

ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)

THE HONOURABLE MR.

)

MONDAY, THE 7TH

JUSTICE PENNY

)

DAY OF OCTOBER, 2019

)



IN THE MATTER OF THE PROPOSAL OF
FT ENE CANADA INC.,
OF THE CITY OF BRANTFORD,
IN THE PROVINCE OF ONTARIO

Applicants

ORDER

(Approving Proposal – Sec. 60(5))

THIS MOTION, made by MNP LTD., the trustee (in such capacity, the “**Proposal Trustee**”) in the amended proposal (the “**Amended Proposal**”) of FT ENE CANADA INC. (the “**Company**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) was heard on September 26, 2019 at 330 University Avenue, Toronto, Ontario.

ON READING the Report on the Proposal of the Proposal Trustee dated September 6, 2019 (the “**Report**”), and the Exhibits thereto, the Supplementary Report dated September 13th, and exhibits thereto (the “**Supplementary Report**”), the Factum of the Proposal Trustee, the Book of Authorities of Finetex ENE, Inc. and on hearing the submissions of counsel for the Proposal Trustee, counsel for the Company, and counsel for those other parties listed on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavits of Service of Mary Ann Menalo and Alex Ilchenko, sworn and filed,

SERVICE

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

APPROVAL OF PROPOSAL

2. **THIS COURT ORDERS** that defined terms not otherwise defined herein, shall have the meanings attributed to them in the Amended Proposal.

3. **THIS COURT ORDERS AND DECLARES** that the Amended Proposal of the Company as set out at **Exhibit "A"** to the Report and Annexed hereto as **Schedule "A"** is hereby approved.

4. **THIS COURT ORDERS AND DECLARES** that, pursuant to paragraph 3.5 of the Amended Proposal, the Unsecured Creditors will be deemed to have released and discharged all claims that arose prior to the NOI Filing Date against the former and current directors of the Debtors, to the extent that these claims relate to the obligations of the Debtors where the directors of the Debtors, as applicable, are liable in their capacity as directors of the Debtors for the payment of such obligations, but shall exclude any such claims as described in s.50(14) of the BIA and set out in the Amended Proposal.

APPROVAL OF REPORT ON THE AMENDED PROPOSAL

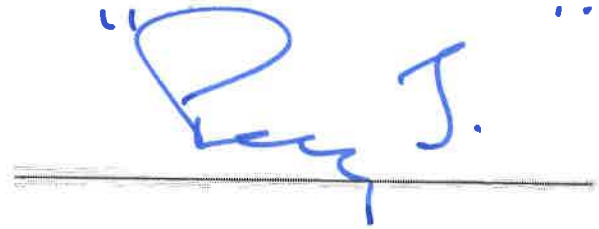
5. **THIS COURT ORDERS** that the Report, and the Supplementary Report, and the conduct and activities of the Proposal Trustee as set out therein, be and are hereby approved.

PAYMENT AND TAXATION OF FEES AND DISBURSEMENTS OF THE PROPOSAL TRUSTEE

6. **THIS COURT ORDERS** that from and after the date of this Order, the fees and disbursements of the Proposal Trustee, and its counsel, may be paid by the Company in the ordinary course prior to taxation, except that (a) Court Approval thereof shall be required in the event that the Proposal Trustee or its counsel seeks to enforce the Administration Charge; and (b)

such fees and disbursements paid by the Company in the ordinary course shall be subject to taxation in the ordinary course pursuant to the BIA.

7. **THIS COURT ORDERS** that the fees and disbursements of the Proposal Trustee and its legal counsel, as set out in the Supplementary Report, the Affidavits of Sheldon Title and Monty Dhaliwal, each sworn September 13, 2019, are hereby authorized and approved.



Schedule "A"

Amended Proposal of FT ENE CANADA INC.

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

IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE PROPOSAL OF

FT ENE CANADA INC.

OF THE CITY OF BRANTFORD, IN THE PROVINCE OF ONTARIO

AMENDED PROPOSAL OF FT ENE CANADA INC.

