilities pursuant to this Section 3.4.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

The Receiver and the Company, as applicable, represent and warrant as follows to the Buyer as of the date hereof and acknowledge and confirms that the Buyer is relying upon the following representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

4.1 Existence

The Receiver has been appointed as the receiver of the assets and property of the Company pursuant to the Appointment Order.

4.2 Corporate Power

- (a) The Receiver is duly organized and validly existing under the laws of its jurisdiction of organization.
- (b) Subject to the issuance and entry of the Approval Order, the Receiver has the power, authority and capacity to enter into and perform its obligations under this Agreement.
- (c) Subject to the issuance and entry of the Approval Order, the Company has the power to enter into and perform its obligations under this Agreement.

4.3 Residence of the Receiver and Company

Neither the Receiver nor the Company is a non-resident of Canada for the purposes of the Tax Act.

4.4 Due Authorization and Enforceability of Obligations

Pursuant to the Appointment Order, and subject to the issuance of the Approval Order, this Agreement has been duly and validly executed by the Receiver and the Company and constitutes a valid and binding obligation of the Receiver and the Company enforceable against such Parties in accordance with its terms.

4.5 Registration

The Company is registered for purposes of the GST/HST Legislation, and its registration number is [●].

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Receiver as follows, and acknowledges that the Receiver is relying upon the following representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

5.1 Corporate Power

The Buyer:

- (a) is a corporation duly organized and validly existing and in good standing under the Applicable Laws of its jurisdiction of formation; and

- (b) has the power, capacity and authority to enter into and perform its obligations under this Agreement and carry on business.

5.2 Residence of the Buyer

The Buyer is not a non-resident of Canada for the purposes of the Tax Act.

5.3 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Buyer. This Agreement has been duly and validly executed by the Buyer and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms.

5.4 GST/HST Legislation

The Buyer will be registered for purposes of the GST/HST Legislation prior to Closing and shall provide the Receiver with its registration number prior to Closing.

5.5 Diligence

The Buyer acknowledges and agrees that: (a) it is purchasing the Purchased Assets and assuming the Assumed Liabilities on an “as is, where is” basis; (b) it has relied upon its own independent review, investigation and inspection of the documents and information made available by or on behalf of the Receiver or the Company for the purpose of the Transaction; (c) except as expressly set forth in this Agreement, it is not relying upon any written or oral statements, documents, information, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Business or the Assumed Liabilities; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence.

ARTICLE 6 OTHER AGREEMENTS

6.1 Conduct Prior to Closing

During the Interim Period, the Company shall conduct the Business in the Ordinary Course, except to the extent required to allow the Receiver and the Company to comply with their obligations under this Agreement or as may be permitted with the written consent of the Buyer, subject in all cases to the Appointment Order and any other Court orders granted in the Receivership Proceedings. Without limiting the generality of the foregoing, the Company shall:

- (a) maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course;

- (b) preserve intact the Goodwill and maintain satisfactory relationships with suppliers, customers, landlords, Governmental Authorities and all other Persons with whom the Company has a business relationship;
- (c) not convey, encumber or otherwise dispose of any of the Purchased Assets except in the Ordinary Course;
- (d) not amend or modify any Assigned Agreement in any material respect, waive any material rights in respect of any Assigned Agreement or disclaim any Assigned Agreement;
- (e) not enter into any material contract or agreement in respect of the Business;
- (f) not enter into any settlement of any claim, cause of action or litigation by or against the Company;
- (g) preserve and maintain in force and in good standing all Authorizations;
- (h) continue and keep in full force and effect all insurance coverage currently held by the Company; and
- (i) comply in all material respects with all Applicable Laws relating to the conduct of the Business and the ownership and use of the Purchased Assets.

6.2 Sale Procedures

- (a) The Receiver shall conduct the sale process in respect of the business and assets of the Company in accordance with the Sale Procedures and shall not seek any amendment or modification to the Sale Procedures without the prior consent of the Buyer or further order of the Court.
- (b) If the Transaction is designated as the Successful Bid pursuant to the Sale Procedures, the Receiver shall as soon as reasonably practicable serve and file a motion, on notice to the service list in the Receivership Proceedings and any other Person reasonably requested by the Buyer, seeking the Approval Order.
- (c) All motion materials of the Receiver in respect of the Approval Order and the Assignment Order, if applicable, shall be in form and substance acceptable to the Buyer and provided sufficiently in advance to the Buyer for review and comment.

6.3 Access to Information

Until the Closing and to the extent permitted by Applicable Law, the Company shall provide the Buyer and its Representatives, during normal business hours and upon reasonable advance notice, reasonable access to the Premises and shall furnish them with all such information relating to the Business and the Purchased Assets as the Buyer may reasonably request in connection with the Transaction.

6.4 Access to Third Parties

The Receiver and the Company shall co-operate with the Buyer in arranging any such meetings or discussions as the Buyer or its Representatives may reasonably request with employees, customers, suppliers, lessors or other Persons having a business relationship with the Company, and the Company shall provide the Buyer with such assistance, documentation and materials as the Buyer may reasonably request in connection with the preparation for and participation in such meetings and discussions. The Receiver shall be entitled to have a Representative present in connection with any such meetings or discussions.

ARTICLE 7 CONDITIONS

7.1 Conditions for the Benefit of the Buyer

The obligation of the Buyer to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **Truth of Representations and Warranties.** The respective representations and warranties of the Receiver and the Company contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date (except for those representations and warranties that are made as of a specific time or date), which shall be certified by the Receiver and the Company, as the case may be, pursuant to certificates delivered by each of the Receiver and the Company to the Buyer at Closing;
- (b) **Performance of Covenants.** The Receiver and the Company shall have performed, in all material respects, each of their covenants and agreements to be performed by them at or prior to the Closing, which shall be certified by the Receiver and the Company, as the case may be, pursuant to certificates delivered by each of the Receiver and the Company to the Buyer at Closing;
- (c) **Deliverables.** The Receiver must have delivered to the Buyer the documents contemplated in Section 8.2, in each case in form and substance satisfactory to the Buyer, acting reasonably; and
- (d) **Assignment Order.** If requested by the Buyer to cause the assignment of a Consent Required Agreement, the Court shall have issued an Assignment Order in respect of such Consent Required Agreement, such Assignment Order shall be in form and substance acceptable to the Buyer in its sole discretion, and such Assignment Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.

The conditions in this Section 7.1 are for the exclusive benefit of the Buyer. Any condition in this Section 7.1 may be waived by the Buyer in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part.

7.2 Conditions for the Benefit of the Receiver

The obligation of the Receiver to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **Truth of Representation and Warranties.** The representations and warranties of the Buyer contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), which shall be certified by the Buyer pursuant to a certificate delivered to the Receiver at Closing;
- (b) **Performance of Covenants.** The Buyer must shall have performed, in all material respects, each of its covenants and agreements to be performed by it at or prior to the Closing, which shall be certified by the Buyer pursuant to a certificate delivered to the Receiver at Closing;
- (c) **Deliverables.** The Buyer must have delivered to the Receiver the documents contemplated in Section 8.3, in each case in form and substance satisfactory to the Receiver, acting reasonably.

The conditions in this Section 7.2 are for the exclusive benefit of the Receiver. Any condition in this Section 7.2 may be waived by the Receiver in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part.

7.3 Mutual Conditions

The obligation of the Buyer and the Receiver to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **No Legal Action.** No provision of any Applicable Laws and no judgment, injunction, order or decree by any Person that prohibits the consummation of the Transaction pursuant to and in accordance with this Agreement shall be in effect, pending or threatened;
- (b) **Appointment Order.** The Court shall have issued the Appointment Order in form and substance acceptable to the Receiver and the Buyer, and such Appointment Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.
- (c) **Successful Bid.** The Transaction shall have been designated as the Successful Bid pursuant to the Sale Procedures.

- (d) **Approval Order.** The Court shall have issued the Approval Order in form and substance acceptable to the Receiver and the Buyer, and such Approval Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.

The conditions in this Section 7.3 are for the mutual benefit of the Buyer and the Receiver. Any condition in this Section 7.3 may be waived jointly by the Buyer and the Receiver in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part.

ARTICLE 8 CLOSING

8.1 Date, Time and Place of Closing

The completion of the Transaction will take place at the offices of Goodmans LLP, at 333 Bay Street, Suite 3400, Toronto, Ontario M5H 3S7 at 10:00 a.m. (Toronto time) on the Closing Date, or at such other place (including virtually through electronic exchange of documents), on such other date and at such other time as may be agreed upon in writing by the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that the Transaction will be deemed to have closed effective as of the Closing Time.

8.2 Receiver Deliverables at Closing

At Closing, the Receiver will deliver or cause to be delivered to the Buyer the following:

- (a) the General Conveyance and Assumption Agreement signed by the Receiver and the Company;
- (b) if applicable, the elections referred to in Section 2.8, in each case signed by the Receiver;
- (c) the certificates of the Receiver and the Company referred to in Section 7.1;
- (d) the Receiver's Vesting Certificate; and
- (e) all other documents reasonably requested by the Buyer to be entered into or delivered by the Receiver or the Company at Closing pursuant to the terms of this Agreement.

8.3 Buyer Deliverables at Closing

At Closing, the Buyer will deliver or cause to be delivered to the Receiver the following:

- (a) the Purchase Price, in the manner set forth in Section 2.5, including evidence satisfactory to the Receiver, acting reasonably, that the Kensington Lenders have irrevocably released and discharged the Company and the Receiver from the Senior Secured Obligations;

- (b) the General Conveyance and Assumption Agreement signed by the Buyer;
- (c) if applicable, the elections referred to in Section 2.8, in each case signed by the Buyer;
- (d) the certificates of the Buyer referred to in Section 7.2;
- (e) the Buyer's GST/HST registration number; and
- (f) all other documents reasonably requested by the Receiver to be entered into or delivered by the Buyer at Closing pursuant to the terms of this Agreement.

8.4 Possession of Assets

The Purchased Assets shall be and remain until Closing at the risk of the Company. On Closing, the Buyer shall take possession of the Purchased Assets where situate at Closing. The Buyer acknowledges that neither the Receiver nor the Company has any obligation to deliver physical possession of the Purchased Assets to the Buyer. If following the Closing Time the Receiver or the Company comes into possession or control of a Purchased Asset, the Receiver or the Company, as applicable, shall promptly notify the Buyer and release the Purchased Asset to the Buyer or as the Buyer may direct. If following the Closing Time the Buyer comes into possession or control of an Excluded Asset, the Buyer shall promptly notify the Receiver and release the Excluded Asset to the Receiver or as the Receiver may direct and, for greater certainty, no right, title or interest in and to such Excluded Asset shall, or shall be deemed to, vest in the Buyer.

ARTICLE 9 EMPLOYEES

9.1 Employees

- (a) At least five days prior to the Closing Date, the Buyer shall make a written offer of employment, effective as of the Closing Date and contingent upon the Closing, to such Company Employees as the Buyer shall determine in its sole discretion (the "**Offered Employees**") on terms and conditions determined by the Buyer in its sole discretion. Notwithstanding the foregoing, nothing herein shall be construed as to prevent the Buyer, at its sole responsibility, liability and obligation, from terminating the employment of any Transferred Employee, consistent with applicable law, at any time following the Closing Date.
- (b) Each Transferred Employee shall be given credit by the Buyer for all service with the Company and its predecessors solely to the extent as is required by statute, but not for common law purposes.
- (c) The Parties agree that nothing in this Section 9.1, whether express or implied, is intended to create any third party beneficiary rights in any Transferred Employee.

9.2 Assumed Employee Obligations

The Buyer will assume and be responsible for the following obligations and liabilities in respect of Transferred Employees (collectively, the “**Assumed Employee Obligations**”):

- (a) all liabilities for salary, wages, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date;
- (b) all liabilities for vacation pay entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date; and
- (c) all liabilities for claims for injury, disability, death or workers’ compensation arising from or related to employment of the Transferred Employees from and after the Closing Date, but excluding any claims arising from and after the Closing Date but related to the employment of the Transferred Employees by the Company prior to the Closing Date.

ARTICLE 10 TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Receiver and the Buyer;
- (b) by the Buyer, if:
 - (i) the Sale Procedures are not approved by the Court in form and substance acceptable to the Buyer or if the Sale Procedures are amended or modified without the prior consent of the Buyer;
 - (ii) a transaction other than the Transaction is designated by the Receiver as the Successful Bid pursuant to the Sale Procedures;
- (c) by the Receiver or the Buyer, if the Closing has not occurred on or before the Outside Date; provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach by a Party of any representation, warranty, covenant or agreement contained in this Agreement, then the breaching Party may not terminate this Agreement pursuant to this Section 10.1(c);
- (d) by the Receiver, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty and such violation or breach has not been waived by the Receiver or cured within five Business Days after written notice thereof from the Receiver to the Buyer, unless the Receiver is in material breach of its obligations under this Agreement; and

- (e) by the Buyer, if there has been a material violation or breach by the Receiver or the Company of any covenant, representation or warranty and such violation or breach has not been waived by the Buyer or cured within five Business Days after written notice thereof from the Buyer to the Receiver or the Company, unless the Buyer is in material breach of its obligations under this Agreement.

10.2 Effect of Termination

In the event of termination of this Agreement in accordance with its terms, this Agreement shall become void and of no further force and effect, except for Section 1.10 (Governing Law, Jurisdiction and Venue) and Article 11 (General Matters), each of which shall survive termination. Nothing in this Section 10.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

ARTICLE 11 GENERAL MATTERS

11.1 Further Assurances

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other Parties such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

11.2 Structuring

The Receiver shall consider and negotiate in good faith any proposed modifications to this Agreement and the structure of the Transaction requested by the Buyer to implement the Transaction in a tax efficient manner, including, where possible, to maximize the value and ability of the Buyer to obtain the benefit of any existing tax attributes of the Company.

11.3 Personal Information

The Buyer acknowledges that it is aware, and it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Buyer and its Representatives pursuant to this Agreement and/or the Transaction. The Buyer agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to them.

11.4 Survival

None of the representations, warranties, agreements or covenants of any of the Parties set forth in this Agreement shall survive Closing, except for Section 1.10 (Governing Law), Article 11 (General Matters) and any other covenant or agreement that by its express terms is to survive or

to be performed after Closing, in each case solely to the extent they are to be performed or operate by their express terms after the Closing.

11.5 Expenses

Each of the Receiver and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation of this Agreement and the completion of the Transaction, provided that, for greater certainty, all such expenses incurred by the Buyer shall constitute Senior Secured Obligations pursuant to the terms of the Promissory Notes and the General Security Agreement.

11.6 Time of the Essence

Time will be of the essence in this Agreement.

11.7 Successors and Assigns

This Agreement may not be assigned by the Receiver or the Company without the prior written consent of the Buyer. This Agreement may not be assigned by the Buyer without the prior written consent of the Receiver, provided however that the Buyer shall be permitted, without the consent of the Receiver or the Company, to assign its rights and obligations under this Agreement in whole or in part to one or more affiliates of or funds managed by any of the Kensington Lenders where such assignee(s) agree(s) in writing to be bound by the terms of this Agreement to the extent of the assignment, and notwithstanding such assignment the Buyer shall remain liable for any obligations under this Agreement not performed by such assignee(s).

11.8 Notices

Any notice or other communication under this Agreement shall be in writing and may be delivered personally, by courier or by email, addressed:

If to the Buyer at:

95 St. Clair Avenue West, Suite 905
Toronto, Ontario
M4V 1N6

Attention: Richard Nathan
E-mail: accounting@kcpl.ca and legal@kcpl.ca

with a copy to: Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Attention: Tim Heeney and Bradley Wiffen
E-mail: theeney@goodmans.ca / bwiffen@goodmans.ca

If to the Receiver or the Company at:

RSM Canada Limited
11 King Street West
Suite 700, Box 27
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
E-mail: bryan.tannenbaum@rsmcanada.com

with a copy to: Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON
M2N 7E9

Attention: Harvey Chaiton
E-mail: harvey@chaitons.com

Any such notice of other communication, if given by personal delivery or by courier, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day or on a day that is not a Business Day, will be deemed to have been given on the next Business Day after the date of the transmission.

11.9 Amendment

This Agreement may be amended as to all Parties by instrument in writing signed by the Buyer and the Receiver.

11.10 Counterparts, Electronic Signatures

This Agreement may be signed in any number of counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by email, PDF or other

electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

11.11 Receiver's Capacity

It is acknowledged by the Buyer that the Receiver is entering into this Agreement solely in its capacity as Court-appointed Receiver and that the Receiver shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Receiver shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of the Company and shall not apply to its personal property and other assets held by it in any other capacity.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

RECEIVER

RSM CANADA LIMITED, in its capacity as the court-appointed receiver of O2 INDUSTRIES INC., and not in its personal or corporate capacity

Per: _____
Name:
Title:

BUYER

[●]

Per: _____
Name:
Title:

Per: _____
Name:
Title:

COMPANY

O2 INDUSTRIES INC.

Per: _____
Name:
Title:

SCHEDULE A

PURCHASED ASSETS SCHEDULE

[To be completed by the Buyer prior to the Closing Time]

SCHEDULE B

EXCLUDED ASSETS SCHEDULE

[To be completed by the Buyer prior to the Closing Time]

SCHEDULE C
SALE PROCEDURES

[Attached.]

B

**SALE PROCEDURES
FOR THE SALE OF THE BUSINESS AND PROPERTY OF
O2 INDUSTRIES INC.**

1. On May 27, 2021, RSM Canada Limited was appointed as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of O2 Industries Inc. (the “**Company**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. The Appointment Order approved the procedures set forth herein (the “**Sale Procedures**”) for soliciting and selecting bids for a sale transaction (a “**Transaction**”) in respect of all or certain of the property, assets and undertakings of the Company (the “**Property**”) and authorized and directed the Receiver to carry out the Sale Procedures.

Defined Terms

3. Capitalized terms used and not otherwise defined in the body of these Sale Procedures shall have the meanings given to them in **Appendix “A”**.

Solicitation Process and Timeline

4. The Company has received a Transaction bid from 2841551 Ontario Limited (the “**Stalking Horse Bidder**”) pursuant to an asset purchase agreement in substantially the form attached to the pre-filing report of the proposed Receiver dated May 26, 2021 (the “**Stalking Horse Agreement**”) which constitutes a qualified bid for all purposes and at all times under these Sale Procedures (the “**Stalking Horse Bid**”). The Stalking Horse Bid shall serve as the “stalking horse” bid for the purposes of the sale process governed by these Sale Procedures (the “**Sale Process**”). The Stalking Horse Agreement may be modified or amended prior to its execution as agreed to by the Stalking Horse Bidder and the Receiver and may be modified or amended following its execution in accordance with its terms.
5. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids for a Transaction pursuant to these Sale Procedures.
6. These Sale Procedures describe the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Company, its Property, and its businesses and operations (the “**Business**”), the manner in which a bid becomes a Qualified Bid, the receipt and review of bids received, the ultimate selection of a Successful Bid and the approval thereof by the Court.
7. The Receiver shall implement these Sale Procedures with the assistance of the Company and, where specified, in consultation with the Stalking Horse Bidder. In the event that there is disagreement as to the interpretation or application of these Sale Procedures, the Court will have jurisdiction to hear and resolve any such dispute.
8. The following table sets out the deadlines under the Sale Process, each of which can be extended by up to seven (7) days by the Receiver in its discretion, or for a longer period with the consent of the Stalking Horse Bidder or by Court order:

Milestone	Deadline
Commencement of Sale Process	Promptly following the granting of the Appointment Order
Bid Deadline	July 8, 2021
Auction Date	July 15, 2021
Approval Hearing Date	July 22, 2021
Outside Date	July 30, 2021

Solicitation of Interest

9. As soon as reasonably practicable following the granting of the Appointment Order, the Receiver shall, with the assistance of the Company: (a) prepare a list of potential bidders (each, a **“Potential Bidder”**) who may be interested in pursuing a Transaction; (b) prepare a marketing presentation describing the Company, the Business and the Property and the opportunity to participate in the Sale Process (the **“Marketing Presentation”**); and (c) establish a data room (the **“Data Room”**) of due diligence materials, including the Marketing Presentation (the **“Diligence Materials”**) that the Receiver believes may be useful for Potential Bidders.

10. As soon as reasonably practicable following the granting of the Appointment Order, the Receiver shall contact Potential Bidders to introduce the opportunity and shall provide the Marketing Presentation to each Potential Bidder that executes a Confidentiality Agreement. The Receiver shall post a copy of the Sale Procedures on the website maintained by the Receiver and shall post a notice of the Sale Process, substantially in the form attached as **Appendix “B”** hereto, in one or more newspapers or other publications determined by the Receiver.

Participation Requirements

11. Unless otherwise provided for herein, ordered by the Court or agreed by the Receiver, in order to participate in the Sale Process and be granted access to the Diligence Materials, a Potential Bidder must deliver to the Receiver, at the address specified in **Appendix “C”** hereto (including by email), (a) an executed confidentiality agreement in form and substance satisfactory to the Receiver (the **“Confidentiality Agreement”**), which shall inure to the benefit of any Successful Bidder that completes a Transaction contemplated by the Successful Bid, and (b) such other information as the Receiver may request to ascertain the identity of the Potential Bidder, including its direct and indirect owners.

12. Potential Bidders shall be provided with access to the Data Room. The Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Data Room, the Diligence Materials or any other information provided by the Receiver or its agents in respect of the Business or Property of the Company, except to the extent expressly provided in any definitive sale agreement executed and delivered by the Receiver (a **“Definitive Agreement”**).

13. The Receiver reserves the right to withhold or delay the disclosure of any Diligence Materials that it determines are business sensitive or otherwise not appropriate for disclosure to a Potential Bidder who is a strategic buyer, competitor, supplier or other person with a business relationship with the Company until such time as the Receiver determines, in its discretion, that

such Potential Bidder has (a) a *bona fide* intent to submit a Bid, and (b) the financial capability to consummate a Transaction.

14. Potential Bidders shall direct information requests with respect to the Sale Process to the Receiver or such other individuals as the Receiver may authorize. Potential Bidders shall provide the Receiver with advance notice, and obtain the prior consent of the Receiver, before commencing or continuing any communications or discussions with any director, officer, agent, employee, supplier, customer, creditor or shareholder of the Company concerning the Company or its Business, Property, financial condition, or prospects, and the Receiver shall have the option to oversee or participate in any such communications or discussions.

Bids

15. A Potential Bidder, other than the Stalking Horse Bidder, that wishes to deliver a bid shall deliver a written binding offer for a Transaction (a “**Bid**”) to the Receiver at the addresses specified in **Appendix “C”** hereto (including by email) so as to be received by the Receiver no later than 5:00 p.m. (Eastern Time) on the Bid Deadline.

