

Estate File Number: 35-2638322
Court File No.: 35-2638322

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.**

MOTION RECORD
(returnable May 1, 2020)
(re approval of DIP Loan, sale process and other relief)

April 24, 2020

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.**

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Tab 1

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

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.**

NOTICE OF MOTION
(returnable May 1, 2020)
(re approval of DIP Loan, sale process and other relief)

KMW ENERGY INC. (“**KMW**” or the “**Company**”) will make a motion to a Judge of the Commercial List on Friday May 1, 2020 at 10:00 a.m., or as soon after that time as the motion can be heard, via telephone conference.

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

THE MOTION IS FOR:

- (a) an order:
 - (i) if necessary, abridging the time for service of this notice of motion and KMW’s motion record so that the motion is properly returnable on May 1, 2020;
 - (ii) authorizing the Company to enter into an interim financing term sheet dated April 24, 2020 (the “**DIP Term Sheet**”) with 2751602 Ontario Inc. (“**2751**”), approving the DIP Term Sheet, and granting 2751 in its capacity as lender under the DIP Term Sheet (the “**DIP Lender**”) a second ranking

charge on the Company's property, assets and undertakings (collectively, the "**Property**") as security for the Company's obligations to the DIP Lender under the DIP Term Sheet;

- (iii) authorizing the Company to execute a stalking horse asset purchase agreement dated April 24, 2020 (the "**Stalking Horse Agreement**") between the Company and 2751 in its capacity as stalking horse bidder (the "**Stalking Horse Bidder**"), and approving the Stalking Horse Agreement;
- (iv) authorizing the Proposal Trustee (as defined below) to conduct a sale process for the Company's business and assets (the "**Sale Process**");
- (v) approving a first ranking charge over the Property in an amount not to exceed \$150,000 in favour of the Company's legal counsel, the Proposal Trustee, and the Proposal Trustee's legal counsel (collectively, the "**Administrative Professionals**") to secure payment of their reasonable fees and disbursements;
- (vi) approving a third ranking charge over the Property in an amount not to exceed \$50,000 in favour of the Company's directors and officers to indemnify them against obligations and liabilities that they may incur after April 11, 2020; and
- (vii) approving an extension of the time for the Company to make a proposal to its creditors; and

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

THE GROUNDS FOR THE MOTION ARE:

Background

1. On April 11, 2020, KMW filed a Notice of Intention to Make a Proposal pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. was named proposal trustee in this proceeding (the “**Proposal Trustee**”).
2. For approximately 33 years, KMW has been a leading designer, developer and supplier of the components of biomass combustion system boilers and heaters.
3. KMW’s financial difficulties are primarily attributable to issues related to a contract dated December 6, 2016 between KMW and Georges River Energy, LLC (the “**GRE Contract**”) for the design and supply of a complete biomass energy system to generate 8.5MW of electric power, including turbine, generation and cooling tower.
4. The Company has faced a liquidity crisis and it is anticipated that, without receiving interim financing, it will be unable to meet its post-filing obligations by April 30, 2020.
5. KMW has two secured creditors, 2751 and Liberty Mutual Insurance Company (“**Liberty Mutual**”).
6. 2751 is a party related to 462673 Ontario Inc. c.o.b. as Nor-Arc Steel Fabricators (“**Nor-Arc**”). Nor-Arc primarily supplies combustion chambers and fabrication services to KMW. As at March 24, 2020, KMW was indebted to Nor-Arc in the amount of

\$2,778,084.92 for unpaid invoices, which was secured by a general security agreement granted by the Company.

7. On April 9, 2020, Nor-Arc demanded payment from KMW and served a Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA.
8. Nor-Arc subsequently assigned the indebtedness and security to 2751.
9. Liberty Mutual, as surety, issued a performance bond in connection with the GRE Contract and obtained security from the Company to secure the Company's obligation to indemnify Liberty Mutual.

DIP Loan

10. KMW, with the assistance of the Proposal Trustee, prepared a cash flow forecast for the time period commencing April 6, 2020 through to July 3, 2020, which demonstrates that KMW will require additional funds to enable it to carry on business during this proceeding and fund the Sale Process, working capital and the costs of the proceeding.
11. 2751, in its capacity as the proposed DIP Lender, has offered to make available to KMW a debtor-in possession loan in the maximum amount of \$500,000 (the "**DIP Loan**") pursuant to the terms of the DIP Term Sheet.
12. It is a fundamental term of the DIP Term Sheet that the Court grant an order on terms acceptable to the DIP Lender which grants the DIP Lender a second ranking charge over the Property in priority to all other claims and encumbrances (the "**DIP Charge**") other than the Administration Charge (as defined below).

13. KMW believes that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, KMW will not be able to conduct the Sale Process and will be forced to immediately shut down its business and file for bankruptcy.
14. The DIP Loan enhances the Company's prospects of making a viable proposal to its creditors, and no creditor will be materially prejudiced as a result of the granting of the DIP Charge.

Sale Process and Stalking Horse Agreement

15. KMW, in consultation with the Proposal Trustee, developed the Sale Process. The Sale Process will be administered by the Proposal Trustee. As part of the Sale Process, KMW will enter into the Stalking Horse Agreement.
16. It is anticipated that, if a sale of KMW's business and assets is completed pursuant to the Stalking Horse Agreement, the Stalking Horse Bidder will offer employment to most, if not all, of KMW's employees.
17. The Sale Process provides for an expedited marketing process and a bid deadline of May 29, 2020, subject to the Proposal Trustee, in its discretion, extending the date for no more than 10 days not to surpass June 8, 2020.
18. An auction will be held to determine the winning bidder if, in addition to the Stalking Horse Agreement, the Proposal Trustee receives other Qualified Bids (as defined in the Sale Process). If no other Qualified Bids are received, the Stalking Horse Bidder will be the winning bidder.

19. As soon as practicable after determination of the winning bid, the Company will make a motion to the Court for an approval and vesting order in respect of the winning bid and the underlying purchase agreement.

Administration Charge and the D&O Charge

20. In order to protect the fees and expenses of each of the Administrative Professionals, KMW seeks a first ranking charge on the Property in an amount of \$150,000 (the “**Administration Charge**”), ranking in priority to all claims and encumbrances.
21. KMW also is seeking a third ranking charge on the Property in favour of their directors and officers in the amount not to exceed \$50,000 (the “**D&O Charge**”) ranking in priority to all other claims and encumbrances, with the exception of the Administration Charge and the DIP Charge, as security for the possible liabilities that may be incurred by the directors and officers of the Company after April 11, 2020, including wages, vacation pay, and source deductions.
22. The Company does not have an existing insurance policy with respect to directors’ and officers’ liabilities.
23. There is a risk that without the D&O Charge, KMW’s directors and officers might resign from their positions, which would jeopardize the NOI proceeding.
24. The Company, in consultation with the Proposal Trustee, believes that the quantum of the proposed D&O Charge is reasonable given the circumstances.
25. I believe that no creditor will be materially prejudiced as a result of the granting of the Administration Charge and the D&O Charge.

Stay Extension

26. The period for KMW to file a proposal will expire on May 11, 2020. The Company is acting in good faith and with due diligence in seeking to preserve its business on a going concern basis for the benefit of all of its stakeholders.
27. In order to commence and advance the Sale Process, KMW is seeking an extension of time to file a proposal for 45 days or until June 25, 2020.

General

28. Rules 1.04, 1.05, 2.01, 2.03, and 37 of the *Rules of Civil Procedure* (Ontario).
29. Sections 50.4(9), 50.6, 64.1, and 64.2 of the BIA.
30. The inherent jurisdiction of the Court.
31. 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 Affidavit of Eric Bertil Rosen sworn April 24, 2020 and the exhibits thereto; and
2. such further and other material as counsel may advise and this Honourable Court may permit.

April 24, 2020

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TO: THE SERVICE LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KMW ENERGY INC.

Estate File Number: 35-2638322
Court File No.: 35-2638322

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

**PROCEEDING COMMENCED AT
TORONTO**

NOTICE OF MOTION

(returnable May 1, 2020)

(re approval of DIP Loan, sale process and other relief)

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Tab 2

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

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
OF KMW ENERGY INC.

AFFIDAVIT OF ERIC BERTIL ROSEN
(sworn April 24, 2020)

I, ERIC BERTIL ROSEN, of the City of London, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am the Chief Executive Officer and a director of KMW Energy Inc. (“KMW” or the “Company”). The facts set forth herein are within my personal knowledge or determined from the face of the documents attached hereto as exhibits and from information and advice provided to me by others, which I verily believe to be true.
2. On April 11, 2020 (the “**Filing Date**”), KMW filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”). MNP Ltd. was named proposal trustee in the NOI proceeding (the “**Proposal Trustee**”). A copy of the certificate of filing of the NOI is attached hereto and marked as **Exhibit “A”**.
3. This affidavit is made in support of KMW’s motion for an order, among other things:

- (a) authorizing the Company to enter into an interim financing term sheet dated April 24, 2020 (the “**DIP Term Sheet**”) with 2751602 Ontario Inc. (“**2751**”), approving the DIP Term Sheet, and granting 2751 in its capacity as lender under the DIP Term Sheet (the “**DIP Lender**”) a second ranking charge on the Company’s property, assets and undertakings (collectively, the “**Property**”) as security for the Company’s obligations to the DIP Lender under the DIP Term Sheet;
- (b) authorizing the Company to execute a stalking horse asset purchase agreement dated April 24, 2020 (the “**Stalking Horse Agreement**”) between the Company and 2751, in its capacity as stalking horse bidder (the “**Stalking Horse Bidder**”), and approving the Stalking Horse Agreement;
- (c) authorizing the Proposal Trustee to conduct a sale process as described below (the “**Sale Process**”);
- (d) approving a first ranking charge over the Property in an amount not to exceed \$150,000 in favour of the Company’s legal counsel, the Proposal Trustee, and the Proposal Trustee’s legal counsel (collectively, the “**Administrative Professionals**”) to secure payment of their reasonable fees and disbursements;
- (e) approving a third ranking charge over the Property in an amount not to exceed \$50,000 in favour of the Company’s directors and officers to indemnify them against obligations and liabilities that they may incur after the Filing Date; and
- (f) approving an extension of the time for the Company to make a proposal to its creditors.

BUSINESS AND OPERATIONS

4. KMW is an Ontario corporation that carries on business in London, Ontario. I am the sole member of the board of directors. Gerry Higgins and I are the only officers of KMW. A copy of the Corporation Profile Report for KMW is attached hereto and marked as **Exhibit "B"**.

5. For approximately 33 years, KMW has been a leading designer, developer and supplier of the components of biomass combustion system boilers and heaters. Biomass is an environmentally friendly, sustainable energy source that comes from a number of resources, including plant materials, residues from forest industries, by-products from wood remanufacturing, and agricultural residues and waste products. Biomass can produce electricity, heat, liquid fuels, gaseous fuels, and a variety of useful chemicals, including those currently manufactured from fossil fuels.