FT ENE Canada Inc. ("FTE" or the "Company") hereby submits the following Proposal to all of its Unsecured Creditors pursuant to Part III of the *Bankruptcy and Insolvency Act* (Canada).

ARTICLE 1

DEFINITIONS

1.1 Definitions

In this Proposal:

- (a) **"Administrative Fees and Expenses"** means the proper fees, expenses and legal fees and disbursements of the Proposal Trustee, and the Company on and incidental to the negotiation, preparation, presentation, consideration and implementation of the Proposal, and all proceedings and matters relating to or arising out of the Proposal including, without limitation, those fees and expenses secured by the Order of Justice Penny dated March 28, 2019, (which order is not vacated or altered by the filing or approval of this Proposal);
- (b) **"Approval Date"** means the date upon which the Approval Order is issued by the Court;
- (c) **"Approval Order"** means an order of the Court approving the Proposal;
- (d) **"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended and in force as at the Date of Filing;
- (e) **"Business Day"** means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (f) **"Canada Pension Plan"** means the *Canada Pension Plan*, R.S.C. 1985, c. C-8, as

amended;

- (g) **“Claim”** means any right of any Person against the Company in connection with any indebtedness, liability, action or obligation of any kind of or by the Company which indebtedness, action, liability or obligation is in existence or had occurred at the Date of Filing, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist prior to or at the time of the Date of Filing including, without limitation, any claims that would have been claims provable in bankruptcy had the Company become bankrupt on the Date of Filing, and claim related to the manner in which the Company conducted these Proposal proceedings and all operational decisions made during that period, and any claims which might be made by a trustee in bankruptcy or a creditor or any other party pursuant to sections 95 to 101.1 of the *BIA* or under a statute or common law rule similar to these sections, but expressly excluding any equity claims or claims which are found to be equity claims upon review by the Proposal Trustee or the Court;
- (h) **“Collateral”**, in respect of a Secured Creditor, means the assets and property of the Company in which the Secured Creditor holds a valid and enforceable security interest;
- (i) **“Company”** means FT EnE Canada Inc.;
- (j) **“Court”** means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency);
- (k) **“Creditor”** means any Person, having a Claim (whether or not a Proof of Claim is filed by such Person) and may, if the context requires, mean a Proposal Trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;
- (l) **“Creditor Approval”** means acceptance of the Proposal by the Unsecured Creditors as required under the *BIA* and set out in section 5.6 herein;
- (m) **“Creditors’ Meeting”** means the meeting of the Unsecured Creditors called for the purpose of considering and voting upon the Proposal;
- (n) **“Creditors’ Meeting Date”** means such date and time as may be called by the Proposal Trustee, but in any event shall be no later than twenty-one (21) days following the Date of the Proposal;
- (o) **“Date of Filing”** means February 27, 2019, the date of the filing of the Notice of Intention to Make a Proposal with the Official Receiver;
- (p) **“Date of the Proposal”** means August 2, 2019, the date that the Proposal was lodged with the Proposal Trustee;
- (q) **“Disputed Claim”** means a Claim which is filed in this Proposal by a Creditor which is: i) disallowed in whole or in part by the Proposal Trustee, or ii) is the subject of a disallowance

proceeding or appeal before the Court.