16. A Bid will be deemed to be a “**Qualified Bid**” only if the Bid complies with all of the following:

- (a) it includes an executed Definitive Agreement, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted by the Receiver in Word format in the Data Room), describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the purchase price (the “**Purchase Price**”), and the structure and financing of the proposed Transaction;
- (b) the Transaction shall, on closing, provide cash proceeds, in immediately available funds, sufficient to pay in full in cash the aggregate of the Priority Claims, *plus* the Senior Secured Obligations, *plus* US\$160,000;
- (c) it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;
- (d) it fully discloses any conditions or approvals required to consummate the Bid and the time period within which the Potential Bidder expects to satisfy such conditions or obtain such approvals;
- (e) it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (f) it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court and (ii) thirty (30) calendar days following the Bid Deadline (the “**Irrevocable Bid Date**”), provided that if such Potential Bidder’s Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;

- (g) it includes or is accompanied by evidence satisfactory to the Receiver of the financial ability of the Potential Bidder to consummate the Transaction contemplated by the Bid;
- (h) it is not conditioned on the outcome of unperformed due diligence or obtaining financing;
- (i) it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Receiver) payable to the order of the Receiver, in trust, in an amount equal to 15% of the Purchase Price in the Bid, which Deposit is to be held by the Receiver and dealt with in accordance with these Sale Procedures;
- (j) it includes a commitment to close the Transaction contemplated by the Bid by no later than the Outside Date;
- (k) it contains such other information as may reasonably be requested by the Receiver; and
- (l) it is received prior to the Bid Deadline.

Review of Bid(s)

17. Following the Bid Deadline, the Receiver shall assess any Bids received and determine whether such bids constitute Qualified Bids. The Receiver, in consultation with the Stalking Horse Bidder, may waive compliance with any one or more of the requirements specified herein and deem any non-compliant Bid to be a Qualified Bid, provided that the Receiver shall not be entitled to waive the requirements of Sections 16(b) or 16(i) without the prior consent of the Stalking Horse Bidder.

18. Following the receipt of any Bid the Receiver may seek clarification with respect to any of the terms or conditions of such Bid and/or request one or more amendments to such Bid prior to determining if such Bid should be considered a Qualified Bid.

19. In the event that the Receiver determines that there are no Qualified Bids, the Receiver shall promptly proceed to seek Court approval of the Stalking Horse Bid as the Successful Bid and, provided that such Court approval is granted, proceed to complete the Transaction contemplated by the Stalking Horse Agreement.

Selection of Successful Bid

20. The Receiver shall (a) review and evaluate the Stalking Horse Bid and each Qualified Bid, and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Stalking Horse Bidder or the Potential Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to these Sale Procedures. Any Successful Bid shall be subject to approval by the Court.

21. If the Receiver receives one or more Qualified Bids, it shall proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each Potential Bidder that submits a Qualified Bid and is invited to attend the Auction by the Receiver having regard to the terms of its Qualified Bid (each, an “**Auction Bidder**”). There shall be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. For greater certainty, the Stalking

Horse Bidder shall constitute an Auction Bidder in all circumstances in which an Auction is conducted.

22. If an Auction is conducted, it shall be conducted in accordance with the following procedures:

- (a) The Auction shall be conducted at a time to be designated by the Receiver on the Auction Date at the Toronto offices of the Receiver or by electronic communication means (including videoconference, teleconference or such other reasonable means as the Receiver deems appropriate) and shall continue thereafter until completed, subject to such adjournments as the Receiver may consider appropriate;
- (b) The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
- (c) Except as otherwise permitted in the Receiver's discretion, only the Receiver and the Auction Bidders, and in each case their respective professional advisors, shall be entitled to attend the Auction. Each Auction Bidder shall appear at the Auction through a duly authorized representative that shall be designated by the Auction Bidder as its spokesperson;
- (d) Except as otherwise set forth herein, the Receiver may waive and/or employ and announce at the Auction additional procedures that are reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with these Sale Procedures, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Receiver's judgement, to result in the solicitation of the highest and best offer;
- (e) Not less than two (2) Business Days prior to the Auction, the Receiver shall (i) identify the highest or otherwise best Qualified Bid or Stalking Horse Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments valued at not less than US\$75,000 in excess of the Opening Bid or such other amounts to be determined by the Receiver prior to, and announced at, the Auction. Each Auction Bidder shall, if requested by the Receiver, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;
- (f) All Auctions Bidders shall have the right, at any time during the Auction, to request that the Receiver announce, subject to any potential new bids, the then-current highest or otherwise best bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any questions such Auction Bidder may have on the then-current highest or otherwise best bid;
- (g) Each Auction Bidder shall be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids;

- (h) The Auction shall continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction shall be closed and the Auction Bidder that submitted the highest or otherwise best bid shall be designated as the Successful Bidder; and
- (i) Upon selection of a Successful Bidder, the Successful Bidder shall, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder's bid and any modifications submitted and agreed to during the Auction.

23. For all purposes of the Sale Process, the Stalking Horse Bidder shall be entitled to credit bid all or any portion of the Senior Secured Obligations, at the face value of such obligations. In the event that the Receiver designates a Qualified Bid, the Stalking Horse Bidder shall have the right, as part of an Auction, to supplement its Stalking Horse Bid with additional cash or other consideration such that the revised Stalking Horse Bid includes aggregate consideration in excess of the amount of the Senior Secured Obligations and the Priority Claims.

Court Approval

24. The Receiver shall apply to the Court (the "**Approval Motion**") for an order (the "**Approval Order**") approving a Successful Bid, which Approval Motion, subject to Court availability, shall be held on or prior to the Approval Hearing Date.

25. The Receiver shall implement the Successful Bid by no later than the Outside Date.

Deposits

26. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account.

27. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied (without interest) to the Purchase Price to be paid by the Successful Bidder upon closing of the Successful Bid and will be non-refundable.

28. The Deposits of bidders not selected as the Successful Bidder shall be returned, without interest, to such bidders within two (2) Business Days of the Irrevocable Bid Date.

29. The Stalking Horse Bidder shall not be required to provide a Deposit.

Approvals

30. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required at law in order to implement or complete a Successful Bid.

No Amendment

31. Except as expressly set forth herein, there shall be no amendments to these Sale Procedures without the consent of the Receiver and the Stalking Horse Bidder or further Order of the Court.

“As Is, Where Is”

32. Any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description except to the extent expressly provided under a Definitive Agreement with a Successful Bidder executed and delivered by the Receiver.

Further Orders

33. At any time during the Sale Process, the Receiver may apply to the Court, following consultation with the Stalking Horse Bidder, for advice and directions with respect to the discharge of its powers and duties hereunder.

Appendix “A” Definitions

For purposes of the Sale Procedures, the following terms shall have the following meanings:

“**Business Day**” means a day, other than a Saturday, Sunday, or a day on which banks in Toronto, Ontario are authorized or obligated by applicable law to close or otherwise are generally closed.

“**Kensington**” means KPEF, Kensington Venture Fund II, L.P., Kensington (Parallel) Venture Fund II, L.P., the Stalking Horse Bidder, and each of their respective affiliates and assignees.

“**KPEF**” means Kensington Private Equity Fund.

“**Receiver’s Borrowings Obligations**” means all obligations of any kind or nature owing by the Receiver to Kensington that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements.

“**Priority Claims**” mean all claims other than the Receiver’s Borrowings Obligations ranking in priority to the Promissory Note Obligations and includes, for greater certainty, the post-closing fees of the Receiver and its counsel;

“**Promissory Note Obligations**” means, collectively, all present and future obligations of any kind or nature owing by the Company to Kensington including, without limitation, all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to, or in connection with (a) the Convertible Promissory Note dated March 31, 2021 in the principal amount of US\$1,001,216.44 issued by the Company to KPEF, (b) the Convertible Promissory Note dated April 13, 2021 in the principal amount of US\$650,000.00 issued by the Company to KPEF, (c) the Convertible Promissory Note dated May 10, 2021 in the principal amount of US\$350,000 issued by the Company to KPEF, and (d) the General Security Agreement dated as of March 31, 2021 between the Company and KPEF, in each case as amended, supplemented, amended and restated, replaced, or otherwise modified from time to time.

“**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations.

**Appendix “B”
Form of Notice**

**Acquisition Opportunity
Invitation for Offers to Purchase
DESIGNER AND DISTRIBUTOR OF
RESPIRATORY PROTECTION PRODUCTS**

RSM Canada Limited, in its capacity as Court-appointed Receiver (the “Receiver”) of an Ontario company (the “Company”) that designs, produces and distributes respiratory protection products (respirators, masks and accessories) invites offers for the purchase of the business and assets of the Company including inventory, fixed assets and intellectual property, pursuant to a Court Approved Sales Process.

All offers must be received by the Receiver at the address set out below, on or before 5:00 p.m. (EST – Toronto), July 8, 2021.

For further information and in order to obtain a copy of the Sales Procedures and confidentiality agreement, please contact:

RSM Canada Limited
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7
Attn: Brenda Wong
T: 647 727 3621 | F: 416 480 2646
E: brenda.wong@rsmcanada.com



Visit rsmcanada.com/about-us for more information regarding RSM Canada Limited.

**Appendix “C”
Receiver Address for Notices**

If to the Receiver:

RSM Canada Limited
11 King Street West
Suite 700, Box 27
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
Email bryan.tannenbaum@rsmcanada.com

With a copy to:

Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON
M2N 7E9

Attention: Harvey Chaiton
Email: harvey@chaitons.com

APPENDIX D

ACQUISITION OPPORTUNITY

Invitation for Offers to Purchase

Designer and Distributor of Respiratory Protection Products

The Opportunity

RSM Canada Limited, in its capacity as Court-Appointed Receiver (the "Receiver") of an Ontario company (the "Company") that designs and distributes respiratory protection products (respirators, masks and related accessories) is currently inviting offers for the purchase of the business and assets of the Company, pursuant to a Court approved sales process.

INVESTMENT HIGHLIGHTS

- **Inventory**
 - Non-certifiable respirators, masks, filters and related accessories
- **Products in Development**
 - Respirator
 - Performance Mask
- **Intellectual Property & Registered Web Domains**
- **Fixed Assets:**
 - Tooling (held in China)
 - Office and Computer Equipment (held in Ontario)
- **Design & Manufacturing Agreements**

Offers are being received until 5:00 p.m., Eastern Standard Time on July 8, 2021. For further information about this opportunity and in order to obtain a copy of the Sale Procedures and confidentiality agreement, please contact either:

Bryan A. Tannenbaum
Tel: (416) 238-5055
bryan.tannenbaum@rsmcanada.com

Brenda Wong
Tel: (647) 727-3621
brenda.wong@rsmcanada.com

Disclaimer

The information contained in this document is based on information made available to the Receiver by the Company. RSM is acting solely in its capacity as Court-appointed Receiver and has neither audited nor independently verified any of the information contained herein. The Receiver makes no representations, declarations, warranties, promises or agreements, expressed or implied, with respect to or in any way connected with the operations or assets of the Company.

ECONOMY

INFLATION TARGETING STUDY FINDS RANGES BEAT HARD GOALS

ECONOMY

A resurgent world is seen leaving many behind

RECOVERY 'UNEVEN'

WILLIAM HOROBIN

A strengthening world economy from the COVID-19 pandemic risks leaving behind many regions, fuelling inequities across and within borders, the Organization for Economic Co-operation and Development said Monday.

As the Paris-based group revised up its 2021 global growth forecast to 5.8 per cent, it warned of gaping differences that mean living standards for some people won't return to pre-crisis levels for an extended period.

In countries including Argentina and Spain, more than three years will elapse between the onset of the pandemic and a recovery of per-capita economic output, according to the new projections. That compares to just 18 months in the U.S. and under a year in China.

"It is with some relief that we can see the economic outlook brightening, but with some discomfort that it is doing so in a very uneven way," OECD chief economist Laurence Boone said. "The risk that sufficient post-pandemic growth is not achieved or widely shared is elevated."

The assessment sounds a note of caution as confidence surges in the world's richest countries with the lifting of restrictions and the acceleration of vaccination campaigns.

The OECD praised governments for exceptionally smart and effective policy support that is now fuelling a rebound in trade, manufacturing and consumer spending. That will limit the scars the crisis leaves behind, the 38-member organization said.

But it warned the problem of diverging fortunes could worsen further because of a failure to get enough vaccines and support to emerging and low-income economies, which already have less capacity to absorb shocks and could face sovereign funding issues.

Without inoculations in all countries, the OECD said, new variants and renewed lockdowns could hit confidence, plunge activity back into a disruptive stop-go pattern, and bankrupt firms.

Horobin

Central banks can better control inflation expectations if they use a range for price growth rather than a precise goal, according to a European Central Bank study that could have implications for the institution's strategic review. The working paper by Michael Ehrmann, head of the monetary policy research division and a former Bank of Canada official, looked at inflation-targeting strategies in 20 advanced and emerging-market economies. It found that defining a band within which consumer-price growth is considered acceptable bolsters the central bank's credibility because it is less likely to miss the goal. "The evidence therefore favours the adoption of some sort of interval, be it in the form of a range or a tolerance band around a point target," Ehrmann said. *Steinberg*



Security personnel keep watch outside the Wuhan Institute of Virology during a visit by the World Health Organization team in February.

COMMENT

Canada must be transparent about Wuhan lab ties



DIANE FRANCIS

With evidence mounting that SARS-CoV-2 may have escaped from China's Wuhan Institute of Virology, Prime Minister Justin Trudeau's Liberal government could find itself in a very awkward position if the American intelligence report ordered by U.S. President Joe Biden into the origins of the virus ends up uncovering previously undisclosed information about the connections between Canada's National Microbiology Laboratory and the Wuhan lab. As has been widely reported, a previously undisclosed U.S. intelligence report revealed that three researchers working at the Chinese laboratory were hospitalized in November 2019 with symptoms consistent with both COVID-19

and common seasonal illnesses" which has lent credibility to the lab leak theory.

We also know that the high-security National Microbiology Laboratory in Winnipeg was conducting research into deadly pathogens, in partnership with the now-notorious Wuhan lab. And although the public doesn't have all the information, a series of firings and police investigations relating to the Canadian lab point to troubling developments that have taken place behind the scenes.

In July 2019, the head of the Winnipeg lab's Vaccine Development and Antiviral Therapies section in the Special Pathogens Program was Chinese virologist Wangguo Qiu. That month, she and her husband, Keding Cheng, along with a number of her Chinese students, were marched out of the lab by the RCMP.

At the time, officials made no comment and said it was a procedural investigation. But some experts raised concerns about the possibility of unauthorized shipments of deadly viruses or stolen intellectual property being sent to China.

The two of them were later fired after the Canadian Security Intelligence Service (CSIS) called for their security clearances to be revoked on national security grounds.

There are also concerns over the involvement of Ruhui Yan, who was involved in the Winnipeg lab but also a researcher with the Chinese military's Academy of Military Medical Sciences, according to an intelligence leak recently published in the *Globe and Mail*.

The article quoted Andy Ellis, formerly with CSIS, who said it was "inadequate" for the Public Health Agency of Canada (PHAC) to co-operate with the People's Liberation Army. "It is ill-advised. It is the top lab in Canada," said Ellis. "It is just incredible naivete on their part."

Equally naive was a deal that Trudeau and the National Research Council (NRC) made in March 2020

with a Chinese vaccine company, CanSino Biologics, which saw Canadian intellectual property needed to create vaccines for Ebola and SARS-CoV-2 transferred to the Chinese.

This led to Canada's current vaccine dose-delay and rollout mess. The Chinese vaccine was to be tested at Dalhousie University and, if commercialized, the NRC was supposed to get a share of the proceeds. Trudeau was counting on that, which caused him to delay signing deals with other pharmaceutical companies.

In the summer of 2020, Chinese officials blocked test vaccines from being delivered in Canada. CanSino blamed Chinese customs, but China has permitted other vaccine candidates to be shipped to other countries for testing. The move was more likely in retaliation for Ottawa refusing to free Huawei CFO Meng Wanzhou, who's currently being held in Vancouver while she fights an extradition request from the United States.

PHAC is in charge of the National Microbiology Laboratory and refuses to disclose information about the firings, lab research or the institute's relationship with both the Wuhan lab and the Chinese military. Clearly, this is matter of national security, as well as total incompetence.

Also at stake is Canada's reputation, especially as it pertains to its involvement in NATO and the Five Eyes intelligence-sharing alliance, which is already on thin ice since the 2018 arrest and incarceration of Cameron Drill, a high-level intelligence official with the RCMP.

If Trudeau hopes to retain any credibility, he should follow Biden's example by commissioning a full report from Canadian intelligence officials into Ottawa's questionable relationship with China's scientific and military communities.

'Near-shoring' in Mexico seen coming

CARMICHAEL
Continued from FP1

"We want to be a company that grows and grows volume," he said in an interview. "Our emphasis is on growing the bottom line by moving more freight."

The distinction matters more than it did even a few months ago. In May, Ruest snatched Kansas City, Mo.-based Kansas City Southern from CP chief executive Keith Creel by convincing KCS to accept his US\$2-billion offer, even though it had already agreed to sell its assets to CN's historic rival for US\$25 billion in March.

But winning the prize won't be as simple as outbidding a smaller rival. Analysts assume CN will have a tougher time with regulators who might disapprove of one of the bigger railways gobbling up a potential challenger. A combined CP and KCS would still have been the smallest of the Class 1 railways, but it would have been better positioned to challenge companies such as CSX Corp., Union Pacific Corp. and CN.

On the surface, Ruest's bid will weaken competition. He needs a story about why that won't hurt the economy and the narrative he's chosen is a compelling one: a bigger CN, because of the company's philosophy, means a bigger economy.

"Most of our benefit, to justify the investment, comes from growing the pie of the marketplace," he said. "If you grow the market pie, you can aspire to have a bigger piece. If you are just focusing on the operating ratio, at some point, you might have a profitable pie, but you might not be participating in the full size of what the market can offer."

If a railroad is hyper-focused on ensuring its locomotives leave the yard on time, or is willing to use the industry's relative lack of competition to put shareholders ahead of customers, then the rest of us pay for it. Goods producers are at the mercy of railways and their pinpoint calculations about how to keep their operating ratios low. That makes it harder for producers to get their merchandise to market. It also forces more stuff onto trucks, which clog the roads and increase carbon emissions. But at least shareholders are happy. CP's stock price is about 40-per-cent higher than it was a year ago, while CN's shares have only increased about 14 per cent over the same period after falling about 10 per cent since announcing its intention in mid-April to bid for KCS.

KCS owns tracks that extend deep into Mexico, setting CN up to become the first truly North American railway. Its weaker share price suggests some investors are skeptical that regulators will allow that to happen, which is already on thin ice since the 2018 arrest and incarceration of Cameron Drill, a high-level intelligence official with the RCMP.

If Trudeau hopes to retain any credibility, he should follow Biden's example by commissioning a full report from Canadian intelligence officials into Ottawa's questionable relationship with China's scientific and military communities.

Financial Post
Read and sign up for Diane's newsletter on America at diane.francis.substack.com.

A Canadian railroad that extends uninterrupted to the southernmost ports on the continent could mark the beginning of a new phase for the North American trading zone, which began with the original Canada-United States trade agreement, and later expanded to include Mexico in 1994.

Both Ruest and Creel said they made their bids for KCS because they sensed a change in the weather. Trade winds that have blown strongest across the Pacific Ocean for the past couple of decades are shifting, and both longtime shipping executives have said they anticipate a significant amount of factory production that had shifted to China will be "near-shored" in Mexico in the years ahead.

The new North American trade agreement appears to have quieted U.S. complaints about such an arrangement, removing political risk as a reason to proceed cautiously on making a big investment on north-south trade between Canada, the U.S. and Mexico. The attention of politicians in Washington has shifted to China, preventing companies that want to sell to Americans with an extra incentive to set up production inside the North American bloc.

Many of those companies would have been rethinking their supply chains anyway, because the pandemic exposed the risk of relying too heavily on low-cost factories located in low-oft ports of the world.

They also would have been assessing how to lower their carbon emissions, since consumers, investors and politicians have made it clear that operating a successful company now means being an active participant in the fight against climate change. That's good for railways, because they can offer a greener alternative to trucks. Ruest talks about the trucking industry like he might a competing railway, pledging to do what he can to force thousands of the diesel-guzzling machines off the road if his acquisition of KCS is approved.

"We follow the economy," he said. "We follow business where business is going next, and that's why we're calling this a growth story as opposed to a strictly operating-ratio story."

Financial Post



Jean-Jacques Ruest

FP
ECONOMY
This story came from our weekly FP Economy newsletter. Sign up for free at financialpost.com

Acquisition Opportunity
Invitation for Offers to Purchase
DESIGNER AND DISTRIBUTOR OF RESPIRATORY PROTECTION PRODUCTS
RPM Canada Limited, in its capacity as Court-appointed Receiver (the "Receiver") of an Ontario company (the "Company") that designs and distributes respiratory protection products (respirators, masks and related accessories) invites offers for the purchase of the business and assets of the Company (including inventory, test assets and intellectual property, pursuant to a Court Approved Sales Process.
All offers must be received by the Receiver at the address set out below, before 5:00 p.m. (EST - Toronto), July 8, 2021.
For further information and in order to obtain a copy of the Sale Procedures and confidentiality agreement, please contact:
RPM CANADA LIMITED
11 King St. W., Suite 700, Box 77
Toronto, ON
M5H 4C7
Attn: Dennis Wong
T: 416 592 2821
F: 416 592 2848
E: dennis.wong@rpmcanada.com
Web: www.rpmcanada.com
RPM is a subsidiary of RPM International Inc. (NYSE: RPM) a Delaware corporation.
RSM

Wong, Brenda

From: Insolvency Insider <editor@insolvencyinsider.ca>
Sent: Monday, June 14, 2021 7:01 AM
To: Wong, Brenda
Subject: PwC alleges deleted emails, unusual transactions in Bridging Finance case



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RECENT FILINGS

- Solis Foods Corporation Inc. ("Solis"), Vivian Group Inc. ("Vivian Group") and 1610830 Alberta Ltd. ("161Co")**, three related companies, filed an NOI on June 8, listing approximately \$19.0 million in secured debt and \$5.1 million in unsecured trade debt. Together, the companies facilitate a business enterprise in which **Solis** manufactures and packages snack foods for the food service and retail grocery industries, including producing national branded and private-label snack foods. **Vivian Group** is a holding company responsible for real estate and **161Co** is a holding company solely responsible for certain Alberta real estate (and equipment) that was the home of a now-closed production facility. After **Solis** ran into liquidity issues in 2018, **David Andrew Vivian ("Andrew")** sold 50% of his interest in **Vivian Group** to **Super Pufft Snacks Corp. ("Snacks")**. In addition to providing working capital to the companies, **Snacks** would provide production expertise to help improve **Solis'** profitability. However, profitability did not improve in 2019 as certain key customers were lost and **Solis** reported \$1.2 million in losses. With the onset of COVID-19 related shutdowns in 2020, the companies' financial situation further deteriorated as many restaurants and food services business closed. In light of the financial challenges facing the business, **Snacks** determined it is no longer prepared to fund the companies' working capital

needs. **Sun Pac Holdings Ltd.** will be providing interim financing during these proceedings. **EY** is the proposal trustee. Counsel is **Loopstra Nixon** for the companies, **DLA Piper** for the proposal trustee, **Aird & Berlis** for **Sun Pac Holdings Ltd.** and **Snacks**, and **GSNH** and **Hager Law** for **Andrew**.