6. KMW custom designs and supplies the components of complete biomass boiler systems including fuel handling, combustion systems, heat recovery boilers, and emission control systems. KMW also supplies complete Combined Heat and Power (CHP) plants including steam turbines, Organic Rankine Cycle (ORC) turbines, condensers and cooling systems.

7. KMW has supplied boiler systems to sawmills, hospitals, schools, pulp and paper mills, power utility plants, cogeneration facilities, district heating systems and greenhouses to customers in North, Central, and South America, as well as Europe and Australia. KMW works closely with its customer's project management teams, engineering staff and professional advisors to evaluate and implement biomass energy projects.

8. KMW purchases all components from third party suppliers across the globe. KMW manages the assembly and installation of the components on site for its customers. Once assembly

is complete, KMW provides training and support to its customers in the operation of the turbines and boilers.

9. KMW carries on business from a leased facility located at 275 Colborne Street, London, Ontario (the “**Premises**”). KMW is current in all payments to its landlord under its lease for the Premises, other than for April 2020.

10. As of April 11, 2020, the Company employed 12 non-unionized employees and one independent contractor project manager. KMW does not have an employer-sponsored pension plan for its employees.

11. KMW currently has six (6) ongoing projects at various stages of completion. KMW’s assets are primarily comprised of contracts, accounts receivable, work-in-progress, proprietary engineering designs and software code, and goodwill.

SECURED CREDITORS

12. KMW has no operating lender. KMW has two secured creditors, 2751, which is a party related to 462673 Ontario Inc. c.o.b. as Nor-Arc Steel Fabricators (“**Nor-Arc**”) that took an assignment of the debt and security owed by KMW to Nor-Arc, and Liberty Mutual Insurance Company (“**Liberty Mutual**”). Attached hereto and marked as **Exhibit “C”** is a copy of a search result obtained by the Company’s legal counsel, Chaitons LLP (“**Chaitons**”), from the Ontario Personal Property Security Registration System in respect of registrations under the *Personal Property Security Act* (Ontario) current as of April 24, 2020.

Nor-Arc and 2751

13. Nor-Arc carries on business in Earlton, Ontario as a fabricator of mining and industrial equipment. KMW and its predecessors have been a customer of Nor-Arc for over 30 years. Nor-Arc primarily supplies combustion chambers and fabrication services to KMW.

14. As at March 24, 2020, KMW was indebted to Nor-Arc in the amount of \$2,778,084.92 (the “**Secured Indebtedness**”). This amount represents the sum of outstanding invoices and interest owed by KMW to Nor-Arc from the period of April 2010 to March 2020. KMW has acknowledged that the Secured Indebtedness was owing to Nor-Arc in an Acknowledgement of Debt and Security dated April 9, 2020 that I executed on behalf of KMW, a copy of which is attached hereto and marked as **Exhibit “D”**.

15. KMW historically paid its invoices to Nor-Arc in a timely manner. However, KMW’s business was negatively impacted by the Great Recession of 2008-2010 and, as a result, by April 2011, KMW owed approximately \$538,075 to Nor-Arc in unpaid invoices. At that time, Nor-Arc requested that KMW provide security for payment of the outstanding amount.

16. Pursuant to a general security agreement dated April 12, 2011 (the “**GSA**”), KMW granted to Nor-Arc a security interest in all of its property, assets and undertaking as security for payment of all present and future debts, liabilities and obligations of KMW to Nor-Arc. A copy of the GSA is attached hereto and marked as **Exhibit “E”**.

17. By early 2019, KMW owed Nor-Arc approximately \$1.0 million. However, as is described in greater detail below, KMW’s indebtedness to Nor-Arc has increased during the past two years in connection with the GRE Project (as defined below) and other projects.

18. As noted above, the Secured Indebtedness and the GSA have been assigned by Nor-Arc to 2751 pursuant to an assignment agreement dated April 20, 2020, a copy of which is attached hereto and marked as **Exhibit "F"**.

Liberty Mutual

19. Liberty Mutual is a secured creditor of the Company as it issued a performance bond in connection with a contract dated December 6, 2016 between KMW and Georges River Energy, LLC ("**GRE**") (the "**GRE Contract**") for the design and supply of a complete biomass energy system to generate 8.5MW of electric power, including turbine, generation and cooling tower (the "**GRE Project**"). A copy of the GRE Contract is attached hereto and marked as **Exhibit "G"**.

20. GRE carries on business in Searsmont, Maine and is a subsidiary of Robbins Lumber, Inc. ("**Robbins Lumber**"). Robbins Lumber owns and manages 30,000 acres of forest and operates mills on a 40-acre site in Searsmont.

21. KMW was required to obtain a performance bond with respect to its obligations under the GRE Contract. On December 13, 2016, Liberty Mutual, as surety, issued a Performance Bond for Procurement Contracts in the amount of \$6,412,500 in favour of GRE (the "**Performance Bond**"). A copy of the Performance Bond is attached hereto and marked as **Exhibit "H"**.

22. In connection with the Performance Bond, KMW, myself, Gerry and Nor-Arc (collectively, the "**Indemnitors**") executed two agreements in favour of Liberty Mutual: an Indemnity and Security Agreement dated December 16, 2016 (the "**Indemnity and Security Agreement**"); and a General Indemnity Agreement dated December 16, 2016 (collectively, the "**Indemnity Agreements**"). Copies of the Indemnity Agreements are collectively attached hereto and marked as **Exhibit "I"**.

23. Pursuant to the Indemnity Agreements, each of the Indemnitors agreed to indemnify Liberty Mutual with respect to any liabilities it may incur in connection with the Performance Bond.

24. Pursuant to the Indemnity and Security Agreement, the Company granted to Liberty Mutual a security interest in all of its property, assets and undertaking as security for its obligations to Liberty Mutual.

25. Nor-Arc executed the Indemnity Agreements as it was to supply components to KMW with respect to the GRE Contract and was to receive a share of KMW's net profits from the GRE Contract.

OTHER CREDITORS

Government Remittances and Amounts Owed to Employees

26. As at April 6, 2020, KMW was current with respect to all amounts owed for government remittances and all amounts owed to its employees, excluding certain employee expense reports.

Unsecured Creditors

27. As at April 6, 2020, KMW owed its trade creditors approximately \$4.3 million. This amount does not include any claims that parties may have in relation to the Performance Bond and the Indemnity Agreements (as defined below).

FINANCIAL DIFFICULTIES

28. KMW's financial difficulties are primarily attributable to the GRE Contract.

29. At GRE's request, KMW sought out new suppliers of turbines to reduce the cost of the GRE Project. As a result, KMW contracted with a company Buffalo Turbine based in Brampton,

Ontario for the supply of a turbine manufactured in India to be used for the GRE Project. KMW had no existing relationship with this manufacturer.

30. The turbine was delivered in April 2018 and the biomass energy system was assembled through the spring, summer and fall of 2018. The turbine did not function as required by GRE. From July 2018 to March 2020, KMW spent approximately US\$1.688 million of its working capital in attempting to repair the turbine.

31. Notwithstanding the significant time and money expended by KMW, the turbine still does not function properly. As a result, GRE has threatened litigation against KMW and has not paid to KMW the remaining US\$2,463,907 million owed to it under the GRE Contract. GRE has also notified Liberty Mutual that it may declare KMW to be in default under the GRE Contract and make a demand under the Performance Bond. GRE has not done so to date.

32. GRE and KMW have engaged in settlement discussions in an effort to resolve the issues related to the GRE Project. Notwithstanding their efforts, the parties have been unable to come to terms on an agreeable settlement.

33. As a result of the issues related to the GRE Project, the Company has faced a liquidity crisis and it was anticipated that, without receiving interim financing and protection from its creditors, it would be unable to meet its post-filing obligations by April 30, 2020.

34. On April 9, 2020, Nor-Arc demanded payment from KMW and served a Notice of Intention to Enforce Security ("NITES") pursuant to section 244(1) of the BIA. KMW agreed to waive the 10-day period under section 244 of the BIA. A copy of Nor-Arc's demand letter, NITES,

and the waiver I executed on behalf of the Company are attached hereto and marked as **Exhibit “J”**.

35. On April 11, 2020, KMW commenced the NOI proceeding under the BIA for the purpose of conducting a process for the sale of KMW’s business as a going concern. Prior to the filing, Nor-Arc had agreed to act as DIP Lender during the NOI proceeding and agreed to have a party related to it act as a stalking horse bidder in the sale process to be conducted by the Proposal Trustee.

DIP LOAN

36. KMW, with the assistance of the Proposal Trustee, prepared a cash flow forecast for the time period commencing April 6, 2020 through to July 3, 2020 (the “**Cash Flow**”). The Cash Flow demonstrates that KMW will require additional funds to enable it to carry on business during the NOI proceeding and fund the Sale Process, working capital and the costs of the proceeding. A copy of the Cash Flow is attached hereto and marked as **Exhibit “K”**.

37. Nor-Arc, in its capacity as the proposed DIP Lender, has offered to make available to KMW a debtor-in possession loan in the maximum amount of \$500,000 (the “**DIP Loan**”) pursuant to the terms of the DIP Term Sheet, substantially in the form attached hereto and marked as **Exhibit “L”**, to fund the cash shortfall anticipated in the Cash Flow.

38. It is a fundamental term of the DIP Term Sheet that the Court grant an order on terms acceptable to the DIP Lender which, among other things, grants the DIP Lender a second ranking charge over the Property in priority to all other claims and encumbrances (the “**DIP Charge**”).

39. KMW believes that the terms of the DIP Term Sheet are reasonable in the circumstances and should be approved. In the absence of the DIP Loan, KMW will not be able to conduct the Sale Process and will be forced to immediately shut down its business and file for bankruptcy. I believe that the DIP Loan enhances the Company's prospects of making a viable proposal to its creditors, and no creditor will be materially prejudiced as a result of the granting of the DIP Charge.

SALE PROCESS AND STALKING HORSE AGREEMENT

40. KMW, in consultation with the Proposal Trustee, and subject to the approval of the Court, developed the Sale Process. The Sale Process will be administered by the Proposal Trustee. As part of the Sale Process, KMW will enter into the Stalking Horse Agreement, substantially in the form attached hereto and marked as **Exhibit "M"** which establishes the floor price for KMW's business and assets.

41. The Stalking Horse Bidder is prepared to purchase the business and assets of KMW on a going-concern basis pursuant to the terms of the Stalking Horse Agreement for a purchase price equal to: (i) \$500,000; (ii) any amounts ranking in priority to the Stalking Horse Bidder's security; (iii) any amounts secured by the DIP Charge, the Administration Charge and the D&O Charge (each as defined below); and (iv) an amount of the Secured Indebtedness to be cancelled by the Stalking Horse Bidder as it deems appropriate.

42. It is anticipated that, if a sale of KMW's business and assets is completed pursuant to the Stalking Horse Agreement, the Stalking Horse Bidder will offer employment to most, if not all, of KMW's employees.