- (r) **"Employment Insurance Act"** means the *Employment Insurance Act*, S.C. 1996 c. 23, as amended;
- (s) **"Filed Claim"** means a claim filed in the proposal by a Creditor which has not yet been reviewed or approved by the Proposal Trustee and the Company
- (t) **"Implementation Date"** means the date upon which the conditions set forth in Article 7.4 have been satisfied and the Certificate of Full Performance is issued by the Proposal Trustee to the Company;
- (u) **"Income Tax Act"** means *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended;
- (v) **"Official Receiver"** shall have the meaning ascribed thereto in the *BIA* -
- (w) **"Ordinary Creditors"** means Creditors with Proven Claims, except for those Claims:
 - (i) that the Proposal Trustee determines not to be a provable claim in accordance with Section 135 (1.1) of the *BIA*;
 - (ii) that have been finally and conclusively disallowed in accordance with the *BIA*;
 - (iii) that are Claims by Preferred Creditors;
 - (iv) that are Claims by a Secured Creditor;
 - (v) that are Claims in respect of an Equity Interest; or
 - (vi) that are Claims in respect of Administrative Fees and Expenses.
- (x) **"Performance"** means full performance of this Proposal as set out in Article 6 paragraph 6.1 hereof;
- (y) **"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or instrumentality thereof, or any other entity howsoever designated or constituted;
- (z) **"Post-Filing Claim"** means any right of any Person against the Company in connection with any indebtedness, liability, action or obligation of any kind of or by the Company which indebtedness, action, liability or obligation which is in existence after the Date of Filing, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such a right is executory in nature, including, without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts which exist after the Date of Filing;
- (aa) **"Post-Filing Creditor"** means any Person having a Post-Filing Claim;
- (bb) **"Preferred Creditors"** means Creditors with Proven Claims that are proven and which are required by the *BIA* to be paid in priority to all other Claims under a proposal made by a debtor and including, without limitation:

- (i) employees and former employees of the Company, not to include independent commissioned sales agents or contractors, for amounts equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) of the *BIA* if the Company became bankrupt on the Date of Filing, as well as wages, salaries, commissions or compensation for services rendered after that date and before the Court approval of the Proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the Company's business during the same period; and
- (ii) Her Majesty in Right of Canada or a Province for all amounts that were outstanding at the time of the filing of the notice of intention or of the Date of Filing and are of a kind that could be subject to a demand under,
 - (a) subsection 224(1.2) of the Income Tax Act;
 - (b) any provision of the Canada Pension Plan or of the Employment Insurance Act that refers to subsection 224(1.2) of the Income Tax Act and provides for the collection of a contribution, as defined in the Canada Pension Plan, or an employee's premium, or employer's premium, as defined in the Employment Insurance Act, and of any related interest, penalties or other amounts; or
 - (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the Income Tax Act, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the Income Tax Act, or
 - (ii) is of the same nature as a contribution under the Canada Pension Plan if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the Canada Pension Plan and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.
- (cc) **"Proof of Claim"** shall mean the proof of claim required by the *BIA* to be mailed to each known Creditor prior to the Creditors' Meeting;
- (dd) **"Proposal"** means the Proposal lodged with the Proposal Trustee on August 2nd, 2019 together with any amendments or additions thereto;
- (ee) **"Proposal Trustee"** means MNP Ltd., or its duly appointed successor or successors
- (ff) **"Proposal Fund"** shall mean the payments made by the Company to the Proposal Trustee pursuant to paragraph 6 hereof;
- (gg) **"Proven Claim"** of a Creditor means the amount of the Claim of such Creditor finally determined in accordance with the provisions of the *BIA* and approved by the Company and the Proposal Trustee and the Claim of a Convenience Creditor;

- (hh) **“Related Party”** means Finetex, EnE Inc. (**“FT Korea”**) and any Creditor related to the Company within the meaning of Section 4 of the *BIA*;
- (ii) **“Secured Creditor”** means any creditor holding a valid and perfected security interest against the Company;
- (jj) **“Unsecured Creditors”** means, collectively, the Preferred Creditors and the Ordinary Creditors; and
- (kk) **“Voting Letter”** shall mean the voting letter required by subsection 51(1) of the *BIA* to be mailed to each known Creditor prior to the Unsecured Creditors’ Meeting.

1.2 Articles of Reference

The terms “hereof”, “hereunder”, “herein” and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In this Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

1.3 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.4 Date for Any Action

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

1.5 Time

All times expressed herein are local time in Toronto, Ontario, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Toronto, Ontario, Canada.

1.6 Numbers

In the Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

1.7 Currency

Unless otherwise stated herein, all references to currency in the Proposal are to lawful money of Canada.

1.8 Statutory References

Except as otherwise provided herein, any reference in the Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.9 Successors and Assigns

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Proposal.