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- **MetalsTech Terre des Montagnes Lithium Inc.** and **MetalsTech Wells-Lacourciere Lithium Inc.**, Montreal, Quebec-based lithium exploration companies, filed for bankruptcy on May 20, respectively owing approximately \$1.9 million and \$492.2 thousand to **MetalsTech Limited**, an Australian headquartered company that controls a developing portfolio of early stage, hard-rock exploration projects in Quebec. **MetalsTech Project Generation Lithium Inc.** and **MetalsTech Kapiwak Lithium Inc.** filed for bankruptcy on May 21, respectively owing approximately \$327.5 thousand and \$12.7 thousand to **MetalsTech Limited**. **PwC** is the bankruptcy trustee for each of the bankruptcy proceedings.



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- **P7 Construction Ltd.** ("**P7 Construction**") and **161904 Alberta Ltd.** ("**161 Alberta**") were placed in receivership on May 21 on application by **BDC**, owed approximately \$7.0 million. In February 2015, **BDC** approved a loan to **P7 Construction** in connection with its development of a **Holiday Inn Express & Suites** in Bonnyville, Alberta. **161 Alberta**, which operates the hotel, guaranteed payment of the loan. **P7 Construction** has been in default of the loan since March 24, 2020, and in November 2020, **BDC** and its counsel demanded payment. **BDO** was appointed receiver. **McLennan Ross** is counsel to the applicant.

- **Duck Mountain Environmental Ltd.**, a Kamsack, Saskatchewan based Hydrovac excavation and potable water/septic service company, filed an NOI on May 31, listing approximately \$1.9 million in liabilities. **The Bowra Group** is the proposal trustee.



DOCUMENT LIBRARY UPDATES

- **Have you subscribed to our new [Document Library service](#) yet?** If not, you've missed out on last Thursday's subscribers-only email where we discussed:

-
- The approval of a bespoke claims process in the CCAA proceedings of **Laurentian University** that incorporates the BIA concept of appointing inspectors; and
 - ---

The resolution of several significant issues which arose in the receivership proceedings of **Accel Canada Holdings Limited** and **Accel Energy Canada Limited**, including an unconventional DIP and updates on CEWS applications.

- Make sure your group is subscribed so you're aware of all the important case updates and legal issues developing.
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ASSETS FOR SALE

- **msi Spergel Inc.**, in its capacity as the court-appointed receiver of **2607380 Ontario Inc.**, requests offers for the purchase of the real estate and operating business assets of this company located at 1295 North Service Road, Burlington, Ontario. The site is an approximately 140,000 square foot multi purpose commercial building with long term tenants, short term tenants, and studio/production space. Further details regarding the sale process may be obtained by contacting the receiver's listing agent Michael Yull of **Cushman & Wakefield** at (647) 272-3075 or Michael.Yull@cushwake.com.

- **RSM Canada Limited.**, in its capacity as court-appointed receiver of an Ontario company (the "**Company**") that designs and distributes respiratory protection products (respirators, masks and related accessories) is currently inviting offers for the purchase of the business and assets of the Company pursuant to a court-approved sales process. The deadline for submission of offers is 5:00 pm (EST) on July 8, 2021. For further information, please contact Brenda Wong by email at brenda.wong@rsmcanada.com or by phone at (647) 727-3621. Further information can also be found HERE.

- **Crowe MacKay & Company Ltd.**, in its capacity as receiver for **Hemp Hydrate International Holdings Ltd.** ("**Hemp Hydrate**"), is selling the receiver's right, title and interest in certain assets of **Hemp Hydrate** including several trademarks and other intellectual property as well as an inventory of bottled water and related packaging materials. For further information, or to obtain a bid package, please contact Ivan Driedger by email at: ivan.driedger@crowemackay.ca or by phone at (604) 697-5205. The deadline for submission of bids is 5:00 pm (Pacific) on July 5, 2021.

- Pursuant to an order of the Supreme Court of Yukon, **PwC** was appointed as receiver of **Yukon Zinc Corporation** ("**Yukon Zinc**") on September 13, 2019. **PwC** is seeking offers for the

APPENDIX E

ASSET PURCHASE AGREEMENT

RSM CANADA LIMITED
in its capacity as the court-appointed receiver of
O2 INDUSTRIES INC., and not in its personal or corporate capacity

as the Receiver

- and -

2841551 ONTARIO LIMITED

as the Buyer

- and -

O2 INDUSTRIES INC.

as the Company

Made as of May 28, 2021

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of May 28, 2021

A M O N G:

RSM CANADA LIMITED, in its capacity as the court-appointed receiver of the Company (the “**Receiver**”), and not in its personal or corporate capacity

- and -

2841551 ONTARIO LIMITED, a corporation organized under the laws of the Province of Ontario (the “**Buyer**”)

- and -

O2 Industries Inc., a corporation incorporated under the laws of the Province of Ontario (the “**Company**”)

RECITALS:

- A. The Company is presently indebted to the Kensington Lenders pursuant to the Promissory Notes and the Assignment and Agency Agreement.
- B. The Buyer, an affiliate of the Kensington Lenders, wishes to purchase certain of the assets and property of the Company as detailed herein.
- C. On May 27, 2021, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued an order (the “**Appointment Order**”) appointing the Receiver as receiver of all the assets, undertakings and properties of the Company, approving the Sale Procedures, and designating this Agreement as the stalking horse agreement for purposes of the Sale Procedures.
- D. Subject to the designation of the Transaction as the Successful Bid pursuant to the Sale Procedures, the granting of the Approval Order and the other conditions set forth herein, the Receiver has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase, acquire, assume and accept from the Receiver and the Company, the Purchased Assets and the Assumed Liabilities, on the terms and subject to the conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confirmed, the Parties agree as follows:

- 2 -

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement,

- (a) “**Actions**” means any claims, refunds, causes of action, rights of recovery, rights of set-off, subrogation and rights of recoupment of the Company related to the Business or any of the Purchased Assets or any of the Assumed Liabilities, and the interest of the Company in any litigation and in the proceeds of any judgment, order or decree issued or made in respect thereof in respect of occurrences, events, accidents or losses suffered by the Company prior to the Closing Time;
- (b) “**affiliate**” has the same meaning as “affiliate” under the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended;
- (c) “**Agreement**” means this purchase agreement and all Appendices, Exhibits and Schedules attached hereto, in each case as the same may be supplemented, amended, restated or replaced from time to time; and the expressions “Article”, “Section”, “Schedule” and “Exhibit” followed by a number or letter mean and refer to the specified Article, Section, Schedule or Exhibit of this Agreement;
- (d) “**Applicable Law**” means any statute, law (including the common law), ordinance, rule, regulation, restriction, by-law (zoning or otherwise), order, or any consent, exemption, approval or licence of any Governmental Authority that applies in whole or in part to the Company, the Transaction, the Purchased Assets, the Receiver or the Buyer;
- (e) “**Appointment Order**” has the meaning given to it in the recitals of this Agreement;
- (f) “**Approval Order**” means an approval and vesting order of the Court, *inter alia*, (i) approving the Transaction, and (ii) effective upon the delivery of the Receiver’s Vesting Certificate to the Buyer, vesting in the Buyer all of the right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances, which order shall be in form and substance acceptable to the Receiver and the Buyer;
- (g) “**Assigned Agreements**” means, collectively, the Purchased Contracts, the Real Property Leases and the Personal Property Leases;
- (h) “**Assignment and Agency Agreement**” means the Assignment and Agency Agreement dated May 10, 2021 between the Company and the Kensington Lenders;

- 3 -

- (i) “**Assignment Order**” means an order of the Court authorizing and approving the assignment of a Consent Required Agreement, which order shall be in form and substance acceptable to the Receiver and the Buyer;
- (j) “**Assumed Employee Obligations**” has the meaning given to it in Section 9.2;
- (k) “**Assumed Liabilities**” has the meaning given to it in Section 3.1;
- (l) “**Authorizations**” means all orders, permits, approvals, waivers, licences or authorizations of any Governmental Authority issued to or in respect of the Company, the Business or the Purchased Assets;
- (m) “**Books and Records**” means all books, records, operating manuals, engineering standards, designs, specifications, sales books, customer and supplier lists, and export of the Company’s databases for the assets, books of account, employee personal records of Transferred Employees, Tax records and books and other sales and business records relating or pertaining to the Business or the Purchased Assets;
- (n) “**Business**” means the business now carried on by the Company, comprising the designing, manufacturing, marketing and sale of reusable respirators and related ancillary products;
- (o) “**Business Day**” means any day of the year on which national banking institutions in Toronto, Ontario are open to the public for conducting business and are not required or authorized by Applicable Law to close;
- (p) “**Buyer**” has the meaning given to it in the preamble to this Agreement;
- (q) “**Cash**” means all cash and cash equivalents, bank accounts and bank balances, monies in possession of banks and other depositories, refunds or rebates, term deposits and similar cash property, in each case of the Company, and includes (i) Cash held by or for the benefit of the Company at the Closing Time, and (ii) Cash received by the Company, or held by or for the benefit of the Company, from and after the Closing Time that is received in respect of, or relates to, a Receivable in existence as of the Closing Time;
- (r) “**Closing**” means the completion of the Transaction pursuant to the terms and conditions of this Agreement at the time set forth in Section 8.1 and of all other transactions contemplated by this Agreement that are to occur concurrently with the sale and purchase of the Purchased Assets;
- (s) “**Closing Date**” means the date on which all of the conditions in Sections 7.1 to 7.3 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date, but subject to the satisfaction and waiver of such conditions), or such other date as may be agreed upon by the Receiver and the Buyer, provided however that the Closing Date shall be no later than the Outside Date;

- 4 -

- (t) “**Closing Time**” means 12:01 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date as the Receiver and the Buyer agree that the Closing Time shall take place;
- (u) “**Company**” has the meaning given to it in the preamble to this Agreement;
- (v) “**Company Employees**” means the employees of the Company, whether full-time or part-time, on leave or on disability and including those on statutory or other absences, employed on the Closing Date;
- (w) “**Consent Required Agreement**” has the meaning given to it in Section 3.3;
- (x) “**Contract**” means any contract, agreement, lease, sublease, licence, sublicense, sales order, purchase order, instrument, or other commitment, whether written or oral, that is binding on the Company or any part of its assets or property (personal, real, tangible, intangible or otherwise) under Applicable Law;
- (y) “**Court**” has the meaning given to it in the recitals to this Agreement;
- (z) “**Cure Costs**” means, in respect of a Consent Required Agreement, the amount that the Buyer agrees to pay in satisfaction of any monetary defaults thereunder;
- (aa) “**Discharge Date**” means the date on which the Receiver is discharged as receiver of the Company pursuant to Court order;
- (bb) “**Employee Plans**” means all oral and written employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive or performance compensation, equity compensation, savings, severance or termination pay, retirement, supplementary retirement, registered or unregistered retirement savings, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, policy, agreement, practice, undertaking or arrangement, and every other oral or written benefit plan, program, policy, agreement, practice, undertaking or arrangement sponsored, maintained or contributed to or required to be contributed to by the Company for the benefit of the current or former directors, officers, employees, contractors, consultants and representatives of the Company in respect of the Business and/or their respective dependants or beneficiaries, by which the Company is bound or with respect to which the Company participates or has any actual or potential liability, other than statutory benefit plans which the Company is required to participate in or comply with, including the Canada Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation;
- (cc) “**Encumbrance**” means any security interest, lien, prior claim, charge, hypothec, hypothecation, reservation of ownership, pledge, encumbrance, trust (including any statutory, constructive or deemed trust), mortgage or adverse claim of any nature or kind whatsoever;

- 5 -

- (dd) “**Estimated Fees**” has the meaning given to it in Section 2.4(d);
- (ee) “**Excluded Assets**” has the meaning given to it in Section 2.2;
- (ff) “**Excluded Assets Schedule**” means Schedule B to this Agreement;
- (gg) “**Excluded Contracts**” means all Contracts of the Company that are not Purchased Contracts;
- (hh) “**Excluded Equipment**” means all equipment and personal property, including fixed and tangible assets, machinery, chattels, furniture, computer hardware and other tangible assets listed on the Excluded Assets Schedule;
- (ii) “**Excluded Inventory and Supplies**” means any inventories of products and merchandise including raw materials, supplies, packaging, work in process and finished goods related to the Business which (a) are sold or otherwise disposed of during the Interim Period in the Ordinary Course, or (b) are listed on the Excluded Assets Schedule;
- (jj) “**Excluded Liabilities**” has the meaning given to it in Section 3.2;
- (kk) “**General Conveyance and Assumption Agreement**” means a general conveyance and assumption agreement with respect to the Purchased Assets and the Assumed Liabilities in form and substance acceptable to the Receiver and the Buyer, acting reasonably;
- (ll) “**General Security Agreement**” means the general security agreement dated as of March 31, 2021 between the Company and KPEF;
- (mm) “**Goodwill**” means the goodwill of the Business, including the right of the Buyer to represent itself as carrying on the Business in continuation of and in succession to the Company;
- (nn) “**Governmental Authority**” means: (i) any national, federal, provincial, state, municipal, local or other governmental or public department, court, commission, board, bureau, agency or instrumentality; (ii) any subdivision or authority of any of the foregoing; or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of or in lieu of any of the above;
- (oo) “**GST/HST**” means goods and services tax payable under the GST/HST Legislation, including “harmonized sales tax”;
- (pp) “**GST/HST Legislation**” means Part IX of the *Excise Tax Act* (Canada);
- (qq) “**Insurance**” means (i) Contracts of insurance, insurance policies and insurance plans of the Company, to the extent transferable; (ii) any insurance proceeds net of any deductibles and retention recovered by the Company under all other

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Contracts of insurance, insurance policies (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) and insurance plans during the Interim Period; and (iii) the full benefit of the Company's rights to insurance claims (excluding proceeds paid directly by the insurer to or on behalf of directors and officers under director and officer policies) relating to the Business and amounts recoverable in respect thereof net of any deductible;

- (rr) **"Intellectual Property"** means all rights, interests and benefits of the Company, through ownership, licensing or otherwise, in (i) any trademarks, trade names, business names, brand names, services marks, copyrights, trade secrets, industrial designs, inventions, patents, formulas, processes, know how, technology, manufacturing, engineering and other technical drawings and manuals, blue prints, research and development reports, technical information, technical assistance, engineering data, design and engineering specifications, telephone numbers, domain names, domain name registrations, website names and worldwide web addresses, social media accounts and social media handles and other communication addresses, and related goodwill, and (ii) any applications or registrations of the foregoing, issued patents, continuations in part, divisional applications or analogous rights therefor, in each case whether registered or not, including the Intellectual Property listed on the Purchased Assets Schedule;
- (ss) **"Interim Period"** means the period from and after the date hereof up to and including the Closing Date;
- (tt) **"IT Systems"** means all software (including source code and object code form), computer hardware, licenses, and documentation therefor and rights therein owned by the Company, and any other information technology systems owned or used by the Company, including, all electronic data processing systems, cloud services, program specifications, source codes, object code, input data, report layouts, formats, algorithms, record file layouts, diagrams, functional specifications, narrative descriptions, flow charts, operating manuals, training manuals and other related material;
- (uu) **"Kensington Lenders"** means, collectively, KPEF, Kensington Venture Fund II, L.P. and Kensington (Parallel) Venture Fund II, L.P.;
- (vv) **"KPEF"** means Kensington Private Equity Fund;
- (ww) **"Offered Employees"** has the meaning given to it in Section 9.1(a);
- (xx) **"Ordinary Course"** means, with respect to an action taken or omitted to be taken by a Person, that such action is reasonably practicable and generally consistent with the recent past practices of the Person having regard to the recent circumstances leading up to and including the transactions contemplated by this Agreement and, as applicable, subject to the Appointment Order;

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- (yy) “**Outside Date**” means July 30, 2021 or such later date as may be agreed by the Buyer and the Receiver;
- (zz) “**Parties**” means, collectively, the Receiver, the Buyer and the Company, and “**Party**” means any of them;
- (aaa) “**Permitted Encumbrances**” means the Encumbrances expressly listed as permitted Encumbrances in the Approval Order;
- (bbb) “**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, co-operative, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;
- (ccc) “**Personal Property Leases**” means all leases of personal or moveable property of the Company listed on the Purchased Assets Schedule;
- (ddd) “**Premises**” means the premises leased and occupied by the Company located at 5 Michael Street, Suite #2, Kitchener, Ontario, N2G 1L7;
- (eee) “**Prepaid Expenses**” means all prepaid expenses, including *ad valorem* Taxes, of the Company, and all deposits of the Company with any Person, including any supplier, public utility, lessor under any Personal Property Lease or Real Property Lease, or Governmental Authority;
- (fff) “**Priority Claims**” means any liabilities, obligations or claims, other than the Receiver’s Borrowings Obligations, that rank in priority to the Promissory Notes Obligations pursuant to Applicable Law;
- (ggg) “**Promissory Notes**” means, collectively, (A) the convertible promissory note dated March 31, 2021 in the principal amount of \$1,001,216.44 issued by the Company to KPEF, (B) the convertible promissory note dated April 13, 2021 in the principal amount of \$650,000 issued by the Company to KPEF, and (C) the convertible promissory note dated May 10, 2021 in the principal amount of \$350,000 issued by the Company to KPEF, in each case as amended, supplemented, amended and restated, replaced or otherwise modified from time to time;
- (hhh) “**Promissory Notes Obligations**” means all obligations of any kind or nature owing to the Kensington Lenders, including all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to the Promissory Notes, the General Security Agreement, and the Assignment and Agency Agreement;
- (iii) “**Purchase Price**” has the meaning given to it in Section 2.4;
- (jjj) “**Purchased Assets**” has the meaning given to it in Section 2.1;

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- (kkk) **“Purchased Assets Schedule”** means Schedule A to this Agreement;
- (lll) **“Purchased Contracts”** means the Contracts listed on the Purchased Assets Schedule;
- (mmm) **“Purchased Equipment”** means all equipment and personal property owned by the Company wherever located, including all fixed and tangible assets, machinery, chattels, tooling, furniture, computer hardware and other tangible assets, but excluding Excluded Equipment;
- (nnn) **“Purchased Inventory and Supplies”** means all of the Company’s inventory, merchandise, samples and supplies, including raw materials, work in process, finished goods, and packaging and shipping supplies, but excluding Excluded Inventory and Supplies;
- (ooo) **“Real Property Leases”** means the Company’s leasehold interest in the leases, agreements to lease, subleases or licences listed on the Purchased Assets Schedule;
- (ppp) **“Receivables”** means all future payments made by cash, cheque, automatic clearing houses, direct or pre-authorized debit, wire transfer, electronic money transfers, PayPal money transfers, credit card, debit card, charge card or other forms of payment related to the Business, including for goods, services or facilities provided by the Company but excluding, for greater certainty, Related Party Amounts;
- (qqq) **“Receiver”** has the meaning given to it in the recitals to this Agreement;
- (rrr) **“Receiver’s Borrowings Obligations”** means all obligations of any kind or nature owing by the Receiver to any Kensington Lender or its affiliate that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements;
- (sss) **“Receiver’s Vesting Certificate”** means the Receiver’s certificate contemplated by the Approval Order;
- (ttt) **“Receivership Proceedings”** means the proceedings in respect of the Company commenced pursuant to the Appointment Order;
- (uuu) **“Related Party Amounts”** means any indebtedness, liabilities or other amounts owed or payable to the Company from current or former directors, officers, employees or shareholders of the Company;
- (vvv) **“Representatives”** means, in respect of any Party, its and its affiliates’ directors, officers, employees, agents and advisors (including financial and legal advisors);

- (www) “**Sale Procedures**” means the procedures for the conduct of a sale process in respect of the business and assets of the Company approved by the Court pursuant to the Appointment Order, which procedures shall be in substantially the form attached hereto as Schedule C or otherwise in form and substance acceptable to the Receiver and the Buyer;
- (xxx) “**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations;
- (yyy) “**Successful Bid**” shall have the meaning given to it in the Sale Procedures;
- (zzz) “**Tax**” and “**Taxes**” means all taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, including (a) those levied on, or measured by, or referred to as income, gross receipts, earnings, profits, capital, corporate, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, license, franchising, real or personal property, payroll, employment, wage, employer health, social services, severance, utility, occupation, premium, windfall, education and social security taxes, all surtaxes, all custom duties and import and export taxes, all license, franchise and registration fees and all employment and unemployment insurance, health insurance and Canada and other government pension plan premiums, workers’ compensation levies, and retirement contributions, including those imposed by any Governmental Authority, and (b) any liability for the payment of any amount of the type described in the immediately preceding clause (a) as a result of being a “transferee” (within the meaning of section 160 of the Tax Act or any other Applicable Laws) of another taxpayer or entity or a member of a related, non-arm’s length, affiliated or combined group;
- (aaaa) “**Tax Act**” means the *Income Tax Act* (Canada), as amended from time to time;
- (bbbb) “**Tax Refunds**” means the benefit of the Company to any Tax refunds (including in respect of any overpayment of Taxes), rebates or credits (including refundable credits) payable or paid to the Company, net of any amounts withheld by any Governmental Authority having jurisdiction over the assessment, determination, collection, or other imposition of any Tax, and the benefit of the Company to any claim or right of the Company to any such refund, rebate, or credit in respect of Taxes, including in any case any interest thereon received or receivable from any Governmental Authority, but for greater certainty, only to the extent that such refund, rebate or credit relates to a taxable period ending on or before the Closing Date or, in respect of a taxable period that includes but does not end on the Closing Date, the portion thereof up to and including the Closing Date;
- (cccc) “**Transaction**” means the purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement and any of the other transactions contemplated by this Agreement;

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- (dddd) **“Transferred Employees”** means solely those Offered Employees who accept the offer of employment made by the Buyer or its affiliate(s) pursuant to Section 9.1 and who actually commence employment with the Buyer or its affiliates on their first scheduled shift after Closing;
- (eeee) **“Transfer Taxes”** has the meaning given to it in Section 2.8(a);
- (ffff) **“Warranty Rights”** means all warranty, product guarantee or similar rights against manufacturers, contractors or suppliers relating to any of the Purchased Assets, to the extent the foregoing are transferable to the Buyer.

1.2 Appendices and Schedules

The following Schedules form part of this Agreement:

Schedule A	Purchased Assets Schedule
Schedule B	Excluded Assets Schedule
Schedule C	Sale Procedures

1.3 Statutes

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

1.4 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.5 Interpretations

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.

1.6 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States dollars.

1.7 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.8 Entire Agreement

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the Parties in connection with the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the Receiver and the Buyer. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law, Jurisdiction and Venue

This Agreement, the rights and obligations of the Parties under this Agreement, and any claim or controversy directly or indirectly based upon or arising out of or in connection with this Agreement or the Transaction or any part thereof, including all matters of construction, validity and performance, as well as the rights and obligations of the Parties hereunder or thereunder, shall in all respects be governed by, and interpreted, construed and determined in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to the conflicts of law principles thereof. The Parties consent to the exclusive jurisdiction and venue of the courts of the Court for the resolution of any such disputes arising under or in connection with this Agreement. Each Party agrees that service of process on such Party as provided in Section 11.8 shall be deemed effective service of process on such Party.