43. The following is a summary of the Sale Process and material milestones. All terms not otherwise defined herein, shall have the meaning assigned to such terms in the Stalking Horse Agreement:

- (a) The Sale Process will be commenced immediately following the date of the order approving same (the “**Sale Process Approval Date**”).
- (b) within five (5) business days after the Sale Process Approval Date, the Proposal Trustee will contact parties identified by the Company who may be interested in purchasing the business and/or assets of the Company and any other parties identified by the Company and the Proposal Trustee as potentially interested in purchasing the assets of the Company. The Proposal Trustee will provide a teaser summary of KMW’s assets in order to solicit interest. The Proposal Trustee will obtain a Non-disclosure Agreement (“**NDA**”) from interested parties who wish to receive a Confidential Information Memorandum (“**CIM**”) and undertake due diligence. Following the execution of an NDA, the Proposal Trustee will provide access to an electronic data room (“**Data Room**”) and a template asset and purchase agreement to prospective purchasers.
- (c) Within seven (7) business days of the Sale Process Approval Date, or as soon thereafter as is practical, the Proposal Trustee shall (a) publish a notice advertising the opportunity in the National Post and/or such other trade publications or other publications as the Proposal Trustee may deem appropriate or advisable, and (b) post the opportunity on its website.

- (d) The Bid deadline for prospective purchasers will be May 29, 2020, subject to the Proposal Trustee, in its discretion, extending the date for no more than 10 days not to surpass June 8, 2020 (the “**Bid Deadline**”).
- (e) A Qualified Bid must be accompanied by a cash deposit of 10% of the purchase price and must be equal to or greater than the sum of the indebtedness owed to the Stalking Horse Bidder, the DIP Loan, the amounts secured by the Administration Charge and the D&O Charge, and any other priority payable amounts.
- (f) If no Qualified Bid is received by the Bid Deadline (other than the Stalking Horse Bid), the Auction will not be held.
- (g) If more than one Qualified Bid is received by the Bid Deadline, the Proposal Trustee shall extend invitations to all bidders who submitted Qualified Bids and to the Stalking Horse Bidder to attend an Auction. The Auction shall be held at 10:00 a.m. on the second (2nd) Business Day after the Bid Deadline by teleconference, video conference or other form of electronic telecommunications, as the Proposal Trustee may deem fit.
- (h) The Proposal Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$50,000, or such other amount as the Proposal Trustee determines to facilitate the Auction. Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration (which, for clarity, may be satisfied by way of credit bid by the Stalking Horse Bidder).

The format and other procedures for the Auction shall be determined by the Proposal Trustee in its sole discretion.

- (i) The Winning Bid shall be either:
 - (i) in the event that no other Qualified Bid is received by the Bid Deadline, the Stalking Horse Bid;
 - (ii) in the event that multiple Qualified Bids are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Proposal Trustee is satisfied, acting reasonably, is capable of being completed as required by the Sales Process Order.
- (j) As soon as practicable after determination of the Winning Bid, the Company will make a motion to the Court for an approval and vesting order in respect of the Winning Bid and the underlying purchase agreement.

ADMINISTRATION CHARGE

44. In order to protect the fees and expenses of each of the Administrative Professionals, KMW seeks a first ranking charge on the Property in an amount of \$150,000 (the “**Administration Charge**”), ranking in priority to all claims and encumbrances.

45. I believe that no creditor will be materially prejudiced as a result of the granting of the Administration Charge

D&O CHARGE

46. As part of the NOI proceeding, KMW is seeking a third ranking charge on the Property in favour of their directors and officers in the amount not to exceed \$50,000 (the “D&O Charge”) ranking in priority to all other claims and encumbrances, with the exception of the Administration Charge and the DIP Charge, as security for the possible liabilities that may be incurred by the directors and officers of the Company after the Filing Date, including wages, vacation pay, and source deductions.

47. The Company does not have an existing insurance policy with respect to directors and officers liabilities.

48. There is a risk that without the D&O Charge, KMW’s directors and officers might resign from their positions, which would jeopardize the NOI proceeding. The Company, in consultation with the Proposal Trustee, believes that the quantum of the proposed D&O Charge is reasonable given the circumstances.

49. I believe that no creditor will be materially prejudiced as a result of the granting of the D&O Charge

STAY EXTENSION

50. I have been advised by Sam Rappos, a partner at Chaitons, that under the BIA, the period for KMW to file a proposal will expire on May 11, 2020. The Company is acting in good faith and with due diligence in seeking to preserve its business on a going concern basis for the benefit of all of its stakeholders.

51. In order to commence and advance the Sale Process, KMW is seeking an extension of time to file a proposal for 45 days or until June 25, 2020.

52. Without the extension, KMW will not be in a position to make a viable proposal to its creditors and will become bankrupt to the detriment of its stakeholders. In contrast, no creditor will be materially prejudiced if the extension applied for is granted. The extension is supported by the Proposal Trustee. If the extension applied for is granted, KMW would likely be able to make a viable proposal to its creditors following the completion of the Sale Process.

53. This affidavit is sworn in support of KMW's motion and for no other or improper reason.

Sworn before me)
via video conference call)
on the 24th day of April, 2020)



SAM RAPPOS
A commissioner, etc.



ERIC BERTIL ROSEN

This is Exhibit "A" referred to in the Affidavit of Eric Bertil Rosen
sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

In the Matter of the Notice of Intention to make a
proposal of:

KMW Energy Inc.
Insolvent Person

MNP LTD / MNP LTÉE
Licensed Insolvency Trustee

Date of the Notice of Intention: April 11, 2020

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: April 14, 2020, 12:42

E-File/Dépôt Electronique

Official Receiver

Federal Building - London, 451 Talbot Street, Suite 303, London, Ontario, Canada, N6A5C9, (877)376-9902

Canada

This is Exhibit "B" referred to in the Affidavit of Eric Bertil Rosen
sworn April 24, 2020.

A handwritten signature in black ink, appearing to read "Sam Rappos". The signature is fluid and cursive, with a large initial "S" and a long, sweeping underline.

Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

Request ID: 024420746
Transaction ID: 75167562
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/09
Time Report Produced: 14:43:20
Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Amalgamation Date
1749202	KMW ENERGY INC.	2008/03/01
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
635 WILTON GROVE RD		NOT APPLICABLE
		Amalgamation Ind.
		A
		New Amal. Number
		NOT APPLICABLE
		Notice Date
		NOT APPLICABLE
		Letter Date
		NOT APPLICABLE
Mailing Address		Revival Date
635 WILTON GROVE ROAD		NOT APPLICABLE
		Continuation Date
		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		Cancel/Inactive Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
		EP Licence Term.Date
		NOT APPLICABLE
	Number of Directors	Date Commenced
	Minimum	in Ontario
	Maximum	
	00001	NOT APPLICABLE
	00007	
Activity Classification		Date Ceased
NOT AVAILABLE		in Ontario
		NOT APPLICABLE

Request ID: 024420746
Transaction ID: 75167562
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/09
Time Report Produced: 14:43:20
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

1749202

Corporation Name

KMW ENERGY INC.

Corporate Name History

KMW ENERGY INC.

Effective Date

2008/03/01

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Amalgamating Corporations**Corporation Name**

KMW ENERGY INC.

KMW SYSTEMS INC.

Corporate Number

1111879

1183794

Request ID: 024420746
Transaction ID: 75167562
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/09
Time Report Produced: 14:43:20
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

1749202

Corporation Name

KMW ENERGY INC.

Administrator:

Name (Individual / Corporation)

GERRY
ROY
HIGGINS

Address

1572 MICKLEBOROUGH DRIVE

LONDON
ONTARIO
CANADA N6G 5R9

Date Began

2008/03/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

ERIC
BERTIL
ROSEN

Address

131 LELAND ROAD

LONDON
ONTARIO
CANADA N6K 1T2

Date Began

2008/03/01

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 024420746
Transaction ID: 75167562
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/09
Time Report Produced: 14:43:20
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

1749202

Corporation Name

KMW ENERGY INC.

Administrator:

Name (Individual / Corporation)

ERIC
BERTIL
ROSEN

Address

131 LELAND ROAD

LONDON
ONTARIO
CANADA N6K 1T2

Date Began

2008/03/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

Administrator:

Name (Individual / Corporation)

ERIC
BERTIL
ROSEN

Address

131 LELAND ROAD

LONDON
ONTARIO
CANADA N6K 1T2

Date Began

2008/03/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

Request ID: 024420746
Transaction ID: 75167562
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/09
Time Report Produced: 14:43:20
Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

1749202

Corporation Name

KMW ENERGY INC.

Administrator:

Name (Individual / Corporation)

ERIC
BERTIL
ROSEN

Address

131 LELAND ROAD

LONDON
ONTARIO
CANADA N6K 1T2

Date Began

2008/03/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

CHIEF EXECUTIVE OFFICER Y

Resident Canadian

Request ID: 024420746
Transaction ID: 75167562
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2020/04/09
Time Report Produced: 14:43:20
Page: 6

CORPORATION PROFILE REPORT

Ontario Corp Number

1749202

Corporation Name

KMW ENERGY INC.

Last Document Recorded

Act/Code Description

Form

Date

CIA ANNUAL RETURN 2018

1C

2018/12/30 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

This is Exhibit "C" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : Chaitons LLP - Lynda Christodoulou
Reference : 65743
Search ID : 768065
Date Processed : 4/24/2020 2:08:52 PM
Report Type : PPSA Electronic Response
Search Conducted on : KMW ENERGY 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: KMW ENERGY INC.

FILE CURRENCY: April 23, 2020

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: KMW ENERGY INC.

FILE CURRENCY: April 23, 2020

UNMATCHED REGISTRATION

FAMILY : 1 OF 3 ENQUIRY PAGE : 1 OF 5

SEARCH : BD : KMW ENERGY INC.

FILE NUMBER : 668920896 EXPIRY DATE : 02MAR 2021 STATUS :

THE NEXT REGISTRATION IS A FINANCING CHANGE STATEMENT/CHANGE STATEMENT OR A MOTOR VEHICLE SCHEDULE WHICH REFERS TO A REGISTRATION THAT IS NOT RECORDED IN THE SYSTEM. IF IT IS A FINANCING CHANGE STATEMENT/CHANGE STATEMENT, THIS MAY HAVE OCCURRED AS A RESULT OF AN ERROR OR BECAUSE THE REGISTRATION REFERRED TO HAS EXPIRED OR BEEN DISCHARGED. IF IT IS A MOTOR VEHICLE SCHEDULE, THIS MAY HAVE OCCURRED BECAUSE OF AN ERROR.

*** 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: KMW ENERGY INC.

FILE CURRENCY: April 23, 2020

2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

FAMILY : 1 OF 3 ENQUIRY PAGE : 2 OF 5

SEARCH : BD : KMW ENERGY INC.