ARTICLE 2

CLASSIFICATION OF CREDITORS

2.1 Classes of Creditors

For the purposes of voting on the Proposal, only Ordinary Creditors will be entitled to vote on the Proposal. There shall be one class of Unsecured Creditors.

ARTICLE 3

TREATMENT OF CREDITORS

3.1 Secured Creditors

All Secured Creditors shall be paid in accordance with the respective agreement(s) between each Secured Creditor and the Company or as otherwise agreed between said Secured Creditor and the Company. To the extent that there is insufficient Collateral to repay the secured indebtedness, the Secured Creditor will file the balance of its claim as an Unsecured Creditor and participate in this Proposal as same.

3.2 Preferred Creditors

The Proven Claims of the Preferred Creditors are to be paid by the Proposal Trustee in full in priority to all the Proven Claims of Ordinary Creditors in accordance with the *BIA* and the Proposal.

3.3 Ordinary Creditors

The Proven Claims of all Ordinary Creditors, subject to paragraph 3.4 below, are to be paid, on a *pro rata* basis, their proportionate share of the Proposal Funds once the claims of Preferred Creditors are satisfied as provided for in this Proposal. For distribution purposes, to the extent that the Collateral is not sufficient to satisfy the Proven Claim of a Secured Creditor, that Secured Creditor shall be an Unsecured Creditor for any portion of that Secured Creditor's Proven Claim that remains outstanding.

3.4 Creditors May Elect

Any Claim owed to any Unsecured Creditor, regardless of whether or not the Creditor has filed a proof of claim, which the books and records of the Company (as reviewed by the Proposal Trustee) indicate is less than \$15,000.00, shall be deemed to have a Proven Claim in that amount ("Convenience Creditor"). Any Convenience Creditor shall receive the full amount of their Proven Claim following the approval of the Proposal, as further set out in section 6.4 (a) hereof. Any other Creditor with a Proven Claim which is greater than \$15,000.00, may elect in writing, on or before September 17, 2019, to, instead of participating in a pro rata distribution as set out above, receive \$15,000.00 (an "Electing Creditor"). As further described in section 6.4(a) below, any Convenience Creditor or Electing Creditor shall be deemed to have voted in favour of the Proposal and shall be deemed to have provided the Proposal Trustee with their proxy.

3.5 Claims Against Directors or Deemed Director

Any Claims (other than those set out in section 50(14) of the *BIA* which for greater certainty includes a claim for oppression, breach of fiduciary duty or that falls within section 178 of the *BIA*, including without limitation allegations of fraud, embezzlement, misappropriation and/or defalcation) against any Director, including any deemed director, that relate to obligations of such person to the Company or actions taken by such person on behalf of or to support the interests of the Company or where the directors are under any law liable in their capacity as directors for the payment or performance of such obligations which occurred prior to the filing date (a "**Director Claim**") shall on the Implementation Date be and are hereby, compromised and released and forever discharged as against the directors of the Company.

Any Claim (other than those set out in section 50(14) of the *BIA*, which for greater certainty includes a claim for oppression, breach of fiduciary duty or that falls within section 178 of the *BIA*, including without limitation allegations of fraud, embezzlement, misappropriation and/or defalcation) against any Director, including any deemed director, that relate to obligations of such person to the Company or actions taken by such person on behalf of or to support the interests of the Company where the directors are under any law liable in their capacity as directors for the payment or performance of such obligations which occurred after the filing date up until the date this Proposal is approved by the Court (a "**Restructuring Director Claim**") shall on the Implementation Date be and are hereby, compromised and released and forever discharged as against the directors of the Company.

ARTICLE 4

PROCEDURE FOR VALIDATION OF CLAIMS

4.1 Filing of Proofs of Claim

With the Exception of Convenience Creditors and Electing Creditors, each Creditor must file a Proof of Claim as required by the *BIA* to vote on, or receive a distribution under, the Proposal.