ARTICLE 2 PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, at the Closing and effective as of the Closing Time, the Receiver and the Company agree to sell, assign, transfer and convey to the Buyer, and the Buyer agrees to purchase, assume and accept from the Receiver and the Company, free and clear of all Encumbrances other than Permitted Encumbrances, all of the right, title, benefit and interest of the Receiver and the Company in, to and under, or relating to, the assets, property and undertaking owned or used or held for use in connection with the Business (the “**Purchased Assets**”), including the following properties, assets and rights:

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- (a) Cash;
- (b) Purchased Contracts;
- (c) Purchased Equipment;
- (d) Purchased Inventory and Supplies;
- (e) Intellectual Property;
- (f) Insurance;
- (g) Goodwill;
- (h) Warranty Rights;
- (i) Books and Records;
- (j) Authorizations;
- (k) Real Property Leases;
- (l) Personal Property Leases;
- (m) Prepaid Expenses;
- (n) IT Systems;
- (o) Actions;
- (p) Related Party Amounts; and
- (q) Tax Refunds,

but, for greater certainty, in each case excluding any Excluded Assets.

2.2 Excluded Assets

Notwithstanding any provision of this Agreement, the Purchased Assets shall not, and will not be deemed to, include any of the following assets of the Company (collectively, the “**Excluded Assets**”):

- (a) Receivables;
- (b) Excluded Contracts;
- (c) Excluded Equipment;
- (d) Excluded Inventory and Supplies;

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- (e) Employee Plans;
- (f) original Tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Company, in each case that do not relate to the Business or the Purchased Assets;
- (g) all of the Company's rights and benefits under this Agreement and the Transaction;
- (h) any asset or property otherwise forming part of the Purchased Assets that is sold, conveyed, leased or otherwise consumed, utilized, transferred or disposed of in the Ordinary Course during the Interim Period or in furtherance of or in connection with the Transaction, or otherwise in compliance with the terms of this Agreement;
- (i) shares, partnership or joint venture interests and any other securities of any Person owned or held by the Company or any of its affiliates, including the shares of Hangzhou Oxygen Technology Co. Ltd. owned by the Company;
- (j) all minute books, share ledgers, corporate seals and stock certificates of the Company; or
- (k) any other assets as may be expressly designated by the Buyer in writing prior to Closing.

2.3 As is, Where is

THE BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PURCHASED ASSETS AND THE BUSINESS RELATED THERETO ARE PURCHASED AND THE ASSUMED LIABILITIES ARE ASSUMED BY THE BUYER ON AN "AS IS, WHERE IS" BASIS AS THEY SHALL EXIST AT THE CLOSING DATE WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW WITH RESPECT TO THE PURCHASED ASSETS, THE BUSINESS AND THE ASSUMED LIABILITIES, AND WITHOUT ANY RECOURSE TO THE RECEIVER OR ANY OF ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, AGENTS OR ADVISORS. THE BUYER AGREES TO ACCEPT THE PURCHASED ASSETS, THE BUSINESS RELATED THERETO AND THE ASSUMED LIABILITIES IN THE CONDITION, STATE AND LOCATION THEY ARE IN ON THE CLOSING DATE BASED ON THE BUYER'S OWN INSPECTION, EXAMINATION AND DETERMINATION WITH RESPECT TO ALL MATTERS AND WITHOUT RELIANCE UPON ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY NATURE MADE BY OR ON BEHALF OF OR IMPUTED TO THE RECEIVER, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. Unless specifically stated in this Agreement, the Buyer acknowledges and agrees that no representation, warranty, term or condition, understanding or collateral agreement, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise, is being given by the Receiver in this Agreement or in any instrument furnished in

connection with this Agreement, as to description, fitness for purpose, sufficiency to carry on any business, merchantability, quantity, condition, latent defects, quality, value, suitability, durability, environmental condition, assignability or marketability thereof, or in respect of any other matter or thing whatsoever, and all of the same are expressly excluded. The provisions of this Section 2.3 shall survive and not merge on Closing.

2.4 Purchase Price

The Purchase Price payable by the Buyer to the Receiver for the Purchased Assets shall be (collectively, the “**Purchase Price**”):

- (a) the payment or assumption of the Priority Claims;
- (b) the payment of the Cure Costs;
- (c) the release and discharge from the Senior Secured Obligations; and
- (d) the payment of the amount of CDN\$100,000, estimated by the Receiver to be the aggregate fees, disbursements and expenses of the Receiver for the period from the Closing Time to the Discharge Date (the “**Estimated Fees**”).

2.5 Satisfaction of Purchase Price

The Buyer shall pay and satisfy the Purchase Price on the Closing Date as follows:

- (a) the Buyer shall pay in cash or shall assume the Priority Claims;
- (b) the Buyer shall pay in cash all Cure Costs;
- (c) the Buyer shall pay the Estimated Fees in cash to the Receiver; and
- (d) the Buyer shall cause the Kensington Lenders to irrevocably release and discharge the Company and the Receiver, as applicable, from the Senior Secured Obligations.

2.6 Adjustment for Estimated Fees

If the aggregate of the actual fees, disbursements and expenses incurred by the Receiver during the period from the Closing Time to the Discharge Date is (a) less than the Estimated Fees, any surplus shall be paid by the Receiver to the Buyer within three (3) Business Days of the Discharge Date, or (b) greater than the Estimated Fees, any deficiency shall be paid by the Buyer to the Receiver within three (3) Business Days of the Discharge Date.

2.7 Purchase Price Allocation

The Buyer shall, acting reasonably, prepare and deliver to the Receiver an allocation of Purchase Price among the Purchased Assets within 30 days following Closing. Such allocation shall be binding on the Buyer, the Receiver and the Company, and the Buyer, the Receiver and the Company will file all Tax returns in a manner consistent with such allocation.

2.8 Tax Matters

- (a) All amounts payable by the Buyer pursuant to this Agreement are exclusive of any GST/HST and all transfer, documentary, sales, use, registration and provincial sales Taxes arising in connection with the sale, conveyance, assignment and transfer of the Purchased Assets to the Buyer (collectively, “**Transfer Taxes**”). The Buyer will be solely liable and responsible for and will pay, if required by Applicable Law, all Transfer Taxes (and within the time periods required thereunder). The Parties will cooperate with each other in good faith and will use commercially reasonable efforts to assist the Buyer in mitigating such Taxes. If the Receiver is required by any Applicable Law or by administration thereof to collect any applicable Transfer Taxes from the Buyer, the Buyer will pay such amounts to the Receiver concurrent with the payment of any consideration payable pursuant to this Agreement or, if arising after Closing, forthwith, and the Receiver will pay such amounts to the applicable Governmental Authority on a timely basis and otherwise in accordance with Applicable Laws.
- (b) At the Closing, the Parties shall jointly execute an election under Section 167 of the GST/HST Legislation to cause the sale of the Purchased Assets to take place on a HST-free basis under the GST/HST Legislation and the Buyer shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) At the Closing, the Parties shall, if applicable, execute jointly an election in prescribed form under Section 22 of the Tax Act and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date.
- (d) If requested by the Buyer, the Buyer and the Receiver and/or the Company (as applicable) shall jointly make and file an election pursuant to subsection 20(24) of the Tax Act and the corresponding provisions of the applicable provincial Tax law, if applicable and available, in respect of the Buyer’s assumption of the Company’s obligations in respect of any deferred revenue of the Business (and, if such election is made, a portion of the Purchased Assets having a value equal to the elected amount shall be transferred by the Receiver to the Buyer for the assumption of such obligations by the Buyer), in either case in prescribed manner and within the prescribed time limits applicable to such election(s).
- (e) The Buyer shall be entitled to receive from the Receiver and/or the Company all Tax Refunds. The Buyer and the Receiver shall execute all documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax Refunds. The Receiver will promptly pay to the Buyer all such Tax Refunds.
- (f) The Buyer agrees to indemnify and save the Receiver harmless from and against all claims and demands for payment of all Transfer Taxes payable by the Buyer in connection with the purchase of the Purchased Assets, including penalties and

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interest thereon and any liability or costs incurred as a result of any failure by the Buyer to pay such Taxes when due.

- (g) The Parties agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Purchased Assets and the Assumed Liabilities as is reasonably necessary for the preparation and filing of any Tax return, claim for refund or other required filings relating to Tax matters, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution of any suit or other proceedings relating to Tax matters and for the answer to any inquiry of any Governmental Authority relating to Tax matters.

ARTICLE 3

ASSUMED LIABILITIES AND EXCLUDED LIABILITIES

3.1 Assumed Liabilities

Subject to Closing, the Buyer agrees to assume, pay, discharge, perform, as the case may be, from and after the Closing Time, the following obligations and liabilities of the Company with respect to the Purchased Assets (collectively, the “**Assumed Liabilities**”), which Assumed Liabilities shall exclude the Excluded Liabilities and shall consist solely of:

- (a) all obligations and liabilities under the Assigned Agreements to the extent first arising and relating to the period on or after the Closing Date;
- (b) all obligations and liabilities related to the operation of the Purchased Assets on or after the Closing Date; and
- (c) the Assumed Employee Obligations.

3.2 Excluded Liabilities

Except as expressly assumed by the Buyer pursuant to Section 3.1, the Buyer shall not assume, accept or undertake any debt, obligation, duty or liability of the Company of any kind or nature whatsoever, whether accrued, contingent, known or unknown, express or implied, direct or indirect, liquidated or unliquidated, contingent or otherwise, and whether due or to become due (the “**Excluded Liabilities**”), which Excluded Liabilities, without limitation, shall include the following liabilities or obligations:

- (a) except as expressly included in Assumed Liabilities, all liabilities, obligations, present and future actions, causes of action, lawsuits, damages, judgements, executions or claims relating to or arising out of the conduct or operation of the Business or the Purchased Assets prior to the Closing Date, including all liabilities, obligations, claims and causes of action relating to or arising from breaches of contract, violations of Applicable Law, product liability, warranties, or tortious or illegal conduct;

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- (b) all liabilities and obligations relating to the Excluded Assets;
- (c) all liabilities and obligations of the Company under the Assigned Agreements incurred or relating to the period prior to the Closing Date, except any Cure Costs agreed to by the Buyer in respect of Consent Required Agreements (which Cure Costs shall be paid by the Buyer in accordance with this Agreement);
- (d) indebtedness for borrowed money, including the Senior Secured Obligations;
- (e) all liabilities and obligations for (i) all Taxes of the Company for any Tax period; (ii) all Taxes relating to the Purchased Assets for periods (or any portion thereof) ending on or prior to the Closing Date, including any Taxes based upon operation, possession, use or ownership of the Purchased Assets, (iii) any Taxes in respect of any payments to Persons employed or retained in connection with the Business in respect of any period prior, and any related obligation to withhold or remit Taxes, even though a claim may be made after the Closing Date, and (iv) any Taxes relating to the Excluded Assets;
- (f) other than the Assumed Employee Obligations, all liabilities and obligations relating to the employment or the termination of the employment of the Company Employees (including Transferred Employees), including termination and severance obligations;
- (g) all liabilities, obligations or causes of action asserted or that may be asserted by (i) Sigma Worldwide, LLC, including in proceedings before the Ontario Superior Court of Justice bearing court file number CV-21-00660483-0000, and (ii) The Interpublic Group of Companies Canada, Inc. d/b/a Huge Canada, including in proceedings before the Ontario Superior Court of Justice bearing court file number CV-21-00659511-0000; and
- (h) any other obligations or liabilities expressly excluded from the Assumed Liabilities under this Agreement.

3.3 Consent Required Agreements

In the event that there are any Assigned Agreements or Authorizations that are not assignable in whole or in part to the Buyer without the consent, approval or waiver of any counterparty to such Assigned Agreement or issuer of such Authorization (each, a “**Consent Required Agreement**”):

- (a) the Parties shall, at the direction of the Buyer, use commercially reasonable efforts to obtain any such consent, approval or waiver in respect of a Consent Required Agreement;
- (b) if any consent, approval or waiver is not obtained for any Consent Required Agreement, the Receiver, if requested by the Buyer in its sole discretion, shall as soon as reasonably practicable bring a motion before the Court seeking the issuance of an Assignment Order with respect to each such Consent Required Agreement;

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- (c) the determination as to whether to pay Cure Costs in order to obtain any required consent, approval or waiver, and the determination as to whether to seek an Assignment Order in respect of a Consent Required Agreement that, if granted, will necessitate the payment of Cure Costs, shall be made by the Buyer in its sole discretion;
- (d) the payment of any Cure Costs payable to obtain the consent, approval or waiver of any counterparty to an Assigned Agreement or as a condition to obtaining an Assignment Order in respect of any Consent Required Agreement shall be the responsibility of the Buyer; and
- (e) where any required consent, approval or waiver in respect of a Consent Required Agreement or, in the alternative, an Assignment Order in respect of such Consent Required Agreement, has not been obtained as of the Closing Time, nothing in this Agreement shall be construed as an assignment of such Consent Required Agreement, the Buyer shall have no responsibility whatsoever in respect of such Consent Required Agreement, and such Consent Required Agreement shall constitute an Excluded Asset for purposes of this Agreement.

3.4 Additions to Purchased Assets, Excluded Assets and Excluded Liabilities

Notwithstanding anything to the contrary herein, the Buyer shall have the right, at any time prior to the Closing Time, by notice in writing to the Receiver and without any adjustment to the Purchase Price, to deem (a)(i) any asset or agreement of the Company (including any asset or agreement that is otherwise identified herein as a Purchased Asset) to be an Excluded Asset, and (ii) any liability or obligation of the Company (including any liability or obligation that is otherwise identified herein as an Assumed Liability) to be an Excluded Liability, in each case for all purposes of this Agreement, in which case such Excluded Asset or Excluded Liability, as the case may be, shall not be assigned or transferred to or assumed by, and shall not vest in, the Buyer at Closing, and (b) any asset or agreement of the Company (including any asset or agreement that is otherwise identified herein as an Excluded Asset) to be a Purchased Asset for all purposes of this Agreement. The Schedules to this Agreement may be updated by the Buyer at any time prior to the Closing Time to reflect any actions taken by the Buyer pursuant to this Section 3.4. There shall be no adjustment to the Purchase Price as a result of any designation or modification of Purchased Assets, Excluded Assets, Assumed Liabilities or Excluded Liabilities pursuant to this Section 3.4.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

The Receiver and the Company, as applicable, represent and warrant as follows to the Buyer as of the date hereof and acknowledge and confirms that the Buyer is relying upon the following representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

4.1 Existence

The Receiver has been appointed as the receiver of the assets and property of the Company pursuant to the Appointment Order.

4.2 Corporate Power

- (a) The Receiver is duly organized and validly existing under the laws of its jurisdiction of organization.
- (b) Subject to the issuance and entry of the Approval Order, the Receiver has the power, authority and capacity to enter into and perform its obligations under this Agreement.
- (c) Subject to the issuance and entry of the Approval Order, the Company has the power to enter into and perform its obligations under this Agreement.

4.3 Residence of the Receiver and Company

Neither the Receiver nor the Company is a non-resident of Canada for the purposes of the Tax Act.

4.4 Due Authorization and Enforceability of Obligations

Pursuant to the Appointment Order, and subject to the issuance of the Approval Order, this Agreement has been duly and validly executed by the Receiver and the Company and constitutes a valid and binding obligation of the Receiver and the Company enforceable against such Parties in accordance with its terms.

4.5 Registration

The Company is registered for purposes of the GST/HST Legislation, and its registration number is 838799997 RT0001.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYER

The Buyer represents and warrants to the Receiver as follows, and acknowledges that the Receiver is relying upon the following representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

5.1 Corporate Power

The Buyer:

- (a) is a corporation duly organized and validly existing and in good standing under the Applicable Laws of its jurisdiction of formation; and

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- (b) has the power, capacity and authority to enter into and perform its obligations under this Agreement and carry on business.

5.2 Residence of the Buyer

The Buyer is not a non-resident of Canada for the purposes of the Tax Act.

5.3 Due Authorization and Enforceability of Obligations

The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action of the Buyer. This Agreement has been duly and validly executed by the Buyer and constitutes a valid and binding obligation of the Buyer enforceable against it in accordance with its terms.

5.4 GST/HST Legislation

The Buyer will be registered for purposes of the GST/HST Legislation prior to Closing and shall provide the Receiver with its registration number prior to Closing.

5.5 Diligence

The Buyer acknowledges and agrees that: (a) it is purchasing the Purchased Assets and assuming the Assumed Liabilities on an “as is, where is” basis; (b) it has relied upon its own independent review, investigation and inspection of the documents and information made available by or on behalf of the Receiver or the Company for the purpose of the Transaction; (c) except as expressly set forth in this Agreement, it is not relying upon any written or oral statements, documents, information, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, the Business or the Assumed Liabilities; and (d) the obligations of the Buyer under this Agreement are not conditional upon any additional due diligence.

ARTICLE 6 OTHER AGREEMENTS

6.1 Conduct Prior to Closing

During the Interim Period, the Company shall conduct the Business in the Ordinary Course, except to the extent required to allow the Receiver and the Company to comply with their obligations under this Agreement or as may be permitted with the written consent of the Buyer, subject in all cases to the Appointment Order and any other Court orders granted in the Receivership Proceedings. Without limiting the generality of the foregoing, the Company shall:

- (a) maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course;

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- (b) preserve intact the Goodwill and maintain satisfactory relationships with suppliers, customers, landlords, Governmental Authorities and all other Persons with whom the Company has a business relationship;
- (c) not convey, encumber or otherwise dispose of any of the Purchased Assets except in the Ordinary Course;
- (d) not amend or modify any Assigned Agreement in any material respect, waive any material rights in respect of any Assigned Agreement or disclaim any Assigned Agreement;
- (e) not enter into any material contract or agreement in respect of the Business;
- (f) not enter into any settlement of any claim, cause of action or litigation by or against the Company;
- (g) preserve and maintain in force and in good standing all Authorizations;
- (h) continue and keep in full force and effect all insurance coverage currently held by the Company; and
- (i) comply in all material respects with all Applicable Laws relating to the conduct of the Business and the ownership and use of the Purchased Assets.

6.2 Sale Procedures

- (a) The Receiver shall conduct the sale process in respect of the business and assets of the Company in accordance with the Sale Procedures and shall not seek any amendment or modification to the Sale Procedures without the prior consent of the Buyer or further order of the Court.
- (b) If the Transaction is designated as the Successful Bid pursuant to the Sale Procedures, the Receiver shall as soon as reasonably practicable serve and file a motion, on notice to the service list in the Receivership Proceedings and any other Person reasonably requested by the Buyer, seeking the Approval Order.
- (c) All motion materials of the Receiver in respect of the Approval Order and the Assignment Order, if applicable, shall be in form and substance acceptable to the Buyer and provided sufficiently in advance to the Buyer for review and comment.

6.3 Access to Information

Until the Closing and to the extent permitted by Applicable Law, the Company shall provide the Buyer and its Representatives, during normal business hours and upon reasonable advance notice, reasonable access to the Premises and shall furnish them with all such information relating to the Business and the Purchased Assets as the Buyer may reasonably request in connection with the Transaction.

6.4 Access to Third Parties

The Receiver and the Company shall co-operate with the Buyer in arranging any such meetings or discussions as the Buyer or its Representatives may reasonably request with employees, customers, suppliers, lessors or other Persons having a business relationship with the Company, and the Company shall provide the Buyer with such assistance, documentation and materials as the Buyer may reasonably request in connection with the preparation for and participation in such meetings and discussions. The Receiver shall be entitled to have a Representative present in connection with any such meetings or discussions.

ARTICLE 7 CONDITIONS

7.1 Conditions for the Benefit of the Buyer

The obligation of the Buyer to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **Truth of Representations and Warranties.** The respective representations and warranties of the Receiver and the Company contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date (except for those representations and warranties that are made as of a specific time or date), which shall be certified by the Receiver and the Company, as the case may be, pursuant to certificates delivered by each of the Receiver and the Company to the Buyer at Closing;
- (b) **Performance of Covenants.** The Receiver and the Company shall have performed, in all material respects, each of their covenants and agreements to be performed by them at or prior to the Closing, which shall be certified by the Receiver and the Company, as the case may be, pursuant to certificates delivered by each of the Receiver and the Company to the Buyer at Closing;
- (c) **Deliverables.** The Receiver must have delivered to the Buyer the documents contemplated in Section 8.2, in each case in form and substance satisfactory to the Buyer, acting reasonably; and
- (d) **Assignment Order.** If requested by the Buyer to cause the assignment of a Consent Required Agreement, the Court shall have issued an Assignment Order in respect of such Consent Required Agreement, such Assignment Order shall be in form and substance acceptable to the Buyer in its sole discretion, and such Assignment Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.

The conditions in this Section 7.1 are for the exclusive benefit of the Buyer. Any condition in this Section 7.1 may be waived by the Buyer in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part.

7.2 Conditions for the Benefit of the Receiver

The obligation of the Receiver to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **Truth of Representation and Warranties.** The representations and warranties of the Buyer contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and of such date (except for those representations and warranties that are made as of a specific time or date), which shall be certified by the Buyer pursuant to a certificate delivered to the Receiver at Closing;
- (b) **Performance of Covenants.** The Buyer must shall have performed, in all material respects, each of its covenants and agreements to be performed by it at or prior to the Closing, which shall be certified by the Buyer pursuant to a certificate delivered to the Receiver at Closing;
- (c) **Deliverables.** The Buyer must have delivered to the Receiver the documents contemplated in Section 8.3, in each case in form and substance satisfactory to the Receiver, acting reasonably.

The conditions in this Section 7.2 are for the exclusive benefit of the Receiver. Any condition in this Section 7.2 may be waived by the Receiver in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part.

7.3 Mutual Conditions

The obligation of the Buyer and the Receiver to complete the Transaction is subject to the following conditions to be fulfilled or performed at or prior to the Closing:

- (a) **No Legal Action.** No provision of any Applicable Laws and no judgment, injunction, order or decree by any Person that prohibits the consummation of the Transaction pursuant to and in accordance with this Agreement shall be in effect, pending or threatened;
- (b) **Appointment Order.** The Court shall have issued the Appointment Order in form and substance acceptable to the Receiver and the Buyer, and such Appointment Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.
- (c) **Successful Bid.** The Transaction shall have been designated as the Successful Bid pursuant to the Sale Procedures.

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- (d) **Approval Order.** The Court shall have issued the Approval Order in form and substance acceptable to the Receiver and the Buyer, and such Approval Order shall have become final and shall not have been appealed, vacated, stayed, varied or amended without the consent of the Buyer.

The conditions in this Section 7.3 are for the mutual benefit of the Buyer and the Receiver. Any condition in this Section 7.3 may be waived jointly by the Buyer and the Receiver in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part.

ARTICLE 8 CLOSING

8.1 Date, Time and Place of Closing

The completion of the Transaction will take place at the offices of Goodmans LLP, at 333 Bay Street, Suite 3400, Toronto, Ontario M5H 3S7 at 10:00 a.m. (Toronto time) on the Closing Date, or at such other place (including virtually through electronic exchange of documents), on such other date and at such other time as may be agreed upon in writing by the Parties. Notwithstanding the foregoing, the Parties acknowledge and agree that the Transaction will be deemed to have closed effective as of the Closing Time.