FILE NUMBER 668920896

PAGE TOT REGISTRATION NUM REG TYPE
01 CAUTION : 01 OF 001 MV SCHED: 20200302 1732 1590 8404

21 REFERENCE FILE NUMBER : 668920896

22 AMEND PAGE: NO PAGE: CHANGE: B RENEWAL REN YEARS: 5 CORR PER:

23 REFERENCE DEBTOR/ IND NAME:

24 TRANSFEROR: BUS NAME: KMW ENERGY INC.

25 OTHER CHANGE:

26 REASON:

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 :
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 : LOOPSTRA NIXON LLP (CJ)

17 ADDRESS : 135 QUEEN'S PLATE DRIVE, SUITE 600

CITY : TORONTO PROV : ON POSTAL CODE : M9W 6V7

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: KMW ENERGY INC.

FILE CURRENCY: April 23, 2020

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 3 ENQUIRY PAGE : 3 OF 5

SEARCH : BD : KMW ENERGY INC.

00 FILE NUMBER : 760541184 EXPIRY DATE : 02MAR 2025 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20200302 1706 1590 8391 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: KMW ENERGY INC.
OCN : 001749202
04 ADDRESS : 635 WILTON GROVE ROAD
CITY : LONDON PROV: ON POSTAL CODE: N6N 1N7
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
462673 ONTARIO INC. C.O.B. NOR-ARC STEEL FABRICATORS
09 ADDRESS : 331567 HIGHWAY #11, P.O. BOX 565
CITY : EARLTON PROV: ON POSTAL CODE: P0J 1E0
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: LOOPSTRA NIXON LLP (CJ)

17 ADDRESS : 135 QUEEN'S PLATE DRIVE, SUITE 600

CITY : TORONTO PROV: ON POSTAL CODE: M9W 6V7

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: KMW ENERGY INC.

FILE CURRENCY: April 23, 2020

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 3 ENQUIRY PAGE : 4 OF 5

SEARCH : BD : KMW ENERGY INC.

00 FILE NUMBER : 761514516 EXPIRY DATE : 17APR 2025 STATUS :
01 CAUTION FILING : PAGE : 001 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20200417 1516 1862 2565 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: KMW ENERGY INC.
OCN :
04 ADDRESS : 635 WILTON GROVE ROAD
CITY : LONDON PROV: ON POSTAL CODE: N6N 1N7
05 IND DOB : IND NAME:
06 BUS NAME: 462673 ONTARIO INC.
OCN :
07 ADDRESS : 331567 HIGHWAY 11 NORTH, P.O. BOX 565
CITY : EARLTON PROV: ON POSTAL CODE: P0J 1E0

08 SECURED PARTY/LIEN CLAIMANT :
LIBERTY MUTUAL INSURANCE COMPANY
09 ADDRESS : C/O LIBERTY INTERNATIONAL UNDERWRITERS,
CITY : TORONTO PROV: ON POSTAL CODE: M5J 2T3
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
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14
15

GENERAL COLLATERAL DESCRIPTION

16 AGENT: BORDEN LADNER GERVAIS LLP (J.W. MACLELLAN)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

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: KMW ENERGY INC.

FILE CURRENCY: April 23, 2020

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 3 ENQUIRY PAGE : 5 OF 5

SEARCH : BD : KMW ENERGY INC.

00 FILE NUMBER : 761514516 EXPIRY DATE : 17APR 2025 STATUS :
01 CAUTION FILING : PAGE : 002 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20200417 1516 1862 2565 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME: NOR-ARC
OCN :
04 ADDRESS : 331567 HIGHWAY 11 NORTH, P.O. BOX 565
CITY : EARLTON PROV: ON POSTAL CODE: P0J 1E0
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS : 181 BAY STREET, SUITE 1000
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:
LAST SCREEN

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

This is Exhibit "D" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

ACKNOWLEDGMENT OF DEBT & SECURITY


TO: 462673 ONTARIO INC.
FROM: KMW ENERGY INC.
RE: ACKNOWLEDGMENT OF DEBT & SECURITY

KMW Energy Inc. (the "Debtor"), hereby confirms and acknowledges to 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators (the "Creditor") that:

- (a) the Debtor is indebted to the Creditor (i) in amount of \$2,301,877.02 (CAD), for principal and interest accrued to March 24, 2020, (ii) plus interest, costs and fees continuing to accrue from and after March 24, 2020;
- (b) the foregoing indebtedness is secured by, among other things, a general security agreement dated April 12, 2011, executed by the Debtor in favour Creditor;
- (c) the foregoing indebtedness and security represent valid and subsisting obligations of the Debtor to the Creditor, fully enforceable as against the Debtor; and
- (d) the Debtor it has no defence with respect of the Creditor's enforcement of the debt and security described herein.

This acknowledgment of debt has been signed on the 9th day of April 2020.

KMW ENERGY INC.


Name: Eric Rosen
Position: CEO
I have authority to bind the corporation.

This is Exhibit "E" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

GENERAL SECURITY AGREEMENT

THIS GENERAL SECURITY AGREEMENT is given as of the 12th day of April, 2011 by **KMW ENERGY INC.** (the "Debtor") in favour of **462673 ONTARIO INC. c.o.b. NOR-ARC STEEL FABRICATORS** (the "Secured Party").

WHEREAS the Debtor is indebted to the Secured Party;

AND WHEREAS the Debtor and the Secured Party have agreed that the Debtor shall grant a security interest to the Secured Party;

WITNESSETH that, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. **Security Interest.** As continuing collateral security for the due performance by the Debtor of all present and future debts, liabilities and obligations of the Debtor to the Secured Party (the "Indebtedness"), the Debtor hereby mortgages and charges and grants a security interest (the "Security Interest") to the Secured Party in all undertaking, property and assets of the Debtor, all Goods (including all parts, accessories, attachments, special tools, additions and accessions thereto), Chattel Paper, Documents of Title (whether negotiable or not), Instruments, Intangibles and Securities now owned or hereafter owned or acquired by or on behalf of the Debtor (including such as may be returned to or repossessed by the Debtor) and in all proceeds, renewals and replacements thereof, accretions thereto, substitutions therefor and any personal property in any form, or fixtures, derived directly or indirectly from any dealing with such property or that indemnifies or compensates for such property destroyed or damaged (collectively the "Collateral") including, without limitation, all of the following now owned or hereafter owned or acquired by or on behalf of the Debtor:

- (a) all inventory of whatever kind and wherever situate, including, but not limited to, all goods now or hereafter held for sale or lease or furnished or to be furnished under contract of service, raw materials, work in process, materials or supplies used up or consumed in a business or profession and merchandise in transit (the "Inventory");
- (b) all equipment (other than the Inventory) of whatever kind and wherever situate, including all machinery, tools, apparatus, plant, furniture, fixtures, vehicles and other tangible personal property of whatsoever nature or kind;
- (c) all book accounts and book debts and generally all accounts, debts, dues, claims, choses in action and demands of every nature and kind howsoever arising or securities, including letters of credit and advices of credit, which are now due, owing or accruing or growing due to or owned by or which may hereafter become due, owing or accruing or growing due to or owned by the Debtor (the "Debts");

- (d) all deeds, documents, writings, papers, books of account and other books relating to or being records of the Debts, Chattel Paper or Documents of Title or by which such are or may hereinafter be secured, evidenced, acknowledged or made payable;
- (e) all shares, stock, warrants, bonds, debentures, debenture stock or other securities now or hereafter owned by the Debtor (the "Securities");
- (f) all contractual rights and insurance claims and all goodwill, patents, patents pending, trade marks, trade names, design rights, engineering drawings, copyrights and other industrial property; and
- (g) all monies other than trust monies lawfully belonging to others.

2. **Reservation of Last Day of Leases.** The Security Interest shall not extend or apply to the last day of the term of any lease, whether oral or written, or any agreement therefor now held or hereafter acquired by the Debtor; but should the Security Interest become enforceable, the Debtor shall thereafter stand possessed of such last day and shall hold it in trust to assign the same to any person who may acquire such part of the term hereby charged in the course of enforcement of the Security Interest or any realization of the subject matter hereof. Upon any such enforcement or realization, the Secured Party shall be entitled for the purpose of vesting the aforesaid remainder of any such term or renewal thereof in any purchaser or purchasers thereof, by deed or writing to appoint such purchaser or purchasers or any person as a new trustee or trustees of the said remainder in the place of the Debtor and to vest the same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting the same.

3. **Interpretation.** The terms "Goods", "Chattel Paper", "Documents of Title", "Instruments", "Intangibles", "Securities", "Proceeds", "Inventory" and "Accession", whenever used herein, shall have their respective meanings when used in the *Personal Property Security Act* (Ontario), R.S.O. 1990, c.P.10, as amended from time to time, which Act, including amendments thereto and any Act substituted therefor and amendments thereto shall be referred to herein as the "P.P.S.A.", but the term "Goods" shall not include "consumer goods" of the Debtor as that term is defined in the P.P.S.A. and the term "Inventory" shall include livestock, the young thereof after conception and crops that become such within one year of execution of this Security Agreement. Any reference herein to "Collateral" shall, unless the context otherwise requires, be deemed a reference to "Collateral or any part thereof".

4. **Securities**

- (a) The Securities, including all certificates or other evidence of same heretofore or hereafter deposited with or transferred to the Secured Party, its nominee or nominees by the

Debtor, including any substitutions therefor, shall be held by the Secured Party by way of hypothecation and pledge as continuing collateral security for the Indebtedness.

- (b) The Debtor authorizes the Secured Party to transfer the Securities or any part thereof into its own name or that of its nominee or nominees so that the Secured Party or its nominee or nominees may appear of record as the sole owner thereof; provided that until default, the Secured Party shall deliver promptly to the Debtor all notices or other communications received by it or its nominee or nominees as such registered owner and, upon receipt by it or its nominee or nominees as such registered owner and receipt of payment of any necessary expenses thereof, shall issue to the Debtor a proxy to vote and take all action with respect to such Securities. After default, the Debtor waives all rights to receive any notices or communications received by the Secured Party or its nominee or nominees as such registered owner and agrees that no proxy issued by the Secured Party to the Debtor or its order as aforesaid shall thereafter be effective.

5. **Representations and Warranties of the Debtor.** The Debtor represents and warrants and, so long as this Security Agreement remains in effect, shall be deemed to continuously represent and warrant that:

- (a) the Collateral is owned by the Debtor free of all security interests, mortgages, liens, claims, charges or other encumbrances (collectively the "Encumbrances"), save for the security interests set out in Schedule "A" hereto and the security granted hereby; and
- (b) each Debt, Chattel Paper and Instrument constituting the Collateral is enforceable in accordance with its terms against the party obligated to pay the same (the "Account Debtor"), and the amount represented by the Debtor to the Secured Party from time to time as owing by each Account Debtor or by all Account Debtors will be the correct amount actually and unconditionally owing by such Account Debtor or Account Debtors, except for normal cash discounts where applicable, set off, claim or counterclaim against the Debtor which can be asserted against the Secured Party whether in any proceeding to enforce the Collateral or otherwise.