4.2 Allowance or Disallowance of Claims by the Proposal Trustee

Upon receipt of a completed Proof of Claim, the Proposal Trustee shall examine the Proof of Claim and shall deal with each claim in accordance with the provisions of the *BIA*. The procedure for valuing Claims of the Unsecured Creditors and resolving disputes with respect to such Claims will be as set forth in the *BIA*. The Proposal Trustee reserves the right to seek the assistance of the Court in valuing any Claim, if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Creditor under the Proposal, as the case may be.

4.3 Claims Bar Process

Forthwith after obtaining the Approval Order, the Proposal Trustee shall give notice pursuant to s.149 of the *BIA* by registered mail to every person with a claim the Proposal Trustee has notice or knowledge but whose claim has been filed or proved that if such person does not prove his claim within a period of thirty (30) days after the mailing of the notice ("**Claims Bar Date**"), the Proposal Trustee will proceed to declare a final dividend without regard to such person's claim; the dividend referred to in said notice shall be deemed a final dividend and any person so notified who does not provide his claim within the said thirty (30) days shall be barred from making a claim in this Proposal or sharing in any dividend hereunder, subject to any exceptions set out in Sections 149(2)(3) and (4) of the *BIA*.

8.
ARTICLE 5

MEETING OF CREDITORS

5.1 Unsecured Creditors' Meeting

On the Creditors' Meeting Date, the Proposal Trustee shall hold the Creditors' Meeting in order for the Creditors to consider and vote upon the Proposal.

5.2 Time and Place of Meeting

Unless otherwise ordered by the Court, the Creditors' Meeting shall be held at a time and place to be established by the Official Receiver, or the nominee thereof, and confirmed in its notice of meeting to be mailed pursuant to the *BIA*. All Proofs of Claim shall be delivered in accordance with the provisions of the Proposal, the *BIA* and any Order which may be issued by the Court in respect of the procedure governing the Creditors' Meeting.

5.3 Conduct of Meetings

The Official Receiver, or the nominee thereof, shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting, the Secured Creditors and their respective legal counsel, if any, and the officers, directors, auditors, and legal counsel of the Company, together with such representatives of the Proposal Trustee as the Proposal Trustee may appoint in its discretion, and such scrutineers as may be duly appointed by the chair of such meeting. Any other person may be admitted on invitation of the chair of the Creditors' Meeting or with the consent of the Unsecured Creditors.

5.4 Adjournment of Meetings

The Creditors' Meeting may be adjourned in accordance with Section 52 of the *BIA* or by ordinary resolution of the Creditors in attendance at the Creditors' Meeting, including any creditors who are in attendance by proxy, or by the Proposal Trustee.

5.5 Voting by Creditors

To the extent provided for herein, each Unsecured Creditor will be entitled to vote to the extent of the amount which is equal to the Proven Claim. The chair reserves the right to reject any claim in accordance with section 108 (1) of the *BIA* and to deny such person the right to vote at the Creditors' Meeting.

5.6 Approval by Creditors

In order that the Proposal be binding on all of the Unsecured Creditors of the Company in accordance with the *BIA*, it must first be accepted by the Unsecured Creditors as prescribed by this Proposal by a majority in number of the Unsecured Creditors who actually vote upon the Proposal (in person or by proxy) at the Creditors' Meeting or by a Voting Letter, representing at least two-thirds in value of the Proven Claims of the Unsecured Creditors who actually vote upon the Proposal (whether in person or by proxy) at the Creditors' Meeting or by a Voting Letter.