8.2 Receiver Deliverables at Closing

At Closing, the Receiver will deliver or cause to be delivered to the Buyer the following:

- (a) the General Conveyance and Assumption Agreement signed by the Receiver and the Company;
- (b) if applicable, the elections referred to in Section 2.8, in each case signed by the Receiver;
- (c) the certificates of the Receiver and the Company referred to in Section 7.1;
- (d) the Receiver's Vesting Certificate; and
- (e) all other documents reasonably requested by the Buyer to be entered into or delivered by the Receiver or the Company at Closing pursuant to the terms of this Agreement.

8.3 Buyer Deliverables at Closing

At Closing, the Buyer will deliver or cause to be delivered to the Receiver the following:

- (a) the Purchase Price, in the manner set forth in Section 2.5, including evidence satisfactory to the Receiver, acting reasonably, that the Kensington Lenders have irrevocably released and discharged the Company and the Receiver from the Senior Secured Obligations;

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- (b) the General Conveyance and Assumption Agreement signed by the Buyer;
- (c) if applicable, the elections referred to in Section 2.8, in each case signed by the Buyer;
- (d) the certificates of the Buyer referred to in Section 7.2;
- (e) the Buyer's GST/HST registration number; and
- (f) all other documents reasonably requested by the Receiver to be entered into or delivered by the Buyer at Closing pursuant to the terms of this Agreement.

8.4 Possession of Assets

The Purchased Assets shall be and remain until Closing at the risk of the Company. On Closing, the Buyer shall take possession of the Purchased Assets where situate at Closing. The Buyer acknowledges that neither the Receiver nor the Company has any obligation to deliver physical possession of the Purchased Assets to the Buyer. If following the Closing Time the Receiver or the Company comes into possession or control of a Purchased Asset, the Receiver or the Company, as applicable, shall promptly notify the Buyer and release the Purchased Asset to the Buyer or as the Buyer may direct. If following the Closing Time the Buyer comes into possession or control of an Excluded Asset, the Buyer shall promptly notify the Receiver and release the Excluded Asset to the Receiver or as the Receiver may direct and, for greater certainty, no right, title or interest in and to such Excluded Asset shall, or shall be deemed to, vest in the Buyer.

ARTICLE 9 EMPLOYEES

9.1 Employees

- (a) At least five days prior to the Closing Date, the Buyer shall make a written offer of employment, effective as of the Closing Date and contingent upon the Closing, to such Company Employees as the Buyer shall determine in its sole discretion (the "**Offered Employees**") on terms and conditions determined by the Buyer in its sole discretion. Notwithstanding the foregoing, nothing herein shall be construed as to prevent the Buyer, at its sole responsibility, liability and obligation, from terminating the employment of any Transferred Employee, consistent with applicable law, at any time following the Closing Date.
- (b) Each Transferred Employee shall be given credit by the Buyer for all service with the Company and its predecessors solely to the extent as is required by statute, but not for common law purposes.
- (c) The Parties agree that nothing in this Section 9.1, whether express or implied, is intended to create any third party beneficiary rights in any Transferred Employee.

9.2 Assumed Employee Obligations

The Buyer will assume and be responsible for the following obligations and liabilities in respect of Transferred Employees (collectively, the “**Assumed Employee Obligations**”):

- (a) all liabilities for salary, wages, commissions, vacation pay, and other compensation and benefits (including accrued vacation and sick days, as well as any other benefits and other similar arrangements) relating to the employment of all Transferred Employees from and after the Closing Date;
- (b) all liabilities for vacation pay entitlement in respect of Transferred Employees accrued or payable prior to and after the Closing Date; and
- (c) all liabilities for claims for injury, disability, death or workers’ compensation arising from or related to employment of the Transferred Employees from and after the Closing Date, but excluding any claims arising from and after the Closing Date but related to the employment of the Transferred Employees by the Company prior to the Closing Date.

ARTICLE 10 TERMINATION

10.1 Termination

This Agreement may be terminated at any time prior to Closing as follows:

- (a) by mutual written consent of the Receiver and the Buyer;
- (b) by the Buyer, if:
 - (i) the Sale Procedures are not approved by the Court in form and substance acceptable to the Buyer or if the Sale Procedures are amended or modified without the prior consent of the Buyer;
 - (ii) a transaction other than the Transaction is designated by the Receiver as the Successful Bid pursuant to the Sale Procedures;
- (c) by the Receiver or the Buyer, if the Closing has not occurred on or before the Outside Date; provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach by a Party of any representation, warranty, covenant or agreement contained in this Agreement, then the breaching Party may not terminate this Agreement pursuant to this Section 10.1(c);
- (d) by the Receiver, if there has been a material violation or breach by the Buyer of any covenant, representation or warranty and such violation or breach has not been waived by the Receiver or cured within five Business Days after written notice thereof from the Receiver to the Buyer, unless the Receiver is in material breach of its obligations under this Agreement; and

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- (e) by the Buyer, if there has been a material violation or breach by the Receiver or the Company of any covenant, representation or warranty and such violation or breach has not been waived by the Buyer or cured within five Business Days after written notice thereof from the Buyer to the Receiver or the Company, unless the Buyer is in material breach of its obligations under this Agreement.

10.2 Effect of Termination

In the event of termination of this Agreement in accordance with its terms, this Agreement shall become void and of no further force and effect, except for Section 1.10 (Governing Law, Jurisdiction and Venue) and Article 11 (General Matters), each of which shall survive termination. Nothing in this Section 10.2 shall be deemed to relieve any Party from liability for any breach of this Agreement or to impair the right of any Party to compel specific performance by any other Party of its obligations under this Agreement.

ARTICLE 11 GENERAL MATTERS

11.1 Further Assurances

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other Parties such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

11.2 Structuring

The Receiver shall consider and negotiate in good faith any proposed modifications to this Agreement and the structure of the Transaction requested by the Buyer to implement the Transaction in a tax efficient manner, including, where possible, to maximize the value and ability of the Buyer to obtain the benefit of any existing tax attributes of the Company.

11.3 Personal Information

The Buyer acknowledges that it is aware, and it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Buyer and its Representatives pursuant to this Agreement and/or the Transaction. The Buyer agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to them.

11.4 Survival

None of the representations, warranties, agreements or covenants of any of the Parties set forth in this Agreement shall survive Closing, except for Section 1.10 (Governing Law), Article 11 (General Matters) and any other covenant or agreement that by its express terms is to survive or

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to be performed after Closing, in each case solely to the extent they are to be performed or operate by their express terms after the Closing.

11.5 Expenses

Each of the Receiver and the Buyer shall be responsible for the expenses (including fees and expenses of legal advisers, accountants and other professional advisers) incurred by them, respectively, in connection with the negotiation of this Agreement and the completion of the Transaction, provided that, for greater certainty, all such expenses incurred by the Buyer shall constitute Senior Secured Obligations pursuant to the terms of the Promissory Notes and the General Security Agreement.

11.6 Time of the Essence

Time will be of the essence in this Agreement.

11.7 Successors and Assigns

This Agreement may not be assigned by the Receiver or the Company without the prior written consent of the Buyer. This Agreement may not be assigned by the Buyer without the prior written consent of the Receiver, provided however that the Buyer shall be permitted, without the consent of the Receiver or the Company, to assign its rights and obligations under this Agreement in whole or in part to one or more affiliates of or funds managed by any of the Kensington Lenders where such assignee(s) agree(s) in writing to be bound by the terms of this Agreement to the extent of the assignment, and notwithstanding such assignment the Buyer shall remain liable for any obligations under this Agreement not performed by such assignee(s).

11.8 Notices

Any notice or other communication under this Agreement shall be in writing and may be delivered personally, by courier or by email, addressed:

If to the Buyer at:

95 St. Clair Avenue West, Suite 905
Toronto, Ontario
M4V 1N6

Attention: Richard Nathan
E-mail: accounting@kcpl.ca and legal@kcpl.ca

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with a copy to: Goodmans LLP
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7

Attention: Tim Heeney and Bradley Wiffen
E-mail: theeney@goodmans.ca / bwiffen@goodmans.ca

If to the Receiver or the Company at:

RSM Canada Limited
11 King Street West
Suite 700, Box 27
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
E-mail: bryan.tannenbaum@rsmcanada.com

with a copy to: Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON
M2N 7E9

Attention: Harvey Chaiton
E-mail: harvey@chaitons.com

Any such notice of other communication, if given by personal delivery or by courier, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day or on a day that is not a Business Day, will be deemed to have been given on the next Business Day after the date of the transmission.

11.9 Amendment

This Agreement may be amended as to all Parties by instrument in writing signed by the Buyer and the Receiver.

11.10 Counterparts, Electronic Signatures

This Agreement may be signed in any number of counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument. Execution of this Agreement may be made by email, PDF or other

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electronic format or transmission which, for all purposes, shall be deemed to be an original signature.

11.11 Receiver's Capacity

It is acknowledged by the Buyer that the Receiver is entering into this Agreement solely in its capacity as Court-appointed Receiver and that the Receiver shall have no personal or corporate liability under or as a result of this Agreement. Any claim against the Receiver shall be limited to and only enforceable against the property and assets then held by or available to it in its capacity as Receiver of the Company and shall not apply to its personal property and other assets held by it in any other capacity.

[The remainder of this page has been left intentionally blank.]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

RECEIVER

RSM CANADA LIMITED, in its capacity as the court-appointed receiver of O2 INDUSTRIES INC., and not in its personal or corporate capacity

Per: 

Name: Bryan A. Tannenbaum
Title: President

BUYER

2841551 ONTARIO LIMITED

Per: _____

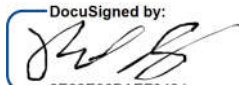
Name:
Title:

Per: _____

Name:
Title:

COMPANY

O2 INDUSTRIES INC.

Per: 

Name: Rich Szasz
Title: Interim CEO

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first written above.

RECEIVER

RSM CANADA LIMITED, in its capacity as the court-appointed receiver of O2 INDUSTRIES INC., and not in its personal or corporate capacity

Per: _____

Name:

Title:

BUYER

2841551 ONTARIO LIMITED

Per: _____

Name: T.R. Kennedy

Title: Senior Managing Director

Per: _____

Name: Richard Nathan

Title: Senior Managing Director

COMPANY

O2 INDUSTRIES INC.

Per: _____

Name:

Title:

SCHEDULE A

PURCHASED ASSETS SCHEDULE

[To be completed by the Buyer prior to the Closing Time]

SCHEDULE B

EXCLUDED ASSETS SCHEDULE

[To be completed by the Buyer prior to the Closing Time]

SCHEDULE C
SALE PROCEDURES

[Attached.]

**SALE PROCEDURES
FOR THE SALE OF THE BUSINESS AND PROPERTY OF
O2 INDUSTRIES INC.**

1. On May 27, 2021, RSM Canada Limited was appointed as receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of O2 Industries Inc. (the “**Company**”) pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. The Appointment Order approved the procedures set forth herein (the “**Sale Procedures**”) for soliciting and selecting bids for a sale transaction (a “**Transaction**”) in respect of all or certain of the property, assets and undertakings of the Company (the “**Property**”) and authorized and directed the Receiver to carry out the Sale Procedures.

Defined Terms

3. Capitalized terms used and not otherwise defined in the body of these Sale Procedures shall have the meanings given to them in **Appendix “A”**.

Solicitation Process and Timeline

4. The Company has received a Transaction bid from 2841551 Ontario Limited (the “**Stalking Horse Bidder**”) pursuant to an asset purchase agreement in substantially the form attached to the pre-filing report of the proposed Receiver dated May 26, 2021 (the “**Stalking Horse Agreement**”) which constitutes a qualified bid for all purposes and at all times under these Sale Procedures (the “**Stalking Horse Bid**”). The Stalking Horse Bid shall serve as the “stalking horse” bid for the purposes of the sale process governed by these Sale Procedures (the “**Sale Process**”). The Stalking Horse Agreement may be modified or amended prior to its execution as agreed to by the Stalking Horse Bidder and the Receiver and may be modified or amended following its execution in accordance with its terms.
5. Notwithstanding the receipt of the Stalking Horse Bid, all interested parties are encouraged to submit bids for a Transaction pursuant to these Sale Procedures.
6. These Sale Procedures describe the manner in which prospective bidders may gain access to or continue to have access to due diligence materials concerning the Company, its Property, and its businesses and operations (the “**Business**”), the manner in which a bid becomes a Qualified Bid, the receipt and review of bids received, the ultimate selection of a Successful Bid and the approval thereof by the Court.
7. The Receiver shall implement these Sale Procedures with the assistance of the Company and, where specified, in consultation with the Stalking Horse Bidder. In the event that there is disagreement as to the interpretation or application of these Sale Procedures, the Court will have jurisdiction to hear and resolve any such dispute.
8. The following table sets out the deadlines under the Sale Process, each of which can be extended by up to seven (7) days by the Receiver in its discretion, or for a longer period with the consent of the Stalking Horse Bidder or by Court order:

Milestone	Deadline
Commencement of Sale Process	Promptly following the granting of the Appointment Order
Bid Deadline	July 8, 2021
Auction Date	July 15, 2021
Approval Hearing Date	July 22, 2021
Outside Date	July 30, 2021

Solicitation of Interest

9. As soon as reasonably practicable following the granting of the Appointment Order, the Receiver shall, with the assistance of the Company: (a) prepare a list of potential bidders (each, a **“Potential Bidder”**) who may be interested in pursuing a Transaction; (b) prepare a marketing presentation describing the Company, the Business and the Property and the opportunity to participate in the Sale Process (the **“Marketing Presentation”**); and (c) establish a data room (the **“Data Room”**) of due diligence materials, including the Marketing Presentation (the **“Diligence Materials”**) that the Receiver believes may be useful for Potential Bidders.

10. As soon as reasonably practicable following the granting of the Appointment Order, the Receiver shall contact Potential Bidders to introduce the opportunity and shall provide the Marketing Presentation to each Potential Bidder that executes a Confidentiality Agreement. The Receiver shall post a copy of the Sale Procedures on the website maintained by the Receiver and shall post a notice of the Sale Process, substantially in the form attached as **Appendix “B”** hereto, in one or more newspapers or other publications determined by the Receiver.

Participation Requirements

11. Unless otherwise provided for herein, ordered by the Court or agreed by the Receiver, in order to participate in the Sale Process and be granted access to the Diligence Materials, a Potential Bidder must deliver to the Receiver, at the address specified in **Appendix “C”** hereto (including by email), (a) an executed confidentiality agreement in form and substance satisfactory to the Receiver (the **“Confidentiality Agreement”**), which shall inure to the benefit of any Successful Bidder that completes a Transaction contemplated by the Successful Bid, and (b) such other information as the Receiver may request to ascertain the identity of the Potential Bidder, including its direct and indirect owners.

12. Potential Bidders shall be provided with access to the Data Room. The Receiver makes no representations or warranties as to the accuracy or completeness of the information contained in the Data Room, the Diligence Materials or any other information provided by the Receiver or its agents in respect of the Business or Property of the Company, except to the extent expressly provided in any definitive sale agreement executed and delivered by the Receiver (a **“Definitive Agreement”**).

13. The Receiver reserves the right to withhold or delay the disclosure of any Diligence Materials that it determines are business sensitive or otherwise not appropriate for disclosure to a Potential Bidder who is a strategic buyer, competitor, supplier or other person with a business relationship with the Company until such time as the Receiver determines, in its discretion, that

such Potential Bidder has (a) a *bona fide* intent to submit a Bid, and (b) the financial capability to consummate a Transaction.

14. Potential Bidders shall direct information requests with respect to the Sale Process to the Receiver or such other individuals as the Receiver may authorize. Potential Bidders shall provide the Receiver with advance notice, and obtain the prior consent of the Receiver, before commencing or continuing any communications or discussions with any director, officer, agent, employee, supplier, customer, creditor or shareholder of the Company concerning the Company or its Business, Property, financial condition, or prospects, and the Receiver shall have the option to oversee or participate in any such communications or discussions.

Bids

15. A Potential Bidder, other than the Stalking Horse Bidder, that wishes to deliver a bid shall deliver a written binding offer for a Transaction (a “**Bid**”) to the Receiver at the addresses specified in **Appendix “C”** hereto (including by email) so as to be received by the Receiver no later than 5:00 p.m. (Eastern Time) on the Bid Deadline.

16. A Bid will be deemed to be a “**Qualified Bid**” only if the Bid complies with all of the following:

- (a) it includes an executed Definitive Agreement, including all exhibits and schedules contemplated thereby, together with a blackline against the Stalking Horse Agreement (which shall be posted by the Receiver in Word format in the Data Room), describing the terms and conditions of the proposed Transaction, including any liabilities proposed to be assumed, the purchase price (the “**Purchase Price**”), and the structure and financing of the proposed Transaction;
- (b) the Transaction shall, on closing, provide cash proceeds, in immediately available funds, sufficient to pay in full in cash the aggregate of the Priority Claims, *plus* the Senior Secured Obligations, *plus* US\$160,000;
- (c) it fully discloses the identity of each person (including any person that controls such person) that will be directly or indirectly sponsoring or participating in the Bid and the complete terms of any such participation;
- (d) it fully discloses any conditions or approvals required to consummate the Bid and the time period within which the Potential Bidder expects to satisfy such conditions or obtain such approvals;
- (e) it does not include any request for or entitlement to any break or termination fee, expense reimbursement or similar type of payment;
- (f) it includes an acknowledgment that the offer is irrevocable until the earlier of (i) the approval of the Successful Bid by the Court and (ii) thirty (30) calendar days following the Bid Deadline (the “**Irrevocable Bid Date**”), provided that if such Potential Bidder’s Bid is selected as a Successful Bid, its bid shall remain irrevocable until the closing of the Transaction contemplated by the Successful Bid;

- (g) it includes or is accompanied by evidence satisfactory to the Receiver of the financial ability of the Potential Bidder to consummate the Transaction contemplated by the Bid;
- (h) it is not conditioned on the outcome of unperformed due diligence or obtaining financing;
- (i) it is accompanied by a refundable deposit (the “**Deposit**”) in the form of a wire transfer (to a bank account specified by the Receiver) payable to the order of the Receiver, in trust, in an amount equal to 15% of the Purchase Price in the Bid, which Deposit is to be held by the Receiver and dealt with in accordance with these Sale Procedures;
- (j) it includes a commitment to close the Transaction contemplated by the Bid by no later than the Outside Date;
- (k) it contains such other information as may reasonably be requested by the Receiver; and
- (l) it is received prior to the Bid Deadline.

Review of Bid(s)

17. Following the Bid Deadline, the Receiver shall assess any Bids received and determine whether such bids constitute Qualified Bids. The Receiver, in consultation with the Stalking Horse Bidder, may waive compliance with any one or more of the requirements specified herein and deem any non-compliant Bid to be a Qualified Bid, provided that the Receiver shall not be entitled to waive the requirements of Sections 16(b) or 16(i) without the prior consent of the Stalking Horse Bidder.

18. Following the receipt of any Bid the Receiver may seek clarification with respect to any of the terms or conditions of such Bid and/or request one or more amendments to such Bid prior to determining if such Bid should be considered a Qualified Bid.

19. In the event that the Receiver determines that there are no Qualified Bids, the Receiver shall promptly proceed to seek Court approval of the Stalking Horse Bid as the Successful Bid and, provided that such Court approval is granted, proceed to complete the Transaction contemplated by the Stalking Horse Agreement.

Selection of Successful Bid

20. The Receiver shall (a) review and evaluate the Stalking Horse Bid and each Qualified Bid, and (b) identify the highest or otherwise best bid (the “**Successful Bid**”, and the Stalking Horse Bidder or the Potential Bidder making such Successful Bid, the “**Successful Bidder**”) pursuant to these Sale Procedures. Any Successful Bid shall be subject to approval by the Court.

21. If the Receiver receives one or more Qualified Bids, it shall proceed with an auction to select the Successful Bid (an “**Auction**”) on notice to the Stalking Horse Bidder and each Potential Bidder that submits a Qualified Bid and is invited to attend the Auction by the Receiver having regard to the terms of its Qualified Bid (each, an “**Auction Bidder**”). There shall be no more than five (5) Auction Bidders, including the Stalking Horse Bidder. For greater certainty, the Stalking

Horse Bidder shall constitute an Auction Bidder in all circumstances in which an Auction is conducted.

22. If an Auction is conducted, it shall be conducted in accordance with the following procedures:

- (a) The Auction shall be conducted at a time to be designated by the Receiver on the Auction Date at the Toronto offices of the Receiver or by electronic communication means (including videoconference, teleconference or such other reasonable means as the Receiver deems appropriate) and shall continue thereafter until completed, subject to such adjournments as the Receiver may consider appropriate;
- (b) The identity of each Auction Bidder participating in the Auction will be disclosed, on a confidential basis, to each other Auction Bidder;
- (c) Except as otherwise permitted in the Receiver's discretion, only the Receiver and the Auction Bidders, and in each case their respective professional advisors, shall be entitled to attend the Auction. Each Auction Bidder shall appear at the Auction through a duly authorized representative that shall be designated by the Auction Bidder as its spokesperson;
- (d) Except as otherwise set forth herein, the Receiver may waive and/or employ and announce at the Auction additional procedures that are reasonable under the circumstances for conducting the Auction, provided that such procedures are (i) not inconsistent with these Sale Procedures, the Stalking Horse Agreement or any order of the Court granted in the within proceedings, (ii) disclosed to each Auction Bidder, and (iii) designed, in the Receiver's judgement, to result in the solicitation of the highest and best offer;
- (e) Not less than two (2) Business Days prior to the Auction, the Receiver shall (i) identify the highest or otherwise best Qualified Bid or Stalking Horse Bid received, which shall constitute the opening bid for purposes of the Auction (the "**Opening Bid**"), and (ii) provide the Definitive Agreement in respect of the Opening Bid to all Auction Bidders, on a confidential basis. Subsequent bidding at the Auction will continue in minimum increments valued at not less than US\$75,000 in excess of the Opening Bid or such other amounts to be determined by the Receiver prior to, and announced at, the Auction. Each Auction Bidder shall, if requested by the Receiver, provide evidence of its financial wherewithal and ability to consummate the Transaction at the increased consideration bid at the Auction;
- (f) All Auctions Bidders shall have the right, at any time during the Auction, to request that the Receiver announce, subject to any potential new bids, the then-current highest or otherwise best bid and, to the extent requested by any Auction Bidder, use reasonable efforts to clarify any questions such Auction Bidder may have on the then-current highest or otherwise best bid;
- (g) Each Auction Bidder shall be given a reasonable opportunity to submit an overbid at the Auction to any then-existing overbids;

- (h) The Auction shall continue until the bidding has concluded and there is one remaining Auction Bidder that the Receiver has determined has submitted the highest or otherwise best bid of the Auction. At such time, the Auction shall be closed and the Auction Bidder that submitted the highest or otherwise best bid shall be designated as the Successful Bidder; and
- (i) Upon selection of a Successful Bidder, the Successful Bidder shall, as soon as practicable, execute and deliver a Definitive Agreement that reflects the Successful Bidder's bid and any modifications submitted and agreed to during the Auction.