6. **Covenants of the Debtor.** So long as this Security Agreement remains in effect, the Debtor covenants and agrees:

- (a) to defend the Collateral against the claims of all other parties claiming the same or an interest therein; to keep the Collateral free from all Encumbrances, except save and except for those set out in Schedule "A", and not to sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral or any interest therein without the prior written consent of the Secured Party; provided always that, until default, the Debtor may, in the ordinary course of the Debtor's business for the purpose of carrying on same, sell or lease the Inventory and, subject to Clause 8 hereof, use monies available to the Debtor;

- (b) to notify the Secured Party promptly of:
 - (i) any material change in the information contained herein or in the Schedules hereto relating to the Debtor, the Debtor's business or the Collateral;
 - (ii) the details of any significant acquisition of the Collateral;
 - (iii) the details of any claims or litigation affecting the Collateral;
 - (iv) any loss of or damage to the Collateral;
 - (v) any default by any Account Debtor in payment of its debts or other performance in accordance with normal trade terms entered into with such Account Debtor; and
 - (vi) the return to or repossession by the Debtor of the Collateral.
- (c) to keep the Collateral in good order, condition and repair and not to use the Collateral in violation of the provisions of this Security Agreement or any other agreement relating to the Collateral or any policy insuring the Collateral or any applicable statute, law, by-law, rule, regulation or ordinance;
- (d) to do, execute, acknowledge and deliver such financing statements and further assignments, transfers, documents, acts, matters and things (including further schedules hereto) as may be reasonably requested by the Secured Party of or with respect to the Collateral in order to give effect to these presents and to pay all costs for searches and filings in connection therewith;
- (e) to prevent the Collateral, save the Inventory sold or leased as permitted hereby, from being or becoming an accession to other property not covered by this Security Agreement;
- (f) to carry on and conduct the business of the Debtor in a proper and efficient manner and so as to protect and preserve the Collateral and to keep, in accordance with generally accepted accounting principles consistently applied, proper books of account for the Debtor's business as well as accurate and complete records concerning the Collateral, and mark any and all such records and the Collateral at the Secured Party's request so as to indicate the Security Interest; and
- (g) to deliver to the Secured Party from time to time promptly upon request in writing:

- (i) any Documents of Title, Instruments, Securities and Chattel Paper constituting, representing or relating to the Collateral; and
- (ii) such information concerning the Collateral, the Debtor and the Debtor's business and affairs as the Secured Party may reasonably request.

7. **Use and Verification of the Collateral.** Subject to compliance with the Debtor's covenants contained herein and Clause 4 hereof, the Debtor may, until default, possess, operate, collect, use and enjoy and deal with the Collateral in the ordinary course of the Debtor's business in any manner not inconsistent with the provisions hereof; provided always that the Secured Party shall have the right at any time and from time to time to verify the existence and state of the Collateral in any manner the Secured Party may consider appropriate and the Debtor agrees to furnish all assistance and information and to perform all such acts as the Secured Party may reasonably request in connection therewith and for such purpose to grant to the Secured Party or its agents access to all places where the Collateral may be located and to all premises occupied by the Debtor.

8. **Collection of Debts.** After default under this Security Agreement, the Secured Party may notify all or any Account Debtors of the Security Interest and may also direct such Account Debtors to make all payments of the Collateral to the Secured Party. The Debtor acknowledges that any payments on or other proceeds of the Collateral received by the Debtor from Account Debtors, whether before or after notification of this Security Interest to Account Debtors and after default under this Security Agreement shall be received and held by the Debtor in trust for the Secured Party and shall be turned over to the Secured Party upon request.

9. **Income from and Interest on the Collateral.**

- (a) Until default, the Debtor reserves the right to receive any monies constituting income from or interest on the Collateral and if the Secured Party receives any such monies prior to default, the Secured Party shall either credit the same to the account of the Debtor or pay the same promptly to the Debtor.
- (b) After default, the Debtor will not request or receive any monies constituting income from or interest on the Collateral and, if the Debtor receives any such monies without any request by it, the Debtor will pay the same promptly to the Secured Party.

10. **Increases, Profits, Payments or Distribution.**

- (a) Whether or not default has occurred, the Debtor authorizes the Secured Party:

- (i) to receive any increase in or profits (other than money) on the Collateral and to hold the same as part of the Collateral. Money so received shall be treated as income for the purposes of Clause 9 hereof and dealt with accordingly; and
 - (ii) to receive any payment or distribution upon redemption or retirement or upon dissolution and liquidation of the issuer of the Collateral; to surrender such Collateral in exchange therefor; and to hold any such payment or distribution as part of the Collateral.
- (b) If the Debtor receives any such increase or profits (other than money) or payments or distributions, the Debtor will deliver the same promptly to the Secured Party to be held by the Secured Party as herein provided.

11. **Disposition of Monies.** Subject to any applicable requirements of the P.P.S.A. or other statute or regulation, all monies collected or received by the Secured Party pursuant to or in exercise of any right it possesses with respect to Collateral shall be applied on account of the Indebtedness in such manner as the Secured Party deems best or, at the option of the Secured Party, released to the Debtor, all without prejudice to the liability of the Debtor or the rights of the Secured Party hereunder, and any surplus shall be accounted for as required by law.

12. **Events of Default.** The Debtor shall be in default under this Security Agreement upon the occurrence of any one or more of the following events:

- (a) if the Debtor has failed to honour a demand for payment or has failed to pay any amount of principal or interest owing to the Secured Party as and when due;
- (b) if the Debtor neglects to observe or perform any other covenant or condition contained herein or in any other agreement or instrument between the Debtor and the Secured Party that is required to be observed or performed by the Debtor;
- (c) the Debtor commits or threatens to commit an act of bankruptcy or ceases or threatens to cease to carry on its business as a going concern or abandons all or any part of the Collateral;
- (d) if an order is made or an effective resolution passed for the dissolution, winding-up or liquidation of the Debtor;
- (e) if the Debtor makes an assignment for the benefit of its creditors, or makes or agrees to make any bulk sale without complying with the *Bulk Sales Act* (Ontario) or is declared bankrupt or makes a proposal under the *Bankruptcy and Insolvency Act* (Canada);

- (f) if an encumbrancer takes possession of the property of the Debtor or any substantial part thereof or if a distress or execution or any similar process is levied or enforced against such property and such distress or execution remains unsatisfied for such period as would permit such property or part thereof to be sold thereunder;
- (g) if the Debtor secretes, sells, mortgages, pledges, leases, lends or otherwise encumbers or disposes of the Collateral or attempts or purports so to do, otherwise than in the ordinary conduct of the Debtor's business;
- (h) if the Debtor does or fails to do any act whereupon the maturity of liability or indebtedness of the Debtor to any person other than the Secured Party is accelerated under any other security agreement or debenture or any other agreement to which the Debtor is a party;
- (i) if the Secured Party in good faith deems itself insecure or the Collateral to be in danger of loss, damage, misuse, seizure, or confiscation. The Debtor shall not after default hereunder sell or offer for sale any of the Collateral to any person, firm or corporation without prior written permission from the Secured Party.

13. **Remedies.** Upon the default by the Debtor as set out in Clause 12 hereof, the Secured Party shall give notice specifying the default to the Debtor and requiring the Debtor to put an end to the default. If within fifteen (15) business days of the default the Debtor has not put an end to the default, the security constituted hereby shall immediately become enforceable and the Secured Party may exercise any of the following remedies separately or in combination, such remedies being cumulative or alternative at the option of the Secured Party, and the Secured Party may exercise or commence or cease to exercise any or all of them without prejudice to its right to exercise or commence or cease to exercise any other of them:

- (a) The Debtor shall deliver to the Secured Party upon demand all or any part of the Collateral at such time or times and place or places as the Secured Party may specify. The Secured Party is authorized and empowered, at its option, to take possession of the Collateral or any of it, by entry upon any premises where the Collateral or any of it may be located and to take possession of and remove same. The Secured Party may thereafter sell, lease or otherwise dispose of all or any part of the Collateral either as a whole or in separate parcels by public auction, public tender or private sale, either for cash or upon credit, with or without advertisement and with or without a reserve bid, at such time and place and upon such terms and conditions as the Secured Party may determine and the Secured Party may also rescind or vary any contract of sale, lease or other disposition that may have been entered into and re-sell, re-lease or otherwise dispose of the Collateral with or under any of the powers conferred hereunder and adjourn any such sale from time to time. The Secured Party may execute and deliver to any purchaser of the Collateral or part thereof a good and sufficient deed or other conveyance for the same, the Secured

Party being hereby constituted the irrevocable attorney of the Debtor for the purpose of making such sale, lease or other disposition and executing such deeds and any such sale shall be a perpetual bar both in law and in equity against the Debtor and all other persons claiming the Collateral or any part thereof by, from, through or under the Debtor.

- (b) The Secured Party may by instrument in writing appoint any person or persons, whether an officer or officers or any employee or employer of the Secured Party or not, to be a receiver or receivers (which term shall include a receiver and manager) of the Collateral or any part thereof and may remove any receiver or receivers so appointed and appoint another or others in his or their stead. Any such receiver so appointed shall, so far as concerns responsibility for his acts, be deemed the agent of the Debtor and in no event the agent of the Secured Party and, without limiting the foregoing, the Secured Party shall not be responsible in any way for any misconduct, negligence or non-feasance on the part of any such receiver. The Secured Party may from time to time fix the reasonable remuneration of any such receiver and direct payment thereof out of the Collateral. Subject to the provisions of the instrument appointing such receiver, any such receiver or receivers so appointed shall have the following power:
- (i) to take possession of the Collateral or any part thereof and, for that purpose, to take any proceedings in the name of the Debtor or otherwise;
 - (ii) to carry on or concur in carrying on the business of the Debtor;
 - (iii) to borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or for the carrying on of the operation of the business of the Debtor;
 - (iv) to sell or concur in selling the whole or any part of the Collateral on such terms and conditions and in such manner as the receiver may determine; and
 - (v) to make any arrangement or compromise which he or it shall think expedient in the interest of the Secured Party.

Except as may otherwise be directed by the Secured Party, all moneys from time to time received by any such receiver shall be held in trust for and paid over to the Secured Party.

- (c) In addition to those rights granted herein and in any other agreement now or hereafter in effect between the Debtor and the Secured Party and in addition to any other rights the Secured Party may have at law or in equity, the Secured Party shall have, both before and after default, all rights and remedies of a secured party under the P.P.S.A.