ARTICLE 6**DISTRIBUTION OF PROCEEDS****6.1 Implementation of Proposal**

- (a) Within ten (10) days of Creditor Approval, the Company shall pay any outstanding Administrative Fees and Expenses and shall deliver a retainer of \$50,000 (or such other amount as the Company and the Proposal Trustee may agree). Notwithstanding the payment of this retainer amount, the Company shall remain liable for the payment of all Administrative Fees and Expenses until such time as the Proposal is fully performed and the Proposal Trustee is discharged. The Company shall continue to make such payments as and when due hereafter.
- (b) Within ten (10) days of Creditor Approval, the Company shall provide the Proposal Trustee with the amount contemplated by section 6.3 hereof.
- (c) Within ten (10) days of Creditor Approval, the Company shall provide payment to the Proposal Trustee of an amount equal to the lesser of the entire amount of (i) the Proven Claims, plus the amount due under the Superintendent's Levy in respect of such claims and any outstanding Administrative Fees and Expenses, or (ii) ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000). (the "Proposal Fund"). The Proposal Fund shall be held in trust by the Proposal Trustee pending the Approval Date and distribution of the Proposal Fund to Creditors with Proven Claims, as set out in sections 6.3 and 6.4 below.

6.2 Payment of Administrative Fees and Expenses

The Company shall pay Administrative Fees and Expenses from time to time pending the completion of the Proposal. Upon payment of the Proposal Fund to the Proposal Trustee, the outstanding Administrative Fees and Expenses shall be paid in full out of the funds in its hands, and, to the extent that is insufficient, from the Proposal Fund, prior to distribution to the Preferred and the Ordinary Creditors.

6.3 Distribution to Preferred Creditors

Upon the Implementation Date, the Proposal Trustee shall make payments to those Preferred Creditors forthwith. Payments to each Preferred Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the *BIA*.

6.4 Distribution to Ordinary Creditors

- (a) Upon the Implementation Date, the Proposal Trustee will, within 10 days, pay the Convenience Creditors and the Electing Creditors from the Proposal Fund.
- (b) The Ordinary Creditors with Proven Claims, other than Convenience Creditors and Electing Creditors, shall be paid from the Proposal Fund, net of the payments made in section 6.2, 6.3 and 6.5 to the Ordinary Creditors with Proven Claims, their *pro rata* share of the remaining Proposal Fund then in the hands of the Proposal Trustee based on the proportion which the Proven Claim of such Ordinary Creditor bears to the aggregate amount of the Proven Claims of all Ordinary Creditors.
- (c) The Proposal Trustee shall, following the payments in 6.4(a) and (b) above attend to the resolution of any Disputed Claims. There will be no further distribution until the Disputed Claims are resolved. Upon

resolution of the Disputed Claims, the Claims held by parties whose Claims were disputed (other than the Claims of Related Parties) shall receive payment in accordance with the resolution of their Proven Claims from the Proposal Fund.

(d) Following the payments set out in 6.4(a), (b) and (c) above, the Proven Claims of Related Parties shall be paid from the Proposal Fund;

(e) FT Korea will only receive a distribution from the Proposal Fund following the resolution of its Claim(s), and the full payment of the Convenience Creditors, Electing Creditors and the other Proven Claims of Ordinary Creditors, unless FT Korea has made the election of being treated as an Electing Creditor, in which case it will receive a distribution in accordance with 6.4(a). Payments to each Ordinary Creditor or Convenience Creditor shall be net of any applicable levy payable to the Office of the Superintendent of Bankruptcy as required by the *BIA*.

6.5 Proposal Default Fund

From the Proposal Fund, and prior to any distributions to any creditors in the administration, an amount of \$20,000 will be retained by the Proposal Trustee ("**Proposal Default Fund**"). The sole purpose of the Proposal Default Fund will be to fund an application to annul the Proposal in the event of default, which has not been waived by the Inspector(s) in the estate or remedied by the Company. Upon instructions from the Inspector(s), if any, the Proposal Trustee will make an application to the Courts to have the Proposal annulled. Despite, a Certificate of Full Performance being issued to the Company, this provision of this Proposal will apply and the Proposal Default Fund will remain unavailable for distribution to the creditors in the estate until all the payments required under this Proposal have been made.

6.6 Discharge of Proposal Trustee

Upon payment by the Proposal Trustee of the amounts contemplated in this Article 6, the Proposal Trustee shall have discharged its duties as Proposal Trustee, the Proposal Trustee's obligation under its Proposal shall be fully performed and the Proposal Trustee shall be entitled to apply for its discharge as Proposal Trustee hereunder. For greater certainty, the Proposal Trustee will not be responsible or liable for any obligations of the Company and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default. Upon its discharge, the Proposal Trustee will return any remaining funds in its hands to the Company or as the Company may direct.