23. For all purposes of the Sale Process, the Stalking Horse Bidder shall be entitled to credit bid all or any portion of the Senior Secured Obligations, at the face value of such obligations. In the event that the Receiver designates a Qualified Bid, the Stalking Horse Bidder shall have the right, as part of an Auction, to supplement its Stalking Horse Bid with additional cash or other consideration such that the revised Stalking Horse Bid includes aggregate consideration in excess of the amount of the Senior Secured Obligations and the Priority Claims.

Court Approval

24. The Receiver shall apply to the Court (the "**Approval Motion**") for an order (the "**Approval Order**") approving a Successful Bid, which Approval Motion, subject to Court availability, shall be held on or prior to the Approval Hearing Date.

25. The Receiver shall implement the Successful Bid by no later than the Outside Date.

Deposits

26. All Deposits shall be retained by the Receiver and deposited in a non-interest bearing trust account.

27. If there is a Successful Bid, the Deposit paid by the Successful Bidder whose bid is approved at the Approval Motion shall be applied (without interest) to the Purchase Price to be paid by the Successful Bidder upon closing of the Successful Bid and will be non-refundable.

28. The Deposits of bidders not selected as the Successful Bidder shall be returned, without interest, to such bidders within two (2) Business Days of the Irrevocable Bid Date.

29. The Stalking Horse Bidder shall not be required to provide a Deposit.

Approvals

30. For greater certainty, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required at law in order to implement or complete a Successful Bid.

No Amendment

31. Except as expressly set forth herein, there shall be no amendments to these Sale Procedures without the consent of the Receiver and the Stalking Horse Bidder or further Order of the Court.

“As Is, Where Is”

32. Any Transaction will be on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description except to the extent expressly provided under a Definitive Agreement with a Successful Bidder executed and delivered by the Receiver.

Further Orders

33. At any time during the Sale Process, the Receiver may apply to the Court, following consultation with the Stalking Horse Bidder, for advice and directions with respect to the discharge of its powers and duties hereunder.

Appendix “A” Definitions

For purposes of the Sale Procedures, the following terms shall have the following meanings:

“**Business Day**” means a day, other than a Saturday, Sunday, or a day on which banks in Toronto, Ontario are authorized or obligated by applicable law to close or otherwise are generally closed.

“**Kensington**” means KPEF, Kensington Venture Fund II, L.P., Kensington (Parallel) Venture Fund II, L.P., the Stalking Horse Bidder, and each of their respective affiliates and assignees.

“**KPEF**” means Kensington Private Equity Fund.

“**Receiver’s Borrowings Obligations**” means all obligations of any kind or nature owing by the Receiver to Kensington that are secured by the Receiver’s Borrowings Charge (as defined in the Appointment Order), including all principal, interest, fees, payments, costs, expenses and disbursements.

“**Priority Claims**” mean all claims other than the Receiver’s Borrowings Obligations ranking in priority to the Promissory Note Obligations and includes, for greater certainty, the post-closing fees of the Receiver and its counsel;

“**Promissory Note Obligations**” means, collectively, all present and future obligations of any kind or nature owing by the Company to Kensington including, without limitation, all principal, interest, fees, payments, costs, expenses and disbursements, pursuant to, or in connection with (a) the Convertible Promissory Note dated March 31, 2021 in the principal amount of US\$1,001,216.44 issued by the Company to KPEF, (b) the Convertible Promissory Note dated April 13, 2021 in the principal amount of US\$650,000.00 issued by the Company to KPEF, (c) the Convertible Promissory Note dated May 10, 2021 in the principal amount of US\$350,000 issued by the Company to KPEF, and (d) the General Security Agreement dated as of March 31, 2021 between the Company and KPEF, in each case as amended, supplemented, amended and restated, replaced, or otherwise modified from time to time.

“**Senior Secured Obligations**” means, collectively, the Receiver’s Borrowings Obligations and the Promissory Note Obligations.

**Appendix “B”
Form of Notice**

**Acquisition Opportunity
Invitation for Offers to Purchase
DESIGNER AND DISTRIBUTOR OF
RESPIRATORY PROTECTION PRODUCTS**

RSM Canada Limited, in its capacity as Court-appointed Receiver (the “Receiver”) of an Ontario company (the “Company”) that designs, produces and distributes respiratory protection products (respirators, masks and accessories) invites offers for the purchase of the business and assets of the Company including inventory, fixed assets and intellectual property, pursuant to a Court Approved Sales Process.

All offers must be received by the Receiver at the address set out below, on or before 5:00 p.m. (EST – Toronto), July 8, 2021.

For further information and in order to obtain a copy of the Sales Procedures and confidentiality agreement, please contact:

RSM Canada Limited
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7
Attn: Brenda Wong
T: 647 727 3621 | F: 416 480 2646
E: brenda.wong@rsmcanada.com



Visit rsmcanada.com/about-us for more information regarding RSM Canada Limited.

**Appendix “C”
Receiver Address for Notices**

If to the Receiver:

RSM Canada Limited
11 King Street West
Suite 700, Box 27
Toronto, ON
M5H 4C7

Attention: Bryan Tannenbaum
Email bryan.tannenbaum@rsmcanada.com

With a copy to:

Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON
M2N 7E9

Attention: Harvey Chaiton
Email: harvey@chaitons.com

APPENDIX F



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : Chaitons LLP - Lynda Christodoulou
Reference : 67857
Search ID : 821421
Date Processed : 7/13/2021 4:38:16 PM
Report Type : PPSA Electronic Response
Search Conducted on : O2 INDUSTRIES INC.
Search Type : Business Debtor

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government Services, Government of Ontario. No liability is undertaken regarding its correctness, completeness, or the interpretation and use that are made of it.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

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

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: O2 INDUSTRIES INC.

FILE CURRENCY: July 12, 2021

RESPONSE CONTAINS: APPROXIMATELY 3 FAMILIES and 5 PAGES.

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.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 02 INDUSTRIES INC.

FILE CURRENCY: July 12, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 3 ENQUIRY PAGE : 1 OF 5

SEARCH : BD : 02 INDUSTRIES INC.

00 FILE NUMBER : 768252906 EXPIRY DATE : 03DEC 2026 STATUS :
 01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
 REG NUM : 20201203 0949 1862 6319 REG TYP: P PPSA REG PERIOD: 6
 02 IND DOB : IND NAME:
 03 BUS NAME: 02 INDUSTRIES INC.
 OCN :
 04 ADDRESS : 8 MICHAEL STREET, UNIT 002
 CITY : KITCHENER PROV: ON POSTAL CODE: N2G 1L7
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
 1537638 ONTARIO LIMITED
 09 ADDRESS : 726 THIRD STREET
 CITY : LONDON PROV: ON POSTAL CODE: N5V 5J2
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10 X 9132 30NOV2026
 YEAR MAKE MODEL V.I.N.

11
 12

GENERAL COLLATERAL DESCRIPTION

13 1- TOSHIBA E-STUDIO 2010AC S/N CNAK24843 AND ACCESSORIES

14
 15

16 AGENT: 1537638 ONTARIO LIMITED

17 ADDRESS : 726 BARANSWAY DRIVE

CITY : LONDON PROV: ON POSTAL CODE: N5V 5J2

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 02 INDUSTRIES INC.

FILE CURRENCY: July 12, 2021

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 3 ENQUIRY PAGE : 2 OF 5

SEARCH : BD : O2 INDUSTRIES INC.

FILE NUMBER 768252906

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 001 MV SCHED: 20210112 1124 1862 8904

21 REFERENCE FILE NUMBER : 768252906

22 AMEND PAGE: NO PAGE: X CHANGE: A AMNDMNT REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: O2 INDUSTRIES INC

25 OTHER CHANGE:

26 REASON: ADDITIONAL DEVICE ADDED TO REGISTRATION

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :	DATE OF	NO FIXED
CONS.	MV		MATURITY OR	MAT DATE
GOODS	INVTRY	EQUIP	ACCTS	OTHER
10	X		9132	30NOV2026

11

12

13 1 - TOSHIBA ESTUDIO 2010AC S/N CNAK24843

14 1 - TOSHIBA ESTUDIO 2010AC S/N CNAK24835

15

16 NAME : CYBERBAHN

17 ADDRESS : 4610-199 BAY STREET

CITY : TORONTO PROV : ON POSTAL CODE : M5L 1E9

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 02 INDUSTRIES INC.

FILE CURRENCY: July 12, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 3 ENQUIRY PAGE : 3 OF 5

SEARCH : BD : 02 INDUSTRIES INC.

00 FILE NUMBER : 769142223 EXPIRY DATE : 11JAN 2026 STATUS :
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
 REG NUM : 20210111 1943 1531 1528 REG TYP: P PPSA REG PERIOD: 5
 02 IND DOB : IND NAME:
 03 BUS NAME: 02 INDUSTRIES INC.
 OCN :
 04 ADDRESS : 2-5 MICHAEL ST
 CITY : KITCHENER PROV: ON POSTAL CODE: N2G 1L7
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
 THE TORONTO-DOMINION BANK - 27642
 09 ADDRESS : 381 KING ST W 2ND FLOOR
 CITY : KITCHENER PROV: ON POSTAL CODE: N2G 1B8
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10 X X X X X X X
 YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

16 AGENT: D+H LIMITED PARTNERSHIP

17 ADDRESS : SUITE 200, 4126 NORLAND AVENUE

CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 02 INDUSTRIES INC.

FILE CURRENCY: July 12, 2021

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 3 ENQUIRY PAGE : 4 OF 5

SEARCH : BD : 02 INDUSTRIES INC.

00 FILE NUMBER : 771185313 EXPIRY DATE : 06APR 2024 STATUS :
 01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
 REG NUM : 20210406 0837 1590 8021 REG TYP: P PPSA REG PERIOD: 3
 02 IND DOB : IND NAME:
 03 BUS NAME: 02 INDUSTRIES INC.
 OCN :
 04 ADDRESS : 5 MICHAEL STREET
 CITY : KITCHENER PROV: ON POSTAL CODE: N2G 1L7
 05 IND DOB : IND NAME:
 06 BUS NAME:
 OCN :
 07 ADDRESS :
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
 KENSINGTON PRIVATE EQUITY FUND
 09 ADDRESS : 95 ST. CLAIR AVENUE WEST, SUITE 905
 CITY : TORONTO PROV: ON POSTAL CODE: M4V 1N6
 CONS. MV DATE OF OR NO FIXED
 GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
 10 X X X X X
 YEAR MAKE MODEL V.I.N.

11
 12

GENERAL COLLATERAL DESCRIPTION

13
 14
 15

16 AGENT: GOODMAN'S LLP (TH/MB)

17 ADDRESS : 3400-333 BAY STREET

CITY : TORONTO PROV: ON POSTAL CODE: M5H 2S7

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 02 INDUSTRIES INC.

FILE CURRENCY: July 12, 2021

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 3 OF 3 ENQUIRY PAGE : 5 OF 5

SEARCH : BD : O2 INDUSTRIES INC.

FILE NUMBER 771185313

PAGE TOT REGISTRATION NUM REG TYPE
 01 CAUTION : 001 OF 1 MV SCHED: 20210505 0911 1590 1165

21 REFERENCE FILE NUMBER : 771185313

22 AMEND PAGE: NO PAGE: X CHANGE: A AMNDMNT REN YEARS: CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: O2 INDUSTRIES INC.

25 OTHER CHANGE:

26 REASON: AMENDMENT TO CORRECT THE SPELLING OF THE SECURED PARTY'S NA

27 /DESCR:

28 :

02/05 IND/TRANSFEE:

03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:

CITY: PROV: POSTAL CODE:

29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

KENSINGTON PRIVATE EQUITY FUND

09 ADDRESS :

CITY :	PROV :	POSTAL CODE :						
CONS.	MV	DATE OF	NO FIXED					
GOODS	INVTRY	EQUIP	ACCTS	OTHER	INCL	AMOUNT	MATURITY OR	MAT DATE

10

11

12

13

14

15

16 NAME : GOODMANS LLP (JD/MB)

17 ADDRESS : 3400-333 BAY STREET

CITY : TORONTO PROV : ON POSTAL CODE : M5H 2S7

LAST SCREEN

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

APPENDIX G

**RSM Canada Limited as
Court Appointed Receiver of
O2 Industries Inc.**

**Interim Statement of Receipts and Disbursements
For the period May 27, 2021 to July 2, 2021**

	<i>In CDN\$</i>
Receipts	
Transfers from O2 Industries Inc.	\$ 116,039
Total receipts	<u>\$ 116,039</u>
Disbursements	
Legal Fees and disbursements	\$ 17,148
Miscellaneous	1,533
Receiver's fees	42,819
HST/PST paid	7,981
Total disbursements	<u>\$ 69,480</u>
Excess of Receipts over Disbursements	<u><u>\$ 46,559</u></u>

*This Appendix forms part of the Receiver's First Report dated July 14, 2021
and should only be read in conjunction therewith.*

APPENDIX H

O2 Industries Inc.

Cash Flow
For the period May 24, 2021 to July 2, 2021

	<i>in US\$</i>
Cash receipts	
Sales	\$ 40,270
Government Receipts (1)	84,243
Total receipts	<u>\$ 124,513</u>
Cash disbursements	
Consultants Fees	\$ 50,729
Insurance	9,223
Legal Fees and disbursements	5,040
Loan repayment	7,500
Other operating costs	15,387
Receiver's fees and expenses (2)	56,525
Payroll	119,990
Rent	20,178
Warehouse and shipping	19,070
Fx gain (loss)	5,180
Total disbursements	<u>\$ 308,822</u>
Net cash in / (out)	\$ (184,309)
Cash - opening balance	<u>331,511</u>
Cash - ending balance (3)	<u>\$ 147,202</u>

Notes

- (1) Government Receipts represents payments received under the Canada Emergency Rent Subsidy (CERS) and Canada Emergency Wage Subsidy (CEWS) programs.
- (2) This amount represents the fees and disbursements of the Receiver and its legal counsel, as described in greater detail on the Receiver's Interim Statement of Receipts and Disbursements.
- (3) The cash on hand includes funds held in the Receiver's post receivership accounts of US\$37,424 or CDN\$46,559.

*This Appendix forms part of the Receiver's First Report dated July 14, 2021
and should only be read in conjunction therewith.*

APPENDIX I

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

BETWEEN:

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

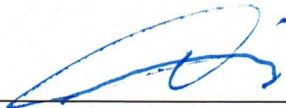
AFFIDAVIT OF BRYAN A. TANNENBAUM

(Sworn July 13, 2021)

I, **BRYAN A. TANNENBAUM**, of the City of Toronto, in the Province of Ontario,
MAKE OATH AND SAY:

1. I am President of RSM Canada Limited ("**RSM**") and as such I have personal knowledge of the matters to which I hereinafter depose, save and except those matters based upon information and belief, in which case I have stated the source of such facts, all of which I verily believe to be true.
2. Pursuant to an Order of the Ontario Superior Court of Justice dated May 27, 2021, RSM Canada Limited ("**RSM**" or the "**Receiver**") was appointed as receiver without security, of all of the assets, undertakings and properties of O2 Industries Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.
3. Attached hereto and marked as **Exhibit "A"** to this my affidavit are copies of invoices issued by RSM for fees and disbursements incurred by the Receiver in respect of these proceedings for the period May 10, 2021 to June 30, 2021 (the "**Period**"). The total fees charged for the Period are \$86,612.50 plus HST of \$11,259.63 for a total of \$97,872.13. The average hourly rate charged during the Period was \$482.52.

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF BRYAN A. TANNENBAUM
SWORN BEFORE ME THIS 13th DAY OF JULY, 2021



A Commissioner, etc.

Daniel Raphael Weisz,
a Commissioner, etc., Province of Ontario, for
RSM Canada LLP and RSM Canada Limited.
Expires February 4, 2024.



GST/HST: 80784 1440 RT 0001

192

RSM CANADA LIMITED
Licensed Insolvency Trustee
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
Court-appointed Receiver of
O2 Industries Inc.
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date June 14, 2021

Client File 8281376/10000

Invoice 1

No. 6371160

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver of O2 Industries Inc. ("O2") for the period ending May 31, 2021.

Date	Professional	Description
5/10/2021	Daniel Weisz	Review financial information provided; work on conflict check; discussion with A. Shiner; address CLEAR conflict check.
5/12/2021	Daniel Weisz	Review information from T. Thompson of HUB International Insurance Brokers ("HUB") re insurance and discussion with B. Wong re same; draft email to A. Shiner; discussion with H. Chaiton of Chaitons LLP.
5/13/2021	Daniel Weisz	Review email from T. Thompson and email to H. Chaiton re same.
5/14/2021	Bryan Tannenbaum	Call with H. Chaiton and D. Weisz regarding appointment and insurance issues.
5/14/2021	Daniel Weisz	Conference call with H. Chaiton and B. Wong re receivership considerations; clear conflicts re CLEAR; exchange emails with A. Shiner re insurance; preliminary review of insurance policies provided.
5/17/2021	Daniel Weisz	Conference call with B. Tannenbaum and B. Wong to discuss status; review emails received.
5/19/2021	Daniel Weisz	Review draft Sale Procedures and receivership order and discussion with B. Tannenbaum re same.
5/20/2021	Bryan Tannenbaum	Review draft revisions to the Sale Procedures and receivership order; conference call re same with B. Wong and D. Weisz; call with H. Chaiton, D. Weisz and B. Wong re sales process and order; review H. Chaiton's email to B. Wiffen of Goodmans LLP.
5/20/2021	Daniel Weisz	Prepare for and attend call with B. Tannenbaum and B. Wong to discuss draft documents; email to H. Chaiton re same; attend conference call with B. Tannenbaum, B. Wong and H. Chaiton; review email from H. Chaiton, discuss same with B. Wong and reply to H. Chaiton; email to A. Shiner and review response to same.

Date	Professional	Description
5/20/2021	Brenda Wong	Attend call with D. Weisz and B. Tannenbaum re draft documents; prepare teaser/information sheet; attend call with D. Weisz, B. Tannenbaum and H. Chaiton; emails with O. Cheung re prospective purchasers; review Chaitons email re Sale Procedures and Receiver's role; review email to Chaitons re insurance.
5/20/2021	Otto Cheung	Prepare target list.
5/21/2021	Daniel Weisz	Review draft stalking horse agreement of purchase and sale; exchange emails with B. Wong re insurance; discussion with B. Tannenbaum; conference call with A. Shiner and B. Tannenbaum; email to H. Chaiton; discussion with B. Wong re insurance status.
5/23/2021	Bryan Tannenbaum	Review D. Weisz email re newspaper ad to be approved in the Sale Procedures; review B. Wiffen email with draft Affidavit; email to H. Chaiton with comments on the sales process; review D. Weisz email re Affidavit; review D. Weisz email regarding H. Chaiton to advise B. Wiffen of our comments; review B. Wiffen email with security documentation; review B. Wiffen email regarding pre-filing report and H. Chaiton response to B. Wiffen; review H. Chaiton email to B. Wiffen re Order and scope of Receiver's powers, etc.
5/24/2021	Bryan Tannenbaum	Email from H. Chaiton re inventory sales and information from A. Shiner; response sent to H. Chaiton re same; review of B. Wong email with draft advertisement; telephone call with H. Chaiton to review the wording of the Sale Procedures, advertisement, Order, etc.; revise advertisement and send to B. Wong; email to B. Wong re pre-receivership report; review H. Chaiton email to B. Wiffen re comments on Sale Procedures; review of the Asset Purchase Agreement ("APA") wording and forward to H. Chaiton; review B. Wiffen email to H. Chaiton re updated draft of sale order, etc.; email from H. Chaiton re limited receivership order precedents; review B. Wiffen email to H. Chaiton with updated draft Sale Procedures; email draft newspaper ad to A. Shiner for company's review; receipt of company's revisions; review of H. Chaiton email with revised APA; email from H. Chaiton re APA for third party purchasers; various emails with D. Weisz and H. Chaiton; review revised draft Order from B. Wiffen.
5/24/2021	Brenda Wong	Prepare newspaper ad; review affidavit and stalking horse agreement; start preparing pre-filing report; review emails with Chaitons.
5/25/2021	Bryan Tannenbaum	Review B. Wiffen email with consent, sign and return; review B. Wiffen email attaching updated PPSA searches; telephone call with H. Chaiton with further comments on the APA; telephone call with B. Wong in preparation for the 10:30 call; email to H. Chaiton re accounts receivable; Zoom call with H. Chaiton, B. Wiffen, Kensington Private Equity representatives, J. Greenspan, A. Shiner to discuss finalization of documentation and organization, etc.; subsequent call with H. Chaiton and B. Wiffen to review wording of the APA, Order; call with H. Chaiton on the Sale Procedures; review of H. Chaiton email on revisions to the Sale Procedures; review B. Wiffen email with revised Affidavit; send to B. Wong; review B. Wiffen email with revised Order; review B. Wiffen email re Kensington security; review emails re insurance availability and respond to B. Wiffen and H. Chaiton; review B. Wiffen email re estimated fees post-closing; review H. Chaiton email re WEPPA costs; telephone call with B. Wong re pre-receivership report;

Date	Professional	Description
		review B. Wiffen email with the final revised sale procedures; email from B. Wong re WEPPA cost estimate for fees; review A. Shiner email with list of prospective purchasers; telephone call with H. Chaiton re revised APA received from B. Wiffen.
5/25/2021	Daniel Weisz	Review draft documents and provide comments.
5/25/2021	Brenda Wong	Prepare pre-filing report; review revised receivership order, APA and Sale Procedures; update teaser; conference call with Chaitons, Goodmans, company and RSM; send email to National Post to obtain quote; discussion with A. Shiner re information provided, marketing and employees, etc.
5/26/2021	Echa Odeh	Review of company websites and internet searches to obtain contact information for list of prospective purchasers provided by the company.
5/26/2021	Bryan Tannenbaum	Review B. Wong email to A. Shiner re retention details; review B. Wiffen email with draft Notice of Motion and Factum; review H. Chaiton comments on same to B. Wiffen; review B. Wong email with comments on Sale Procedures; email to H. Chaiton re same; various emails re last minute changes to the legal documentation; email with B. Wong re publication date for the newspaper ad; review revised APA from B. Wiffen; emails re US currency; Zoom call with O2 management to discuss process.
5/26/2021	Daniel Weisz	Review and update Proposed Receiver's report to court; discuss with H. Chaiton; review comments received and finalize the report; send to H. Chaiton.
5/26/2021	Brenda Wong	Review information provided by A. Shiner; review email from PostMedia re proof for ad; discussion with E. Odeh re Receiver's role and contact information for list of prospective purchasers; email to A. Shiner re additional information required; email to O. Cheung re prospective purchasers; draft disclaimer for data room; introductory call with O2 to discuss receivership; discussion with B. Tannenbaum re marketing materials; discussions and emails with E. Odeh re list of prospective purchasers.
5/26/2021	Otto Cheung	Prepare target list of prospective purchasers.
5/27/2021	Echa Odeh	Prepare letter to BMO Bank of Montreal ("BMO") to open two trust accounts for the receivership; set up data room; email and fax information sheet to potential purchasers; prepare draft Notice and Statement of Receiver ("245 Notice") and accompanying creditor listing.
5/27/2021	Bryan Tannenbaum	Various emails re marketing information sheet; review A. Shiner email re cash flow; review S. Lee-Scott email with information requested; attend Court for Approval of Appointment before Justice Conway; sign BMO documentation to open accounts; receipt and review of Justice Conway Endorsement and signed Order; attend call with employees; call with B. Wong afterwards; call with A. Shiner re call and status; review B. Wong email re call with J. Hunt; email from B. Wiffen re contracts; send response.
5/27/2021	Brenda Wong	Discuss various matters with J. Hunt including banking, cash flow, monitoring, payment processing etc.; email PostMedia re changes to newspaper ad and review revised proof; prepare introduction for Receiver's website; review letter to BMO to open accounts for receivership; review draft communications to prospective purchasers; attend conference call with employees; review emails from O2 with updated information; emails with J. Hunt re setting up access to