- (d) The Secured Party shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of the Collateral or to institute any proceedings for such purposes. Furthermore, the Secured Party shall have no obligation to take any steps to preserve rights against prior parties to any Instrument or Chattel Paper, whether the Collateral or proceeds and whether or not in the Secured Party's possession and shall not be liable or accountable for failure to do so.
- (e) The Debtor agrees to pay all costs, charges and expenses reasonably incurred by the Secured Party or any receiver appointed by it, whether directly or for services rendered (including reasonable solicitors' and auditors' costs and other legal expenses and receiver remuneration), in operating the Debtor's accounts, in preparing or enforcing this Security Agreement, taking custody of, preserving, repairing, processing, preparing for disposition and disposing of the Collateral and in enforcing or collecting the Indebtedness and all such costs, charges and expenses together with any monies owing as a result of any borrowing by the Secured Party or any receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of the Collateral and shall be secured hereby.
- (f) Unless the Collateral in question is perishable or unless the Secured Party believes on reasonable grounds that the Collateral in question will decline speedily in value, the Secured Party will give the Debtor such notice of the date, time and place of any public sale or of the date after which any private disposition of the Collateral is to be made, as may be required by the P.P.S.A.

14. **Miscellaneous.**

- (a) The Debtor hereby authorizes the Secured Party to file such financing statements and other documents and do such acts, matters and things (including completing and adding schedules hereto identifying the Collateral or any permitted Encumbrances affecting the Collateral or identifying the locations at which the Debtor's business is carried on and the Collateral and records relating thereto are situate) as the Secured Party may deem appropriate to perfect and continue the Security Interest, to protect and preserve the Collateral and to realize upon the Security Interest.
- (b) Without limiting any other right of the Secured Party, whenever the Indebtedness is immediately due and payable or the Secured Party has the right to declare the Indebtedness to be immediately due and payable (whether or not it has so declared), the Secured Party may, in its sole discretion, set off against the Indebtedness any and all monies then owed to the Debtor by the Secured Party in any capacity, whether or not due, and the Secured Party shall be deemed to have exercised such right of set-off immediately at the time of making its decision to do so even though any charge therefor is made or entered on the Secured Party's records subsequent thereto.

- (c) Upon the Debtor's failure to perform any of its duties hereunder, the Secured Party may, but shall not be obligated to, perform any or all of such duties, and the Debtor shall pay to the Secured Party, forthwith upon written demand therefor, an amount equal to the expense incurred by the Secured Party in so doing plus interest thereon from the date such expense is incurred until it is paid at the rate at which interest is payable on the Indebtedness.
- (d) The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges and otherwise deal with the Debtor, and upon the default of the Debtor, debtors of the Debtor, sureties and others and with the Collateral and other security as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize the Security Interest. Furthermore, upon the default of the Debtor, the Secured Party may demand, collect and sue on the Collateral in either the Debtor's or the Secured Party's name, at the Secured Party's option, and may endorse the Debtor's name on any and all cheques, commercial paper and any other Instruments pertaining to or constituting the Collateral.
- (e) No delay or omission by the Secured Party in exercising any right or remedy hereunder or with respect to any of the Indebtedness shall operate as a waiver thereof or of any other right to remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Furthermore, the Secured Party may remedy any default by the Debtor hereunder or with respect to any of the Indebtedness in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Debtor. All rights and remedies of the Secured Party granted or recognized herein are cumulative and may be exercised at any time and from time to time independently or in combination.
- (f) The Debtor waives protest of any Instrument constituting the Collateral at any time held by the Secured Party on which the Debtor is in any way liable and, subject to Clause 13(f) hereof, notice of any other action taken by the Secured Party.
- (g) This Security Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. If more than one Debtor executes this Security Agreement, the obligations of such Debtors hereunder shall be joint and several.
- (h) Save for any schedules which may be added hereto pursuant to the provisions hereof, no modification, variation or amendment of any provisions of this Security Agreement shall be made except by a written agreement, executed by the parties hereto, and no waiver of any provision hereof shall be effective unless in writing.

- (i) This Security Agreement and the transactions evidenced hereby shall be governed by and construed in accordance with the laws of the Province of Ontario as the same may from time to time be in effect, including, where applicable, the P.P.S.A.

Subject to the requirements of Clauses 13(f) and 14(k) hereof, any notice to be given hereunder may be effectively given by delivering the same at the addresses hereinafter set forth or by sending the same by prepaid registered mail to the Secured Party or the Debtor at such addresses. Any notice so mailed shall be deemed to have been received on the third (3rd) business day following the mailing thereof and if given by delivery shall be deemed to have been received upon delivery. The mailing addresses of the parties for the purpose hereof shall be:

- (i) as to the Debtor:

635 Wilton Grove Road
London, Ontario
N6N 1N7

- (ii) as to the Secured Party:

331567 Highway #11
P.O. Box 565
Earlton, Ontario
P0J 1E0

or to such other address as the party to whom given has last notified the party giving the notice in the manner provided in this Clause. In the event of postal interruption, notice shall be made by delivery.

- (k) This Security Agreement and the security afforded hereby is in addition to and not in substitution for any other security now or hereafter held by the Secured Party and is, and is intended to be, a continuing Security Agreement and shall remain in full force and effect until all the Indebtedness contracted for or created before the receipt of such notice by the Secured Party, and any extensions or renewals thereof (whether made before or after receipt of such notice), together with interest accruing thereon after such notice, shall be paid in full.
- (l) The headings used in this Security Agreement are for convenience only and are not to be considered a part of this Security Agreement and do not in any way limit or amplify the terms and provisions of this Security Agreement.

- (m) When the context so requires, the singular number shall be read as if the plural were expressed and the provisions hereof shall be read with all grammatical changes necessary dependent upon the person referred to being a male, female, firm or corporation.
- (n) In the event any provisions of this Security Agreement, as amended from time to time, shall be deemed invalid or void, in whole or in part, by any Court of competent jurisdiction, the remaining terms and provisions of this Security Agreement shall remain in full force and effect.
- (o) Nothing herein contained shall in any way obligate the Secured Party to grant, continue, renew or extend the time for payment of the Indebtedness.
- (p) The Security Interest created hereby is intended to attach as of the date of this Agreement.

15. **Copy of Agreement.** The Debtor hereby acknowledges receipt of a copy of this Security Agreement.

IN WITNESS WHEREOF the Debtor has executed this General Security Agreement as of the date first written above.

KMW ENERGY INC.

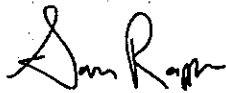
Per: 

Authorized signing officer

SCHEDULE "A"

1. Any prior security interests granted in favour of third parties existing as of the date hereof as evidenced by registered financing statements under the *Personal Property Security Act* (Ontario), including without limitation the following registrations:
 - i. File No. 645093387; Registration No. 20080512 1947 1531 8474; 20080515 1952 1531 3528;
 - ii. File No. 640625913; Registration No. 20071113 1420 1590 3631; and
 - iii. File No. 639847845; Registration No. 20071012 1119 1862 6145
2. Liens for taxes, assessments, governmental charges or levies not due at the date hereof.
3. Rights reserved to or vested in any municipality or government or other public authority by the terms of any lease, licence, franchise, grant or permit, or by any statutory provision, to terminate the same or to require annual or periodic payments as a condition to the continuance thereof.
4. Any lien or encumbrance, the validity of which is being contested by the Debtor in good faith and in respect of which the Secured Party acting reasonably shall be satisfied that its interests are not prejudiced thereby.
5. Any security given by the Debtor in the nature of a purchase money security interest as defined under the *Personal Property Security Act* (Ontario).

This is Exhibit "F" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

ASSIGNMENT OF INDEBTEDNESS AND SECURITY

THIS ASSIGNMENT made on the 20th day of April 2020.

BETWEEN:

**462673 ONTARIO INC. o/a NOR-ARC
STEEL FABRICATORS**, a company incorporated
pursuant to the laws of the Province of Ontario
(hereinafter called the "**Assignor**")

-and-

2751602 ONTARIO INC., a company incorporated pursuant
to the laws of the Province of Ontario
(hereinafter called the "**Assignee**")

-and-

KMW ENERGY INC., a company incorporated pursuant
to the laws of the Province of Ontario
(hereinafter called the "**Debtor**")

WHEREAS

- A. The Assignor provided steel fabrication services (the "**Services**") to the Debtor from or about April 2010 to and including December 2019;
- B. On April 9, 2020, the Assignor made demand on the Debtor for the total principal amount owing on account of the Services and provided the Debtor with notice of its intention to enforce its Security (*as hereinafter defined*);
- C. The outstanding indebtedness owing by the Debtor to the Assignor as at April 9, 2020 is the amount of \$2,784,782.77, with interest continuing to accrue, as set forth in the invoice statement attached as Schedule "A", which amount is hereinafter referred to as the "**Indebtedness**" and the interest rates applicable to each part of the Indebtedness are set forth on Schedule "A".

D. As security for payment of the Indebtedness, the Assignor received the signed security instrument listed in Schedule "B" (the "Security") and registration thereof, in respect of which are set out therein.

E. The Debtor has agreed to consent to the assignment of the Indebtedness and the Security by the Assignor to the Assignee.

F. The Assignee has offered to purchase from the Assignor the Indebtedness and the Security in accordance with the agreements set out below.

NOW THEREFORE THIS ASSIGNMENT WITNESSES that in consideration of the sum of \$30,000 ("Purchase Price") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. The parties hereto acknowledge and agree that each the recitals above are true and correct.
2. The Assignor hereby unconditionally and irrevocably transfers, assigns and sets over to the Assignee, without recourse to the Assignor, and without any representation or warranty whatsoever except as expressly set out herein, all of the Assignor's right, title and interest in, to and under:
 - (a) the Indebtedness; and
 - (b) the Security, together with the full benefit of all covenants and agreements contained therein.
3. The Assignor represents and warrants to the Assignee that,
 - (a) it holds no security against the Debtor's property other than the Security;
 - (b) the Assignor has not previously sold, conveyed, assigned, released, discharged or encumbered the Indebtedness or the Security, either in whole or in part;
 - (c) the Assignor has the legal right and authority to convey to the Assignee all of its right, title and interest in, to and under the Indebtedness and the Security in accordance with the provisions hereof;
 - (d) the books and records of the Assignor as at April 9, 2020 disclose that the Indebtedness is in the amount set forth on Schedule "A" hereto and that this amount is due and owing by the Debtor to the Assignor and the interest rates applicable to each part of the Indebtedness are as set forth on Schedule "A"; and