ARTICLE 7

MISCELLANEOUS

7.1 Compromise Effective for all Purposes

The distributions contemplated hereunder will be binding upon each Creditor, other than Secured Creditors, and their heirs, executors, administrators, successors and assigns, for all purposes.

7.2 Modification of Proposal

The Company or any Unsecured Creditor may propose an alteration or modification to the Proposal prior to the vote taking place on the Proposal.

7.3 Consents, Waivers and Agreements

As at 12:01 a.m. on the Implementation Date, each Creditor, including the Related Parties, but

excluding Secured Creditors and any Post-Filing Creditor (which term expressly includes Mr. Jung Chul Park) will be deemed:

- (a) to have executed and delivered to the Company all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) to have waived any default by the Company in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Creditor and the Company that has occurred on or prior to the Implementation Date;
- (c) to have agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Creditor and the Company as at the Implementation Date (other than those entered into by the Company on, or with effect from, the Implementation Date) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly; and
- (d) to have released the Company, the Proposal Trustee and all of their respective affiliates, employees, agents, officers, shareholders, advisors (including without limitation counsel for the directors), consultants and solicitors from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgements, expenses, executions, liens, set off rights and other recoveries on account of any liability, obligation, demand or cause of action of whatever nature which any Person may be entitled to assert, whether known or unknown, matured or unmatured, foreseen or unforeseen, existing or hereafter arising based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Implementation Date, relating to or arising out of or in connection with the matters herein, including, without limitation, those claims which could be advanced or pursued pursuant to sections 95 to 101.1 of the *BIA*.
- (e) Notwithstanding s. 7.3(d), nothing in this Proposal or in s. 7.3(d) constitutes a release of the Company and/or its employees, affiliates, officers and directors in respect of a claim for oppression, breach of fiduciary duty or that falls within section 178 of the *BIA*, including without limitation allegations of fraud, embezzlement, misappropriation and/or defalcation.

7.4 Conditions Precedent to Proposal Implementation

The implementation of the Proposal by the Company will be conditional upon the fulfilment or satisfaction of the following conditions:

- (a) Creditor Approval;
- (b) approval of the Proposal by the Court pursuant to a final Order;
- (c) the Company will provide FT Korea with an opportunity to conduct a site visit and orientation at the Company's leased premises prior to September 17, 2019;
- (d) the Company and/or the Proposal Trustee shall provide to FT Korea all available current operational information relating to the Company, as well as all operational information in the three months preceding the Date of the Proposal, including but not limited to lease information, details on capital assets and government remittances, accounts receivables and

account payable information and customer and sales information by September 4, 2019.

- (e) Jong Chul Park shall resign from all positions with the Company effective one (1) day after the Approval Date. Jong Chul Park will deliver to the Proposal Trustee a resignation in respect of his position(s) with the Company by September 4, 2019, which shall be held in escrow by the Proposal Trustee and will be released within one (1) day of the Approval Date;
- (f) Jong Chul Park shall (to the extent the following is within his possession and control) provide the following to FT Korea one (1) day after the Approval Date: keys to the Company's leased premises, passwords to access the Company's premises and data, and access to the Company's books and records.
- (g) receipt of the Proposal Fund by the Proposal Trustee; and

The date upon which the last of these conditions is met and the Certificate of Full Performance is issued by the Proposal Trustee to the Company shall be the "**Implementation Date**"

7.5 Effect of Proposal Generally

As at 12:01 a.m. on the Implementation Date, the treatment of all Claims under the Proposal shall be final and binding on the Company and all Creditors, other than Secured Creditors, including all Claims against Directors (as set out in section 3.5 above), and the Proposal shall constitute (i) a full, final and absolute settlement of all rights of the holders of the Claims (whether or not such Creditor with such a Claim filed a Claim); and (ii) an absolute release and discharge of all indebtedness, liabilities and obligations of the Company or the Directors of or in respect of such Claims. The Proposal Trustee shall thereafter issue a Certificate of Full Performance to the Company in accordance with the provisions of the *BIA* promptly.