Date	Professional	Description
		O2's OLBB and banking and marketing reports; discuss changes to Confidentiality Agreement and disclaimer with H. Chaiton and send final documents to B. Tannenbaum; emails and discussion with E. Odeh re data room; review and follow up re retention bonuses; review and respond to miscellaneous emails.
5/28/2021	Brenda Wong	Send email to Chaitons and Goodmans re retention bonuses and review responses; review emails from Goodmans, Chaitons and B. Tannenbaum re execution of APA; download TD online statement and review activity for May 27; review email from A. Tourian re employee expense claim; exchange emails with S. Lee-Scott re WEPP eligibility and employee expense claims, employee cheques to be released, IT systems; review and respond to employee query re expense claim; emails with J. Hunt re supplier question re payment; email A. Shiner re cash flow and monitoring of cash; review retention bonus letter agreement.
5/28/2021	Bryan Tannenbaum	Emails with B. Wong, B. Wiffen and H. Chaiton re retention bonuses; review B. Wong email re TD banking arrangements; O2 daily huddle call re general status and review of previous day announcement; subsequent Zoom call with A. Tourian, A. Shiner and J. Greenspan re retention of 3 employees; receipt and review of the APA for signature; email as to who has authority to sign for Company, etc.; email from B. Wong re payments to suppliers and assurance for payment, etc.; responding email sent; various emails regarding signature for O2; email to R. Szasz requesting his signature; receipt of R. Szasz email with executed APA; send same to B. Wiffen for execution by the Buyer; review retention agreement from B. Wiffen; receipt of fully executed APA.
5/29/2021	Brenda Wong	Download bank statement for May 27 to 28 and check to cash flow.
5/29/2021	Brenda Wong	Review Sale Procedures re documents required to be posted in data room and company information to be posted to data room.
5/31/2021	Donna Nishimura	Prepare cheque requisition for payment to ESC Corporate Services re PPSA; prepare cheque requisition for payment to Promeric Technologies re Ascend license fee.
5/31/2021	Bryan Tannenbaum	Review B. Wong email to J. Hunt re information request and summary of action steps; review H. Chaiton email regarding additional language to the employee retention letter; review B. Wong response to same; review J. Hunt email with responses to information requested; review B. Wiffen email with responding comments on employee retention agreement; attend O2 daily huddle call; review A. Tourian email with comments on employee retention letter; review J. Greenspan email with comments re same; call with R. Szasz and A. Shiner re status and retention arrangements; review email from B. Wong re RSM prospective purchasers list to be ready tomorrow.
5/31/2021	Brenda Wong	Email J. Hunt re action items and additional information request and review response; make edits to retention letter and email to J. Greenspan and A. Tourian for comments and review responses; review and respond to creditor emails; review weekly sales flash; review TD US account activity; review draft S245 report and creditors list; review cash flow; review creditors list for information on warehouse providers; review data room set-up and emails with E. Odeh re same; emails with J. Hunt re creditors.

June 14, 2021
 Invoice 1
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Date	Professional	Description
5/31/2021	Echa Odeh	Make revisions to 245 Notice; prepare and upload documents to data room and send invites.
5/31/2021	Otto Cheung	Prepare list of prospective targets.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT	President	24.1	\$ 625	\$ 15,062.50
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	17.7	\$ 595	10,531.50
Otto Cheung	Director	4.5	\$ 485	2,182.50
Brenda Wong, CIRP, LIT	Senior Manager	27.0	\$ 485	13,095.00
Echa Odeh	Senior Associate	7.7	\$ 250	1,925.00
Donna Nishimura	Estate Administrator	0.2	\$ 110	22.00
Total hours and professional fees		<u>81.2</u>		\$ 42,818.50
HST @ 13%				5,566.41
Total payable				\$ 48,384.91

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.



GST/HST: 80784 1440 RT 0001

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RSM CANADA LIMITED
Licensed Insolvency Trustee
11 King St W, Suite 700, Box 27
Toronto, ON M5H 4C7

T +1 416 480 0160
F +1 416 480 2646

www.rsmcanada.com

To RSM Canada Limited
Court-appointed Receiver of
O2 Industries Inc.
11 King Street West, Suite 700
Toronto, ON M5H 4C7

Date July 6, 2021

Client File 8281376/10000

Invoice 2

No. 6390022

For professional services rendered with respect to the appointment of RSM Canada Limited as Court-appointed Receiver of O2 Industries Inc. ("O2") for the period ending June 30, 2021.

Date	Professional	Description
6/1/2021	Brenda Wong	Review cash flow and email to J. Hunt re projected expenses; email A. Trouian and J. Greenspan re draft retention letter and review response; respond to calls from two former employees with questions on the receivership process; attend O2 daily status update call; review and make updates to creditor notice ("S245 Notice") and creditors list, send to B. Tannenbaum and J. Greenspan for review; emails with S. Lee-Scott re employee claims and software; discussion with E. Odeh re Wage Earner Protection Program ("WEPP"); discuss with RSM Tax re company's eligibility for CEWS and CERS, email to J. Hunt re same; email to B. Tannenbaum re notice to warehouses; discuss with J. Greenspan re retention letter and retention of employee as consultant after termination.
6/1/2021	Echa Odeh	Update creditor listing and make changes to S245 Notice; discussion with RSM Tax regarding O2's eligibility for government subsidies.
6/1/2021	Bryan Tannenbaum	Attend O2 update call; discuss creditors notice with B. Wong re asset net book values.
6/2/2021	Brenda Wong	Review list of prospective purchasers received from O. Cheung and emails to E. Odeh and B. Tannenbaum re same; emails with J. Hunt re outstanding matters and EFT approvals; discuss with B. Tannenbaum retention letter; review post-receivership cash receipts; email to BMO Bank of Montreal ("BMO") re service charges debited to the Receiver's trust accounts; email to J. Hunt re Receiver's trust accounts and transfer of post-receivership receipts; attend O2 daily update call; review draft WEPP documentation and make edits, review WEPP packages and sign letters; review contacts for corporate finance target list; make arrangements for mailing of S245 Notice; discussion with B. Tannenbaum and J. Greenspan re retention letter; discuss with J. Hunt closing of O2's books and post-closing services.

Date	Professional	Description
6/2/2021	Donna Nishimura	Prepare labels for mailing of the S245 Notice.
6/2/2021	Bryan Tannenbaum	Review and sign the S245 Notice; telephone with B. Wong regarding the retention agreement; receipt and review of B. Wong email attaching prospective purchaser list from O. Cheung; call with J. Greenspan and B. Wong regarding retention arrangements; review B. Wiffen of Goodmans LLP email with comments on management retention agreement.
6/2/2021	Echa Odeh	Prepare WEPP mail merge and draft documents to employees; upload documents to data room; review of spreadsheet from O. Cheung and conduct searches to obtain missing contact information; email and fax marketing material to prospective purchasers; conduct online searches to obtain details for other prospective purchasers; update marketing tracking sheet.
6/2/2021	Otto Cheung	Prepare target list of prospective purchasers.
6/3/2021	Brenda Wong	Prepare notes of discussion with J. Hunt re tax returns, etc.; prepare and sign retention letters and send to J. Greenspan; send email to J. Hunt re transfer of cash receipts to Receiver's bank accounts; email J. Hunt re authorizing Canada Revenue Agency ("CRA") to speak to the Receiver and notices of assessment; answer questions of shareholder re receivership process.
6/3/2021	Bryan Tannenbaum	Review B. Wong email re shareholders; review J. Greenspan email re former employee's claim for outstanding wages, etc.
6/3/2021	Echa Odeh	Conduct online research to obtain details for prospective purchasers; update tracking spreadsheet details.
6/4/2021	Brenda Wong	Review demand letter against directors and exchange emails with B. Tannenbaum re same, send response to J. Greenspan; review email from Harvey Chaiton of Chaitons LLP ("Chaitons") re Sigma Worldwide LLC ("Sigma") correspondence; respond to email from creditor inquiring re payment; exchange emails with B. Tannenbaum re contacting liquidators and email to E. Odeh re same; email S245 Notice to counsel and O2; review and make changes to the Service List; review online bank statement.
6/4/2021	Bryan Tannenbaum	Review emails regarding claim of employee and D&O insurance, etc.; receipt and review of emails from directors responding to items in employee's claim; attend O2 update call with management as to status; email to B. Wong regarding correspondence to employee from the Receiver; telephone A. Shiner re status; email to B. Wong re seeking offers from liquidators.
6/4/2021	Echa Odeh	Fax S245 Notice to the Office of the Superintendent of Bankruptcy ("OSB") Hamilton and Toronto; conduct online searches to obtain contact details for prospective purchasers; update tracking spreadsheet; email and fax marketing material to prospective purchasers; update service list with PPSA creditors.
6/7/2021	Brenda Wong	Download online statements for O2's accounts held at the Toronto-Dominion Bank ("TD") and review activity in TD accounts; review and respond to emails from creditors; review emails re former employee's claim, emails to and call with employee re supporting documentation; exchange emails with J. Hunt re cash collections to June 4; email to J. Hunt re HST reporting during receivership; attend O2 daily status call; respond to emails from parties requesting a Confidentiality Agreement ("CA"), review and sign CA; respond to call from employee re WEPP and proof of claim; discussion with E. Odeh re prospective purchasers and email to B. Tannenbaum re same; review and

Date	Professional	Description
		respond to demand letter from Ministry of Economic Development; review email from J. Hunt re vacation pay and email and discussion with B. Tannenbaum re same; email to J. Greenspoon and R. Szasz re machinery and equipment in China and O2 tours; update tracking sheet.
6/7/2021	Bryan Tannenbaum	Attend update call; review several emails on employee's claim; call from B. Bosse re prospective purchaser and explanation of his company's background; emails with prospective purchasers; email re default letter from the Ministry of Economic Development.
6/7/2021	Echa Odeh	Draft ad for Insolvency Insider; email marketing information sheet ("teaser") to liquidators; prepare cover letters for mailing of teaser; update tracking sheet to track data room access; review of signed CA and provide access to the data room.
6/8/2021	Brenda Wong	Review and respond to emails from S. Lee-Scott re deletion of employee's personal files and patent application; emails with E. Odeh re granting access to data room; download TD online statements and review activity.
6/8/2021	Bryan Tannenbaum	Attend update call.
6/8/2021	Echa Odeh	Send invites to the data room to parties who signed the CA; respond to questions re watermark on information viewed in the data room.
6/9/2021	Brenda Wong	Review and respond to email from Sigma; review email from J. Hunt re email from Sigma and email to B. Tannenbaum re same; prepare draft affidavit and send to S. Lee-Scott; review and respond to S. Lee-Scott email re patents; respond to A. Shiner re data room; download and review TD online bank statements.
6/9/2021	Anne Baptiste	Prepare bank reconciliation.
6/9/2021	Bryan Tannenbaum	Review B. Wong email forwarding notice from U-Freight warehouse and provide comments; review B. Wong email to J. Hunt re same re confirmation to abandon inventory; review B. Wong email to S. Lee-Scott regarding patent response required; receipt and review of H. Chaiton email to B. Wiffen regarding correspondence from the Oregon lawyer for Terrazign Consulting Services; review S. Lee-Scott response on patent; attend update call; review of B. Wiffen reply to H. Chaiton; forward same to A. Shiner and J. Greenspan; email from prospective purchaser.
6/9/2021	Echa Odeh	Email employee regarding proof of claim form; phone call with the OSB regarding certificate of filing; complete Trustee Information Form for WEPP, complete Employment Information Form ("EIF") for employees and email EIF to employees; email and phone call with employee regarding WEPP.
6/10/2021	Brenda Wong	Download and review O2 cash flow; review and make final edits to affidavit re employee personal files; review responses to teasers; review O2 email re updated asset list and arrange for posting to data room; review emails and calculation re vacation pay owed to former employee; attend O2 status call; review J. Hunt email re payments to be processed today, email re A. Tourian approval of same and approve payments online; review email from prospective purchaser, send CA and review and sign back CA; receive calls from TD re status of O2's accounts and receivership; approve EFT payments again on line; email employee re company's calculation of vacation pay owed to him.

Date	Professional	Description
6/10/2021	Bryan Tannenbaum	Review email from A. Shiner re data room and B. Wong response re same; review email from B. Wong re teaser and follow up; review B. Wong email re TD freezing O2's account.
6/10/2021	Echa Odeh	Phone calls to potential purchasers to follow up on receipt of teaser; re-send teaser by email; email CA to potential purchasers; email proof of claim form to employee.
6/11/2021	Brenda Wong	Download TD online statements, review transactions and confirm EFTs and wire transfers have been processed; review and respond to emails from S. Lee-Scott re creditors; review email from E. Odeh re employee claiming outstanding wages and discussion with E. Odeh re same; review email from J. Hunt re employment status after closing; review email from supplier re payment for ongoing services and email to J. Hunt re same; review email from supplier re leased equipment and forward to the company; respond to creditor email.
6/11/2021	Bryan Tannenbaum	Review H. Chaiton email attaching Sigma claim and providing amount.
6/11/2021	Echa Odeh	Phone calls to potential purchasers to follow up on receipt of teaser; re-send marketing material by email; email CA to potential purchasers; provide access to the data room.
6/14/2021	Brenda Wong	Review and respond to emails from prospective purchasers; download and review TD online bank statements; email to U-Freight re receivership and stay; review email from J. Greenspan re Toshiba equipment and email to OE Canada re same; review email re former employee wage claim and forward to S. Lee-Scott; review invoices for payment and send copies to J. Hunt; review and respond to letter from creditor; review updated cash flow; review summary of cash receipts to be transferred; respond to J. Hunt re payment of wages owed to former employee; prepare summary of Receiver's fees and expenses and forward summary and supporting invoices to J. Hunt; review and respond to email from S. Lee-Scott re monthly IT costs.
6/14/2021	Donna Nishimura	Prepare cheque requisition for payment of OSB filing fee and prepare OSB Remittance form.
6/14/2021	Bryan Tannenbaum	Review R. Szasz email regarding an offer by former employee; review email from S. Scott-Lee re IT services.
6/14/2021	Echa Odeh	Provide access to the data room and update tracking spreadsheet; review of information provided by employee; fax to CRA the signed authorization form for CRA to speak to the Receiver on O2's accounts.
6/14/2021	Anne Baptiste	Post disbursements.
6/15/2021	Bryan Tannenbaum	Review B. Wong email attaching data room activity report; review email request from prospective purchaser for additional information; attend update call; subsequent call with B. Wong re director's liabilities and arrange prospective purchaser call; review email from B. Wong with prospective purchaser's requests for additional information; review of B. Wong email from prospective purchaser regarding an offer for a specific asset; email from B. Wong with director's names; review S. Lee-Scott email with details of former employee's claim.
6/15/2021	Echa Odeh	Phone call with employee regarding proof of claim; phone call with Service Canada regarding the date of the Receiver's appointment; send invitation to

Date	Professional	Description
		the data room; print reports from data room; review of employee proof of claim and file EIF and email copy of EIF to employee.
6/15/2021	Brenda Wong	Download TD online statements and review activity; email to J. Greenspan re sign back of retention letters, review letters returned and respond to J. Greenspan re corrections required; review and sign back CA from prospective purchaser; call with prospective purchaser re additional questions; review email from prospective purchaser re additional information request and forward to O2; attend O2 update call; review email from prospective purchaser and forward to O2; call from prospective purchaser re sales process and additional information request; review funding requirements for Receiver's expenses and emails with J. Hunt re same; approve EFT transfer of funds to Receiver's trust accounts; prepare draft independent contractor agreement; respond to creditor email; call from CRA re trust exam and email to J. Hunt re same.
6/15/2021	Anne Baptiste	Post receipts.
6/16/2021	Brenda Wong	Review proofs of claim received; review email from prospective purchaser and forward to B. Tannenbaum for comments, forward to J. Greenspan and A. Shiner for comments and review response and discuss with A. Shiner; send email to prospective purchaser re their requests for additional information; review O2 calculation re payroll owed to former employee; review O2 email re payment to creditor; emails with Chaitons re contractor agreement; arrange for transfer of USD funds to CAD account; attend call with B. Tannenbaum and prospective purchaser and prepare summary of discussion; call from employee re status of his claim.
6/16/2021	Bryan Tannenbaum	Review B. Wong email regarding contractor letter and provide comments; review and respond to email from B. Wong re email from prospective purchaser; review J. Greenspan comments regarding prospective purchaser's requests; review and respond to B. Wong email regarding O2 payment of the patent lawyer's invoice; review email from B. Wong to prospective purchaser suggesting they submit conditional offer; conference call with B. Wong and prospective purchaser.
6/17/2021	Echa Odeh	Discussion with B. Wong regarding employee claims; review of employee claims; reconcile employee claim with company information provided; file EIF with Service Canada and email EIF to employee; phone calls with employee regarding their claim and company property to be returned.
6/17/2021	Brenda Wong	Discuss with B. Tannenbaum various outstanding matters; respond to email from prospective purchaser re due diligence materials; emails with S. Lee-Scott re employee vacation pay and return of laptop; discussion with E. Odeh re employee proofs of claim; prepare letter to Sigma re O2 property in its possession; review BMO online statement to confirm EFT transfer received and available cash; download and review TD online statements.
6/17/2021	Bryan Tannenbaum	Telephone call from B. Wong re Sigma, vacation pay liabilities and prospective purchaser's response.
6/17/2021	Anne Baptiste	Post receipts.

Date	Professional	Description
6/18/2021	Brenda Wong	Review O2 information re P. Maric pay and E. Odeh calculation re pay owed; email to S. Lee-Scott re vacation pay paid to P. Maric and update calculation wages owed.
6/18/2021	Daniel Weisz	Process electronic payments.
6/18/2021	Bryan Tannenbaum	Attend Huddle meeting; review various emails on vacation pay information; email from S. Scott-Lee re payment for IT services.
6/21/2021	Anne Baptiste	Post disbursements.
6/21/2021	Brenda Wong	Review proof of claim filed by former employee and email to S. Lee-Scott re same; respond to request for CA, review and sign same; download BMO statement and send to J. Hunt with cheque register; return call from Collection Agent; review email from A. Trouian re employee expense claim and send response; download and review TD online statements; review email from creditor; review returned mail and forward to E. Odeh to contact employee.
6/21/2021	Bryan Tannenbaum	Inquiry from prospective purchaser and request for a CA.
6/21/2021	Echa Odeh	Emails with B. Wong regarding employee claim; draft response to employee regarding their claim; send invitation to the data room; resend WEPP package to employee via email.
6/22/2021	Brenda Wong	Review email from J. Hunt re funds to be transferred to the Receiver's trust accounts this week; download and review cash flow; review O2 draft letter to employee re expense claims; emails with former employee re vacation pay claim and follow up with O2 re same and send response; attend O2 update call; review S. Lee-Scott email re pay owing to former employee and discussion with S. Lee-Scott re same and vacation policy re holiday shutdown; respond to creditor email; respond to call from supplier re continuing service; review and revise draft response to employee re their proof of claim; send email to employee re calculation of claim for wages owing.
6/22/2021	Bryan Tannenbaum	Review E. Odeh email regarding WEPP claim for expenses; attend Huddle call; review prospective purchaser's email with verification of financial ability to complete sale; attend Google meeting with A. Shiner, J. Greenspan and B. Wong to discuss response to prospective purchaser; call to discuss same; review email from J. Greenspan re prospective purchaser to contact lender directly; send introductory email to lender and prospective purchaser.
6/22/2021	Echa Odeh	Review WEPP payment letters and update tracking spreadsheet; send email response to employee.
6/23/2021	Brenda Wong	Respond to email from prospective purchaser; review email from J. Hunt re EFT payments this week, follow up re supporting invoices and approve EFT.
6/23/2021	Bryan Tannenbaum	Review prospective purchasers list re data room activity.
6/23/2021	Echa Odeh	Obtain and send data room activity reports to B. Wong and B. Tannenbaum.
6/24/2021	Brenda Wong	Review and respond to email from J. Greenspan re employee expense claim; download and review TD online statements; review message from creditor and follow up with J. Hunt re same; email J. Hunt re email/call from creditor and review response; email J. Hunt and A. Trouian re updating the cash flow; send follow-up emails to employees to request support for vacation pay claims, review responses; approve payment to creditor; review and sign back CA; discussion with J. Greenspan re employee WEPP claim; review employee

Date	Professional	Description
		expense reports and prepare updated proof of claim and summary of claim and send to O2 and B. Tannenbaum for review.
6/24/2021	Bryan Tannenbaum	Review emails regarding employee claim for outstanding expenses; review B. Wong email to J. Hunt regarding revised cash flow; review email from J. Greenspan regarding letter to former employee; call with B. Wong to discuss employee email and dispute, etc.
6/24/2021	Echa Odeh	Send invitation to the data room.
6/25/2021	Brenda Wong	Review email from former CEO re exception granted to employees re vacation days; review and respond to email from B. Tannenbaum re mutual release to be sought from employee; review emails re employee vacation calculation and email to S. Lee-Scott re same; prepare draft report to Court.
6/25/2021	Bryan Tannenbaum	Attend Huddle call; email to B. Wong regarding decision on former employee's expense claim.
6/28/2021	Brenda Wong	Email H. Chaiton re question on employee claim and obtaining a release; review cash flow projections, discuss cash flow with J. Hunt and make edits and send to J. Hunt to review; review email from prospective purchaser and forward to J. Greenspan, discussion with J. Greenspan re information request and follow up with J. Hunt and S. Lee-Scott re information requested, and emails with A. Shiner re the same; update calculation re employee vacation claim and send to J. Greenspan; continue drafting Receiver's report.
6/28/2021	Echa Odeh	Collate data site activity reports and prepare list of top 3 visitors to the site.
6/28/2021	Bryan Tannenbaum	Receipt and review of B. Wong email to J. Greenspan with additional questions from prospective purchaser; review J. Greenspan responses; review B. Wong email with responses; review UFC agreement; review E. Odeh email re data room visitors; review B. Wong email re proof of financing by prospective purchaser; review B. Wong email regarding employee vacation pay calculation; review A. Shiner email with responses to prospective purchaser's questions; review B. Wong email to A. Shiner and J. Greenspan with comments on request for security documents referenced in stalking horse agreement and consent for assignment of contracts, etc.; response sent re same; response from A. Shiner with his comments and agreement to my email; review B. Wong email to J. Hunt with draft cash flow; review of B. Wong email to J. Hunt re Snap Pea Design royalty claim and J. Hunt response.
6/29/2021	Anne Baptiste	Post receipt.
6/29/2021	Brenda Wong	Prepare draft report to the Court; prepare draft email to Kensington re Receiver's funding request; discussion with B. Tannenbaum re changes to the cash flow; attend O2 update meeting; email J. Greenspan and A. Shiner draft email to lender re funding; approve EFT transfer; discuss with B. Tannenbaum and H. Chaiton re employee claim and email to and discussion with J. Greenspan re proposed action; respond to email from Snap Pea Design; draft response to employee re expense claim.
6/29/2021	Bryan Tannenbaum	Review B. Wong email with cash flow projections and fee estimates, etc.; discuss with B. Wong; attend Huddle call; call with H. Chaiton and B. Wong regarding release for employee, etc.; telephone call from L. Kresge representing Expeditors warehouse regarding status.