- (e) the Security has been delivered to and is held by the Assignor.
4. The Assignee acknowledges having received from the Assignor photostatic copies of the Security, and if an original of the Security is available, the Assignor covenants to deliver same to the Assignee following receipt of the Purchase Price.
 5. The Assignee acknowledges that the Assignor makes no other representations or warranties and the Assignee accepts the Indebtedness and Security in their present state without any recourse to the Assignor or claims for indemnity against the Assignor for any matter or thing whatsoever, save and except in respect of the representations and warranties expressly given by the Assignor in this Agreement. The Assignee hereby acknowledges that except for the representations and warranties expressly set out in this Agreement, it is accepting the Indebtedness and the Security on an "as is, where is" basis without recourse to the Assignor and without any other or further representation or warranty of any nature or kind whatsoever, including, without limitation, the collectability of the Indebtedness, the priority of the Security in relation to other creditors of the Debtor, the validity, enforceability or priority of the Security, any deficiency in the Security or the assets charged thereby, the location of the assets charged by the Security, any failure on the part of the Assignor to appropriately draft, have executed or register or perfect all or any portion of the Security, the existence or nature of any claims, charges, liens or interests against the assets charged by the Security, whether any of the assets charged by the Security constitute fixtures on the premises where they are or may be situate or the condition, merchantability, description, fitness for any particular purpose or use, suitability, durability, marketability, condition, quantity or quality thereof.
 6. By its acceptance of this assignment, the Assignee covenants and agrees with the Assignor that it will not bring, take or commence any suits, actions or proceedings in connection with the Indebtedness or the Security in the name of the Assignor, and will not use the Assignor's name in any such suits, actions or proceedings other than for purposes of describing the Indebtedness and the Security.
 7. The Assignee agrees to indemnify the Assignor from and to all costs, charges, damages, assessments and claims of any kind made by any third party or incurred by the Assignor in relation to the assigned Security and/or the assigned Indebtedness and this Agreement, or otherwise in connection with them.
 8. The Assignor appoints Loopstra Nixon LLP as its agent for registering such documents and filing such statements as may be required as a result of this assignment transaction, and this shall be good and sufficient authorization for it to do so.
 9. The Assignor covenants and agrees that it will not, at any time hereafter, accept payment of the Indebtedness or any part thereof, or do any act by which the Assignee may be prevented or hindered from obtaining payment of the Indebtedness or enforcing the Security. Further,

if after the date of this Agreement the Assignor should receive any such payment of the Indebtedness, the Assignor will promptly remit such payment to the Assignee.

10. The Purchase Price shall be wired to the solicitors for the Assignee, who shall confirm the receipt of the same to the Assignor and shall forthwith following completion of the assignment contemplated hereby, release and pay the Purchase Price to the Assignor in accordance the Assignor's directions.
11. The Assignor will from time to time, at the cost of the Assignee, execute, acknowledge and deliver all such further documents and do all such further acts and things as may be reasonably necessary to give effect to this assignment for the purpose of better transferring and assigning of the Indebtedness and the Security pursuant to this Assignment.
12. The Debtor hereby consents to the assignment of the Indebtedness and Security by the Assignor to the Assignee as contemplated hereby.
13. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and may not be amended or modified in any respect except by written instrument signed by all of the parties. The recitals and Schedule each form an integral part of this Agreement.
14. This Agreement will be governed exclusively by the laws of Ontario and the laws of Canada applicable therein.
15. This Agreement will be binding upon the Assignor and the Assignee and their respective successors and assigns, and for the benefit of the Assignor, the Assignee and their respective successors and assigns.
16. The Assignee acknowledges, covenants and agrees that it has been provided with a reasonable opportunity to seek legal advice with respect to the execution and delivery of this Agreement and has either done so or decided to execute and deliver the same without obtaining such legal advice.
17. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which taken together shall be deemed to constitute an original, and such counterparts shall together constitute one and the same instrument. To the extent this Agreement is delivered by facsimile, email or other electronic transmission, the receipt by each party of the other parties' signature(s) shall serve to confirm the execution thereof by each such party.

[EXECUTIONS ON SEPARATE PAGE]

IN WITNESS WHEREOF the Assignor, the Assignee and the Debtor have executed this assignment on the date first above written.

**462673 ONTARIO INC. o/a NOR-ARC
STEEL FABRICATORS**

Per: 
Name: Mario Leveille
Title: President

I have authority to bind the corporation.

2751602 ONTARIO INC.

Per: 
Name: Mario Leveille
Title: President

I have authority to bind the corporation.

KMW ENERGY INC.

Per: 
Name: Eric Rosen
Title: Authorized Signing Officer

I have authority to bind the corporation.

This is Exhibit "G" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

STANDARD FORM OF
AGREEMENT
P-520

DCP and ELDON Revision
11-23-16 @ 12PM

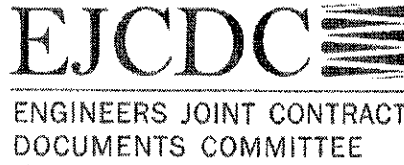
CLEAN WITH 12-5-16 EDITS

FOR FINAL GRE REVIEW

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT BETWEEN
BUYER AND SELLER
FOR PROCUREMENT CONTRACTS**

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

A handwritten signature in the bottom right corner of the page, appearing to be the initials "AC".

This Agreement Between Buyer and Seller for Procurement Contracts has been prepared for use with the Standard General Conditions for Procurement Contracts (EJCDC P-700, 2010 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the others. The suggested wording contained in the Suggested Instructions to Bidders for Procurement Contracts (EJCDC P-200, 2010 Edition), the Suggested Bid Form for Procurement Contracts (EJCDC P-400, 2010 Edition), and the Guide to the Preparation of Supplementary Conditions for Procurement Contracts (EJCDC P-800, 2010 Edition) is also carefully interrelated with the wording of this Agreement.

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
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www.asce.org

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{EP - 02319922 - v2 }

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Page ii

This document contains a suggested format and suggested terms and conditions that will be applicable in most situations. Additional information concerning the use of *this and other* EJCDC Procurement Documents may be found in the Commentary on the EJCDC Procurement Documents (EJCDC P-001, 2010 Edition).

For brevity in the text, the Standard General Conditions for Procurement Contracts (EJCDC P-700, 2010 Edition) will be referred to as "General Conditions."

For brevity in the "Notes to Users" referenced paragraphs of the Suggested Instruction to Bidders (EJCDC P-200, 2010 Edition) are referred to with the prefix "I", those of the Bid Form (EJCDC P-400, 2010 Edition) with the prefix "BF", and those of the General Conditions (P-700, 2010 Edition) or Supplementary Conditions (EJCDC P-800, 2010 Edition) with the prefix "GC" or "SC".



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AGREEMENT

THIS AGREEMENT is by and between Georges River Energy, LLC ("Buyer") and KMW Energy Inc. ("Seller").

Buyer and Seller hereby agree as follows:

ARTICLE 1 – GOODS AND SPECIAL SERVICES

- 1.01 Seller shall furnish the Goods and Special Services as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

- 2.01 The Project, of which the Goods and Special Services may be the whole or only a part, is identified as follows:

ARTICLE 3 – ENGINEER

- 3.01 The Contract Documents for the Goods and Special Services have been prepared by Mid-South Engineering, Inc. ("Engineer"), which is to act as Buyer's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with Seller's furnishing of Goods and Special Services.

ARTICLE 4 – POINT OF DESTINATION

- 4.01 The Point of Destination is designated as: Georges River Energy, LLC @ Robbins Lumber Company, 53 Ghent Road, Searsmont, ME 04973.

ARTICLE 5 – CONTRACT TIMES

- 5.01 *Time of the Essence*

A. All time limits for Milestones, if any, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Contract Documents, are of the essence of the Contract.

- 5.02 *Milestones*

A. *Date for Submittal of Shop Drawings and Samples:* Seller shall submit all Shop Drawings and Samples required by the Contract Documents to Buyer for Engineer's review and approval on or before March 1, 2017. It is the intent of the parties that (1) Engineer conduct such review and issue its approval, or a denial accompanied by substantive comments regarding information needed to gain approval, within ten (10) days of Seller's submittal of such Shop Drawings and Samples; and (2) resubmittals be limited whenever possible. If more than one resubmittal is necessary for reasons not the fault and beyond the control of Seller, then Seller shall be entitled to seek appropriate relief under Paragraph 7.02.B of the General Conditions.

- B. *Date for Delivery of Goods:* The Goods are to be delivered FOB to the Point of Destination and ready for Buyer's receipt of delivery on or before the dates shown on Exhibit A-- Progress Schedule
- C. *Days for Furnishing Special Services:* The furnishing of Special Services, including commissioning assistance and erection assistance services, to Buyer will commence and be completed in mid-2018. Buyer and Seller will agree to exact dates six months prior to the services being needed.

5.03 *Buyer's Final Inspection*

- A. *Days to Achieve Final Inspection:* Buyer shall make its final inspection of the Goods pursuant to Paragraph 8.01.C of the General Conditions within two months of start of commercial operations or when Seller demonstrates that its systems are ready for performance tests, whichever is later.

5.04 *Liquidated Damages*

- A. In the event of late deliveries of the specified Goods, Seller shall pay liquidated damages as set forth in Paragraph 7.02.H of the General Conditions.
- B. In the event of early deliveries of the specified Goods, Seller shall be entitled to receive incentive payments in accordance with Paragraph 7.02.I of the General Conditions.

ARTICLE 6 – CONTRACT PRICE

- 6.01 Buyer shall pay Seller for furnishing the Goods and Special Services in accordance with the Contract Documents as follows:

- A. A Lump Sum of \$ 12,825,000.00 US.

ARTICLE 7 – PAYMENT PROCEDURES

7.01 *Submittal and Processing of Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 10 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

7.02 *Progress Payments; Retainage*

- A. Buyer shall make progress payments on account of the Contract Price on the basis of Seller's Applications for Payment as follows:
 - 1. Upon receipt of Applications for Payment submitted in accordance with Paragraph 10.01.A.1 of the General Conditions and accompanied by Engineer's recommendation of payment in accordance with Paragraph 10.02.A of the General Conditions, amount equal to values shown on Exhibit B Payment Schedule.

7.03 *Final Payment*

- A. Upon receipt of the final Application for Payment accompanied by Engineer's recommendation of payment, Buyer shall pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation and Owners' claims, including but not limited to liquidated damages. Under no circumstance will final payment be made prior to successful performance tests. Performance tests shall be run within two months of start of commercial operations or when Seller demonstrates that its systems are ready for performance tests, whichever is later.

ARTICLE 8 – INTEREST

- 8.01 All monies not paid when due as provided in Article 10 of the General Conditions shall bear interest at the annual rate of five percent (5%).

ARTICLE 9 – SELLER'S REPRESENTATIONS

- 9.01 In order to induce Buyer to enter into this Agreement, Seller makes the following representations:
 - A. Seller is highly qualified and experienced in providing similar goods to the Goods and has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents, as applicable to Seller's obligations identified in Article 1 above.
 - B. If required by the Bidding Documents to visit the Point of Destination and site where the Goods are to be installed or Special Services will be provided, or if, in Seller's judgment, any local condition may affect cost, progress, or the furnishing of the Goods and Special Services, Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided and become familiar with and is satisfied as to the observable local conditions that may affect cost, progress, and the furnishing of the Goods and Special Services.
 - C. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and the furnishing of the Goods and Special Services.
 - D. Seller has carefully studied, considered, and correlated the information known to Seller; information commonly known to sellers of similar goods doing business in the locality of the Point of Destination and the site where the Goods will be installed or where Special Services will be provided; information and observations obtained from Seller's visits, if any, to the Point of Destination and site where the Goods are to be installed or Services will be provided; and any reports and drawings identified in the Bidding Documents regarding the Point of Destination and the site where the Goods will be installed or where Special Services will be provided, with respect to the effect of such information, observations, and documents on the cost, progress, and performance of Seller's obligations under the Contract Documents.