7.6 Notices

Any notices or communication to be made or given hereunder shall be in writing and shall refer to this Proposal and may, subject as hereinafter provided, be made or given by personal delivery, by prepaid mail or by telecopier (except for Proofs of Claim which may only be sent by personal delivery, telecopier or registered mail) addressed to the respective parties as follows:

- (a) if to the Company:
- (b) if to an Unsecured Creditor, to the address or telecopier number for such Unsecured Creditor specified in the Proof of Claim filed by such Unsecured Creditor or, if no Proof of Claim has been filed, to such other address or telecopier number at which the notifying party may reasonably believe that the Unsecured Creditor may be contacted; and,

(c) if to the Proposal Trustee:

Attention: MNP Ltd.
 c/o Mr. Matthew Lem 111
 Richmond Street West Suite
 300
 Toronto, ON, M5H 2G4
 Telephone: (416)515-3882 (416) 596-
 Telecopier: 1711 matthew.lem@mnp.ca
 Email:

or to such other address or telecopier number as any party may from time to time notify the others in accordance with this section. In the event of any strike, lockout and other event which interrupts postal service in any part of Canada, all notices and communications during such interruption may only be given or made by personal delivery or by telecopier and any notice or other communication given or made by prepaid mail within the five (5) Business Day period immediately preceding the commencement of such interruption will be deemed not to have been given or made. All such notices and communications will be deemed to have been received, in the case of notice by telecopier or by delivery prior to 5:00 p.m. (local time) on a Business Day, when received or if received after 5:00 p.m. (local time) on a Business Day or at any time on a non-Business Day, on the next following Business Day and in to case of notice mailed as aforesaid, on the fifth (5th) Business Day following the date on which such notice or other communication is mailed. The unintentional failure to give a notice contemplated hereunder to any particular Creditor will not invalidate this Proposal or any action taken by any Person pursuant to this Proposal.

7.7 Foreign Currency Obligations

For purposes of this Proposal, Claims denominated in a currency other than Canadian funds will be converted to Canadian Dollars at the closing spot rate of exchange of the Bank of Canada on the Date of Filing.

7.8 Applicable Law

This Proposal shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

7.9 Non Severability

It is intended that all provisions of this Proposal shall be binding on and effective between all Persons named or referred to in this Proposal and in the event that any particular provision or provisions of this Proposal is or are found to be void, voidable or unenforceable for any reason whatever, then the remainder of this Proposal and all other provisions shall be void and of no force or effect.

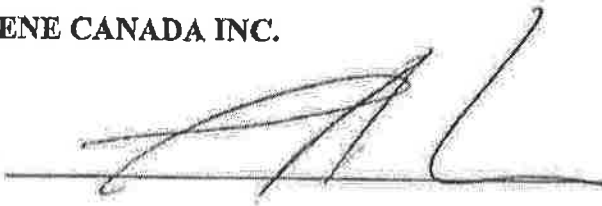
7.10 Deeming Provisions

In this Proposal the deeming provisions are not rebuttable and are conclusive and irrevocable.

DATED at the City of Toronto, in the Province of Ontario, this 29th day of August, 2019,

FT ENE CANADA INC.

Per:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Jong Chul Park

IN THE MATTER OF THE PROPOSAL FT ENE CANADA INC.

Court File No. 32-2480036
Estate File No. 32-2480036

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)

ORDER

(Approving Proposal – Sec. 60(5))

PALLET VALLO LLP

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Mississauga, Ontario L5B 1M5

Alex Ilichenko / Monty Dhaliwal
LSUC# 33944Q / #65124N

Tel: (905) 273-3300
Fax: (905) 273-6920

Lawyers for MNP LTD.
in its capacity as Proposal Trustee
of FT ENE CANADA INC.