July 6, 2021
 Invoice 2
 Page 8

Date	Professional	Description
6/30/2021	Brenda Wong	Email O2 re draft response to employee re expense claim; emails with J. Greenspan re review of funding request and cash flow; email S. Lee-Scott re termination pay owed to current employees; download and review TD online statements; respond to prospective purchaser re accrued severance; review changes to forecast from May 31 forecast.
6/30/2021	Bryan Tannenbaum	Review emails on employee expense claim; review emails regarding Expeditors; review J. Greenspan email with comments on the projections and funding and noting original amount.
		To all other administrative matters with respect to this engagement, including supervision, all meetings, telephone attendances, and written and verbal correspondence to facilitate the foregoing.

FEE SUMMARY

Professional	Level	Hours	Rate	Fees
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT	President	18.7	\$ 625	\$ 11,687.50
Daniel R. Weisz, CPA, CA, CFF, CIRP, LIT	Senior Vice President	0.2	\$ 595	119.00
Otto Cheung	Director	3.5	\$ 485	1,697.50
Brenda Wong, CIRP, LIT	Senior Manager	49.4	\$ 485	23,959.00
Echa Odeh	Senior Associate	24.4	\$ 250	6,100.00
Anne Baptiste/Donna Nishimura	Estate Administrator	2.1	\$ 110	231.00
Total hours and professional fees		98.3		\$ 43,794.00
HST @ 13%				5,693.22
Total payable				\$ 49,487.22

VISA/MASTERCARD

Payments can be made by calling the Accounts Receivable Department at 647.726.0483.

WIRE PAYMENT DETAILS

Please contact Donna Nishimura at 647.727.3552 for wire instructions.

**THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF BRYAN A. TANNENBAUM
SWORN BEFORE ME THIS 13th DAY OF JULY, 2021**



A Commissioner, etc.

Daniel Raphael Weisz,
a Commissioner, etc., Province of Ontario, for
RSM Canada LLP and RSM Canada Limited.
Expires February 4, 2024.

In the Matter of the Receivership of
O2 Industries Inc.
Summary of Receiver's Fees
For the Period ending June 30, 2021

Invoice #	Invoice Date	Period	Hours	Fees	HST	Total	Average Hourly Rate
1	14-Jun-21	May 10, 2021 to May 31, 2021	81.2	\$ 42,818.50	\$ 5,566.41	\$ 48,384.91	\$ 527.32
2	6-Jul-21	June 1, 2021 to June 30, 2021	98.3	43,794.00	5,693.22	49,487.22	445.51
Total			179.5	\$ 86,612.50	\$ 11,259.63	\$ 97,872.13	\$ 482.52

KENSINGTON PRIVATE EQUITY FUND
Applicant

-and-

O2 INDUSTRIES INC
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF BRYAN A. TANNENBAUM

RSM CANADA LIMITED

Licensed Insolvency Trustee
11 King Street West, Suite 700, Box 27
Toronto, ON M5H 4C7
Tel: 416-480-0160
Fax: 416-480-2646

Bryan A. Tannenbaum, Lic # 1388

Tel: 416-238-5055

bryan.tannenbaum@rsmcanada.com

Court-appointed Receiver of O2 Industries Inc.
and not in its personal capacity

APPENDIX J

Court File No. CV-21-00663208-00CL

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

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

**AFFIDAVIT OF MAYA POLIAK
(sworn July 14, 2021)**

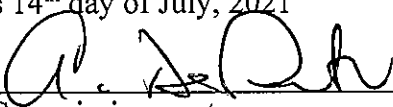
I, **MAYA POLIAK**, of the City of Toronto, in the Province of Ontario **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Chaitons LLP (“**Chaitons**”), lawyers for RSM Canada Limited, in its capacity as Court-appointed receiver (the “**Receiver**”) of the property, assets and undertakings of O2 Industries Inc., and as such have knowledge of the matters to which I hereinafter depose.

2. Attached hereto and marked as **Exhibit “A”** is a copy of the account issued by Chaitons totalling \$19,376.68 (comprised of fees of \$17,147.50 and HST of \$2,229.18) with respect to this proceeding:

3. I confirm that the account described above accurately reflects the services provided by Chaitons in this matter and the fees and disbursements claimed by it from May 12, 2021 to May 28, 2021.

4. Attached hereto as **Exhibit "B"** is a summary of additional information with respect to Chaitons' account, indicating all members of Chaitons who have worked on this matter, their year of call to the bar, total time charged and hourly rates, and I hereby confirm that this list represents an accurate account of such information.

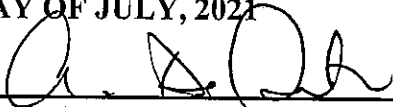
SWORN before me at the City)
of Toronto, Province of Ontario,)
this 14th day of July, 2021)
)
A Commissioner, etc.)



MAYA POLIAK

Antoinette DePinto, a Commissioner, etc.,
Province of Ontario, for Chaitons LLP,
Barristers and Solicitors.
Expires November 23, 2023.

**THIS IS EXHIBIT "A" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 14th
DAY OF JULY, 2021**

A handwritten signature in black ink, appearing to be 'A. A. Q.', written over a horizontal line.

A Commissioner Etc.

Chaitons^{LLP}

INVOICE NUMBER: 281039

May 31, 2021

RSM CANADA LIMITED
11 KING STREET WEST, SUITE 700
TORONTO, ON M5H 4C7

Re: O2 Industries Inc.
Our file: 006998-67857

FOR PROFESSIONAL SERVICES RENDERED on this matter up to and including May 31, 2021:

PROFESSIONAL FEES

SUBJECT TO HST	\$17,147.50	
SUB-TOTAL		\$17,147.50
HST at 13.00%		\$2,229.18

GRAND TOTAL		\$19,376.68
--------------------	--	--------------------

Amount payable on the current invoice	\$19,376.68
Plus outstanding invoices on this matter	\$0.00
Amount Due	<u>\$19,376.68</u>
Trust Balance	

HST No R124110933

INVOICE NUMBER: 281039

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

PROFESSIONAL FEES:

- May 12, 21 Telephone calls with D. Weisz and with B. Wiffen;
- May 14, 21 Telephone call with B. Tannenbaum and D. Weisz re Insurance and form of Appointment Order; emails with B. Wiffen;
- May 20, 21 Review draft order and sale procedures; telephone call with RSM team; telephone call with and email to B. Wiffen providing general comments;
- May 23, 21 Review draft affidavit and sale procedures; telephone call with B. Tannenbaum;
- May 23, 21 Corresponding with S. Rappos regarding Asset Purchase Agreement;
- May 24, 21 Review revised sale procedures; review draft APA and order; review draft advertisement; telephone call with B. Tannenbaum; emails with D. Weisz; email from S. Rappos re comments on APA; telephone conference call with S. Rappos and S. Tanvir re APA; review revised APA; emails and telephone call with B. Wiffen;
- May 24, 21 Reviewed drat sale agreement; discussed matters with H. Chaiton and S. Tanvir; reviewed and drafted e-mails regarding sale agreement;
- May 24, 21 Conference call with H. Chaiton and S. Rappos regarding Asset Purchase Agreement, revising Asset Purchase Agreement;
- May 25, 21 Review revised court materials; telephone call with B. Tannenbaum; participate in telephone conference call with Kensington team and their lawyers and RSM team; telephone conference call with B. Tannenbaum and B. Wiffen re sale procedures and order; review revised affidavit;
- May 25, 21 Reviewed security documents and drafted security review opinion;
- May 26, 21 Various telephone calls with RSM and with B. Wiffen to revise draft sale procedures, APA and order; review draft security opinion; telephone call with S. Rappos to discuss opinion; telephone calls with D. Weisz to review and revise draft pre-filing report;
- May 26, 21 Continued to draft opinion; discussed matters with H. Chaiton and P. Taylor;

Chaitons^{LLP}

3.

- May 27, 21 Prepare for and attend on application for appointment of RSM as receiver; review draft NDA and Disclaimer; telephone call with B. Wong providing comments;
- May 28, 21 Emails re retention bonuses and execution of APA, including telephone call with B. Tannenbaum;
- To all matters of a general nature not more particularly referred to herein;

TOTAL PROFESSIONAL FEES
HST at 13.00%

\$17,147.50
2,229.18

GRAND TOTAL

\$19,376.68

CHAITONS LLP



per: _____

Harvey Chaiton

HST No R124110933

INVOICE NUMBER: 281039

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

LAWYERS' SUMMARY:

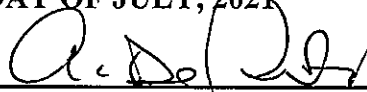
Lawyers and legal assistants involved	Hourly Rate	Hours Billed	Total Billed
HARVEY G. CHAITON	\$750.00	17.50	\$13,125.00
SAM RAPPOS	\$575.00	5.30	\$3,047.50
SANEEA TANVIR	\$325.00	3.00	\$975.00
Total:		25.80	\$17,147.50

HST No R124110933

INVOICE NUMBER: 281039

E. & O.E. Payment due on receipt of the account. In Accordance with the Solicitor's Act, interest will be charged on any unpaid balance at the rate of 0.5% per annum commencing one month after delivery of this account.

**THIS IS EXHIBIT "B" TO
THE AFFIDAVIT OF MAYA POLIAK
SWORN BEFORE ME THIS 14th
DAY OF JULY, 2021**



A Commissioner Etc.

SUMMARY

Lawyer	Year of Call	Hours Billed	Hourly Rate	Amount Billed
Harvey Chaiton	1982	17.50	\$750	\$13,125.00
Sam Rappos	2005	5.30	\$575	\$3,047.50
Saneea Tanvir	2019	3.00	\$325	\$975.00
Total Hours and Amounts Billed		25.80		\$17,147.50
Average Hourly Rate			\$\$664.63	
Total Disbursements				\$Nil
Total Taxes (HST)				\$2,229.18
TOTAL				\$19,376.68

TAB 3

Court File No. CV-21-00663208-00CL

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

THE HONOURABLE MR.)	FRIDAY, THE 23 rd DAY	
)		
JUSTICE KOEHNEN)	OF JULY, 2021	

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver (the “**Receiver**”), of the undertaking, property, and assets of O2 Industries Inc. (the “**Debtor**”), for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement among the Receiver, the Debtor and 2841551 Ontario Limited (“**2841551**”) made as of May 28, 2021 (the “**Asset Purchase Agreement**”) and appended to the first report of the Receiver dated July 14, 2021 (the “**First Report**”), and vesting in 2841551 or

such other person(s) as 2841551 may designate in accordance with the Asset Purchase Agreement (the “**Purchaser**”) the right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets (as defined in the Asset Purchase Agreement), was heard this day virtually by Zoom videoconference due to the COVID-19 crisis.

ON READING the First Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver and the Applicant, no one else appearing for any other person on the service list, although properly served as evidenced by the affidavit of service filed with the Court,

1. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined in this Order shall have the meanings ascribed to them in the Asset Purchase Agreement.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Asset Purchase Agreement by the Receiver and the Debtor is hereby authorized and approved, with such minor amendments as the Receiver and the Purchaser agree. The Receiver and the Debtor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule “A”** hereto (the “**Receiver’s Certificate**”), all of the right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, constructive or otherwise),

liens, executions, levies, charges, causes of action, or other financial or monetary claims (including all Excluded Liabilities), whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order of The Honourable Madam Justice Conway dated May 27, 2021 or any other Order of the Court in these proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”). For greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that (a) following completion of the Transaction, the Receiver or the Debtor are hereby authorized and permitted to execute and file articles of amendment or

such other documents or instruments as may be required to change the legal name of the Debtor, and such articles, documents or instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the Ontario Ministry of Government Services or other official without the requirement (if any) of obtaining director, shareholder or other approval pursuant to any federal or provincial legislation, and (b) upon the official change of the legal name of the Debtor, the name of the Debtor in the within title of proceedings shall be deleted and replaced with the new legal name of the Debtor, and any document filed thereafter in these proceedings (other than the Receiver's Certificate) shall be filed using such revised title of proceedings.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other jurisdiction to give effect to this Order and to assist the Receiver and the Debtor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and 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 Debtor and the Receiver and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-21-00663208-00CL

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

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 27, 2021, RSM Canada Limited was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of O2 Industries Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated July 23, 2021 (the “**Order**”), the Court approved the asset purchase agreement made as of May 28, 2021 (the “**Asset Purchase Agreement**”) among the Receiver, the Debtor and 2841551 Ontario Limited (“**2841551**”), and provided for the vesting in 2841551 or such other person(s) as it may designate in accordance with the Asset

Purchase Agreement (the “**Purchaser**”) of the right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has satisfied the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in sections 7.1, 7.2 and 7.3 of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____, 2021.

**RSM CANADA LIMITED,
in its capacity as Receiver of the undertaking,
property and assets of O2 Industries Inc., and
not in its personal capacity**

Per: _____
Name:
Title:

KENSINGTON PRIVATE EQUITY FUND

Applicant

225

- and -

O2 INDUSTRIES INC.

Respondent

Court File No. CV-21-00663208-00CL

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Sam Rappos (LSO #51399S)
Tel: (416) 218-1137
E-mail: samr@chaitons.com

**Lawyers for RSM Canada Limited,
Court-appointed Receiver**

TAB 4

Revised: January 21, 2014

Court File No. — CV-21-00663208-00CL

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

THE HONOURABLE MR. _____) FRIDAY, THE 23rd DAY
_____)
JUSTICE KOEHNEN) OF JULY, 2021

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

THE HONOURABLE _____) WEEKDAY, THE #
_____)
JUSTICE _____) DAY OF MONTH, 20YR

BETWEEN:

PLAINTIFF

Plaintiff

- and -

DEFENDANT

Defendant

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT.**

R.S.O. 1990, C. C-43, AS AMENDED**APPROVAL AND VESTING ORDER**

THIS MOTION, made by ~~[RECEIVER'S NAME]~~ RSM Canada Limited, in its capacity as the Court-appointed receiver (the "**Receiver**"), of the undertaking, property, and assets of ~~[DEBTOR]~~ O2 Industries Inc. (the "**Debtor**"), for an order approving the sale transaction (the "**Transaction**") contemplated by an asset purchase agreement of purchase and sale among the Receiver, the Debtor and 2841551 Ontario Limited ("2841551") made as of May 28, 2021 (the "Sale" "Asset Purchase Agreement") between the Receiver and ~~[NAME OF PURCHASER]~~ (the "**Purchaser**") dated ~~[DATE]~~ and appended to the Report first report of the Receiver dated ~~[DATE]~~ July 14, 2021 (the "First Report"), and vesting in ~~the 2841551 or such other person(s) as 2841551 may designate in accordance with the Asset Purchase Agreement (the "Purchaser")~~ the Debtor's right, title and interest of the Debtor and the Receiver, if any, in and to the assets described in the Sale Agreement (the "Purchased Assets" (as defined in the Asset Purchase Agreement), was heard this day at ~~330 University Avenue, Toronto, Ontario~~ virtually by Zoom videoconference due to the COVID-19 crisis.

ON READING the First Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ and the Applicant, no one else appearing for any other person on the service list, although properly served as ~~appears from~~ evidenced by the affidavit of ~~[NAME]~~ sworn ~~[DATE]~~ service filed¹ with the Court.

¹ This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

1. ~~THIS COURT ORDERS AND DECLARES~~ that capitalized terms used and not otherwise defined in this Order shall have the meanings ascribed to them in the Asset Purchase Agreement.

2. ~~THIS COURT ORDERS AND DECLARES~~ that the Transaction is hereby approved,² and the execution of the ~~Sale~~Asset Purchase Agreement by the Receiver¹ and the Debtor is hereby authorized and approved, with such minor amendments as the Receiver ~~may deem necessary~~and the Purchaser agree. The Receiver ~~is~~and the Debtor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2-~~THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), all of the ~~Debtor's~~ right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets ~~described in the Sale Agreement~~ and listed on Schedule B hereto⁴ shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, constructive or otherwise), liens, executions, levies, charges, causes of action, or other financial or monetary claims (including all Excluded

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

⁴ To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

Liabilities), whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order of the Honourable Madam Justice [NAME] Conway dated [DATE] May 27, 2021 or any other Order of the Court in these proceedings; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) ~~those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances" which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for~~ For greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

~~3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of (LOCATION)] of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver[[Land Titles Division of (LOCATION)] of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act]⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.~~

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that (a) following completion of the Transaction, the Receiver or the Debtor are hereby authorized and permitted to execute and file articles of amendment or such other documents or instruments as may be required to change the legal name of the Debtor, and such articles, documents or instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the Ontario Ministry of Government Services or other official without the requirement (if any) of obtaining director, shareholder or other approval pursuant to any federal or provincial legislation, and (b) upon the official change of the legal name of the Debtor, the name of the Debtor in the within title of proceedings shall be deleted and replaced with the new legal name of the Debtor, and any document filed thereafter in these proceedings (other than the Receiver's Certificate) shall be filed using such revised title of proceedings.

⁷The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

7. ~~6.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the ~~Company~~ Debtor's records pertaining to the Debtor's past and current employees, including personal information of those employees ~~listed on Schedule "A" to the Sale Agreement~~. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the ~~*Bankruptcy and Insolvency Act* (Canada)~~ **BIA** or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

9. **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 or any other jurisdiction to give effect to this Order and to assist the Receiver and ~~its~~ the Debtor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and 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 Debtor and the Receiver and its their respective agents in carrying out the terms of this Order.

10. THIS COURT ORDERS that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing, as the case may be.

Schedule A – Form of Receiver’s Certificate

Court File No. _____ CY-21-00663208-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE,
(COMMERCIAL LIST)

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

~~BETWEEN:~~

~~PLAINTIFF~~

Plaintiff

- and -

~~DEFENDANT~~

Defendant

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990, C. C-43, AS AMENDED**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated ~~[DATE OF ORDER]~~, ~~[NAME OF~~

~~RECEIVER~~ May 27, 2021, RSM Canada Limited was appointed as the receiver (the "~~Receiver~~") of the undertaking, property and assets of ~~{DEBTOR}~~ O2 Industries Inc. (the "~~Debtor~~").

B. Pursuant to an Order of the Court dated ~~{DATE}~~ July 23, 2021 (the "~~Order~~"), the Court approved the ~~asset purchase agreement of purchase and sale made as of {DATE OF AGREEMENT}~~ May 28, 2021 (the "~~Sale~~" Asset Purchase Agreement") ~~between~~ among the Receiver ~~-, the Debtor~~ and ~~{NAME OF PURCHASER}~~ (the "~~Purchaser~~" 2841551 Ontario Limited ("2841551")), and provided for the vesting in ~~the 2841551 or such other person(s) as it may designate in accordance with the Asset Purchase Agreement (the "Purchaser")~~ of the Debtor's right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in ~~section~~ of the Sale Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has ~~paid and the Receiver has received~~ satisfied the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Asset Purchase Agreement;
2. The conditions to Closing as set out in ~~section~~ sections 7.1, 7.2 and 7.3 of the Sale Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and

3. The Transaction has been completed to the satisfaction of the Receiver.

4. This Certificate was delivered by the Receiver at _____ [TIME] on _____
{DATE} _____, 2021.

{NAME OF RECEIVER} RSM CANADA
LIMITED,
in its capacity as Receiver of the undertaking,
property and assets of {DEBTOR} Q2
Industries Inc., and not in its personal
capacity

Per: _____
Name:
Title:

KENSINGTON PRIVATE EQUITY FUND
Applicant

Revised: January 21, 2014
- and -

OZ INDUSTRIES INC.
Respondent

Court File No. CV-21-00663208-00CL

~~Schedule B - Purchased Assets~~

~~Schedule C - Claims to be deleted and expunged from title to Real Property~~

Schedule D - Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)

<p><i>ONTARIO</i> SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceedings commenced at Toronto</p>	
<p>APPROVAL AND VESTING ORDER</p>	
<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Sam Rappos (LSO #51399S) Tel: (416) 218-1137 E-mail: samr@chaitons.com</p> <p>Lawyers for RSM Canada Limited, Court-appointed Receiver</p>	

Document comparison by Workshare Compare on Wednesday, July 14, 2021 4:28:59 PM

Input:	
Document 1 ID	file://C:\Users\SamR\OneDrive - Chaitons LLP\Precedents\approval-and-vesting-order-EN.doc
Description	approval-and-vesting-order-EN
Document 2 ID	PowerDocs://DOCS/5152026/3
Description	DOCS-#5152026-v3-RSM/O2_-_AVO_dated_July_23_2021
Rendering set	Standard

Legend:
<u>In</u> sertion
De letion
Moved from
Moved to
Style change
Format change
Moved deletion
Inserted cell
Deleted cell
Moved cell
Split/Merged cell
Padding cell

Statistics:

	Count
Insertions	158
Deletions	138
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	296

TAB 5

Court File No. CV-21-00663208-00CL

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

THE HONOURABLE MR.)	FRIDAY, THE 23 rd DAY	
)		
JUSTICE KOEHNEN)	OF JULY, 2021	

BETWEEN

KENSINGTON PRIVATE EQUITY FUND

Applicant

- and -

O2 INDUSTRIES INC.

Respondent

**IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990, C. C-43, AS AMENDED**

ORDER

THIS MOTION, made by RSM Canada Limited, in its capacity as the Court-appointed receiver (the “**Receiver**”), of the undertaking, property, and assets of O2 Industries Inc., was heard this day virtually by Zoom videoconference due to the COVID-19 crisis.

ON READING the first report of the Receiver dated July 14, 2021 (the “**First Report**”) and the appendices thereto, and on hearing the submissions of counsel for the Receiver and the

Applicant, no one else appearing for any other person on the service list, although properly served as evidenced by the affidavit of service filed with the Court,

1. **THIS COURT ORDERS** that the First Report, and the conduct and activities of the Receiver as set out therein, be and are hereby approved.

2. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the First Report, the Affidavit of Bryan Tannenbaum sworn July 13, 2021, and the Affidavit of Maya Poliak sworn July 14, 2021, be and are hereby approved.

3. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements as at July 2, 2021 appended to the First Report, be and is hereby approved.

4. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

Court File No. CV-21-00663208-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

CHATONS LLP
5000 Yonge Street, 10th Floor
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E-mail: samr@chatons.com

Lawyers for RSM Canada Limited,
Court-appointed Receiver

Court File No. CV-21-00663208-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD
(re approval of sale transaction and
ancillary matters)
(motion returnable July 23, 2021)

CHAITONS LLP
5000 Yonge Street, 10th Floor
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Court-appointed Receiver