- E. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Contract Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
- F. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for furnishing Goods and Special Services.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 7, inclusive);
 - 2. Performance Bond on the form attached as Exhibit C
 - 3. Payment Bond on the form attached as Exhibit D
 - 4. General Conditions (pages 1 to 35, inclusive);
 - 5. Supplementary Conditions (pages 1 to 4 inclusive);
 - 6. Exhibit A – Progress Schedule *dated 12-5-2016*;
Exhibit B – Payment Schedule *dated 11-22-2016, Rev. 2*;
 - 8. Seller's Bid, solely as to the definitions of equipment and services to be provided, performance criteria, and prices set forth therein *dated 12-6-2016, Rev. 9*;
 - 7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed;
 - b. Change Order(s);
 - c. Work Change Directive(s).
- B. The documents listed in Paragraph 10.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 10.
- D. The Contract Documents may only be amended, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions and the Supplementary Conditions.

11.02 *Assignment of Contract*

- A. Intentionally omitted.
- B. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. Specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by Laws and Regulations). Unless specifically stated to the contrary in any written consent to such an assignment, such an assignment will not release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Buyer and Seller. The Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Buyer, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

11.06 *Limitations*

Intentionally omitted.

11.07 *Other Provisions*

- A. This Agreement may be executed in one or more counterparts, and when so executed each counterpart shall be deemed to be an original, and said counterparts together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, electronic mail, or any other reliable means shall be deemed to be as effective for all purposes as delivery of the manually executed counterpart.
- B. Notwithstanding anything to the contrary in this Agreement, Buyer and Seller acknowledge that on October 14, 2016 (PO No. GRE-10000) Buyer authorized Seller to commence the design of the Goods and that Seller has commenced design of the Goods prior to the execution of this Agreement with the express understanding all such design work shall be governed by the terms of this Agreement as if this Agreement had been executed prior to the authorization and commencement of the design work and that the cost of all design work in included in the Contract Price.
- C. To the extent the any provision in the Seller's Bid is inconsistent with any provision in this Agreement or the General Conditions, the provisions in this Agreement or the General Conditions shall take precedence.

[Signatures on following page]

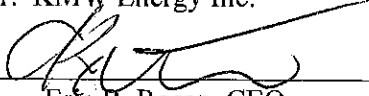
IN WITNESS WHEREOF, Buyer and Seller have signed this Agreement. Counterparts have been delivered to Buyer and Seller. All portions of the Contract Documents have been signed or identified by Buyer and Seller or on their behalf.

This Agreement will be effective on December __, 2016 (which is the Effective Date of the Agreement).

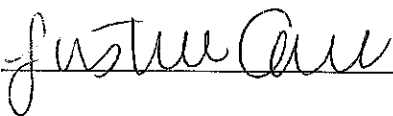
Buyer: Georges River Energy, LLC

Seller: KMW Energy Inc.

By: _____
Alden Robbins, President

By:  _____
Eric B. Rosen, CEO

Attest: _____

Attest:  _____

Address for giving notice:

Address for giving notice:

Georges River Energy, LLC
Attn: Alden Robbins
P.O. Box 9
53 Ghent Road
Searsmont, ME 04973
United States

KMW Energy Inc.
Attn: Eric B. Rosen, M.Sc., P. Eng.
635 Wilton Grove Road
London, Ontario N6N 1N7
Canada

Designated Representative:

Name: Alden Robbins
Title: President
Phone: 207 342 5221 Direct: 207 342 6321
Email: ARobbins@rlco.com
Facsimile: 207 342 5201

Designated Representative:

Name: Eric B. Rosen, M.Sc., P. Eng.
Title: CEO
Phone: 519 686 1771
Email: ebrosen@kmwenergy.com
Facsimile: 519 086 1132



This is Exhibit "H" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

**PERFORMANCE BOND
FOR PROCUREMENT CONTRACTS**

Any singular reference to Seller, Surety, Buyer, or other party shall be considered plural where applicable.

SELLER (Name and Address):

**KMW Energy Inc.
635 Wilton Grove Road
London, ON N6N 1N7, Canada**

SURETY (Name and Address of Principal
Place of Business):

**Liberty Mutual Insurance Company
181 Bay Street, Suite 1000
Toronto, ON M5J 2T3**

BUYER (Name and Address):

**Georges River Energy, LLC
P.O. Box 9, 53 Ghent Road
Searsmont, ME 04973, USA**

CONTRACT

Date: **December 6, 2016**

Amount: **\$12,825,000.00**

Description (Name and Location): **Proposal No. 15025, 8.5 MW Biomass Fired CHP System
53 Ghent Road, Searsmont Maine 04973**

BOND

Date (Not earlier than Contract Date): **December 13, 2016**

Bond Number: **BDTO-150002-016**

Amount: **\$6,412,500.00**

Modifications to this Bond Form: **N/A**

Surety and Seller, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Seller as Principal

Company: **KMW Energy Inc.**

(Corp. Seal)

Signature:

Name and Title:

Surety

Company: **Liberty Mutual Insurance Company**

(Corp. Seal)

Signature:

Name and Title: **Emily Simas, Attorney-in-fact
(Attach Power of Attorney)**

Address: **181 Bay Street, Suite 1000
Toronto, ON M5J 2T3**

Telephone Number: **416-307-4682**

(Space is provided below for signatures of additional parties, if required.)

Seller as Principal

Company: (Corp. Seal)

Signature:
Name and Title:**Surety**

Company: (Corp. Seal)

Signature:
Name and Title:
Address:
Telephone Number:

1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer for the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.
2. If Seller performs the Contract, Surety and Seller have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Buyer Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Buyer has notified Seller and Surety pursuant to Paragraph 10 that Buyer is considering declaring a Seller Default and has requested and attempted to arrange a conference with Seller and Surety to be held not later than 7 days after receipt of such notice to discuss methods of performing the Contract. (If Buyer, Seller, and Surety agree, Seller shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Buyer's right, if any, subsequently to declare a Seller Default); and
 - 3.2. Buyer has declared a Seller Default and formally terminated Seller's right to complete the Contract. Such Seller Default shall not be declared earlier than 14 days after Seller and Surety have received notice as provided in Paragraph 3.1; and
 - 3.3. Buyer has agreed to pay the Balance of the Contract Price to:
 - a. Surety in accordance with the terms of the Contract;
 - b. Another seller selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Buyer has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Seller, with consent of Buyer, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified sellers acceptable to Buyer for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Buyer and a seller selected with Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and

pay to Buyer the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Buyer resulting from Seller Default; or

- 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances, either:
 - a. determine the amount for which it may be liable to Buyer and, as soon as practicable after the amount is determined, tender payment therefor to Buyer; or
 - b. deny liability in whole or in part and notify Buyer citing reasons therefor.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Buyer to Surety demanding that Surety perform its obligations under this Bond, and Buyer shall be entitled to enforce any remedy available to Buyer. If Surety proceeds as provided in paragraph 4.4, and Buyer refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Buyer shall be entitled to enforce any remedy available to Buyer.
6. After Buyer has terminated Seller's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3, then the responsibilities of Surety to Buyer shall not be greater than those of Seller under the Contract, and the responsibilities of Buyer to Surety shall not be greater than those of Buyer under the Contract. To a limit of the amount of this Bond, but subject to commitment by Buyer of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
 - 6.1. the responsibilities of Seller for correction or replacement of defective Goods and Special Services and completion of the Contract;
 - 6.2. Additional legal, design professional, and delay costs resulting from Seller's Default, and resulting from the actions of or failure to act of Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Seller.
7. Surety shall not be liable to Buyer or others for obligations of Seller that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Buyer or its heirs, executors, administrators, successors, or assigns.
8. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location of the Point of Destination, and shall be instituted within two years after Seller Default or within four years after Seller has delivered the Goods required by the contract or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to Surety, Buyer or Seller shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Point of Destination, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

- 12.1. *Balance of the Contract Price:* The total amount payable by Buyer to Seller under the Contract after all proper adjustments have been made, including allowance to Seller of any amounts received or to be received by Buyer in settlement of insurance or other Claims for damages to which Seller is entitled, reduced by all valid and proper payments made to or on behalf of Seller under the Contract.
- 12.2. *Contract:* The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.
- 12.3. *Seller Default:* Failure of Seller, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 12.4. *Buyer Default:* Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.

PAYMENT BOND FOR PROCUREMENT CONTRACTS

Any singular reference to Seller, Surety, Buyer or other party shall be considered plural where applicable.

SELLER (Name and Address):

**KMW Energy Inc.
635 Wilton Grove Road
London, ON N6N 1N7, Canada**

SURETY (Name and Address of Principal
Place of Business):

**Liberty Mutual Insurance Company
181 Bay Street, Suite 1000
Toronto, ON M5J 2T3**

BUYER (Name and Address):

**Georges River Energy, LLC
P.O. Box 9, 53 Ghent Road
Searsmont, ME 04973, USA**

CONTRACT

Date: **December 6, 2016**

Amount: **\$12,825,000.00**

Description (Name and Location): **Proposal No. 15025, 8.5 MW Biomass Fired CHP System
53 Ghent Road, Searsmont Maine 04973**

BOND

Date (Not earlier than Contract Date): **December 13, 2016**

Bond Number: **BDTO-150002-016**

Amount: **\$6,412,500.00**

Modifications to this Bond Form: **N/A**

Surety and Seller, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Seller as Principal

Company: **KMW Energy Inc.**

(Corp. Seal)

Signature:

Name and Title:

Surety

Company: **Liberty Mutual Insurance Company**

(Corp. Seal)

Signature:

Name and Title: **Emily Simas, Attorney-in-fact**

(Attach Power of Attorney)

Address: **181 Bay Street, Suite 1000**

Toronto, ON M5J 2T3

Telephone Number: **416-307-4682**

(Space is provided below for signatures of additional parties, if required.)

Seller as Principal

Company: (Corp. Seal)

Signature:
Name and Title:

Surety

Company: (Corp. Seal)

Signature:
Name and Title:
Address:
Telephone Number:

1. Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Buyer to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference. For purposes of this bond, Buyer means Buyer's assigns, if and when Buyer has assigned the Contract.
2. With respect to Buyer, this obligation shall be null and void if Seller:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies and holds harmless Buyer from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided Buyer has promptly notified Seller and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to Seller and Surety, and provided there is no Buyer Default.
3. With respect to Claimants, this obligation shall be null and void if Seller promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Seller have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Seller:
 - a. Have furnished written notice to Seller and sent a copy, or notice thereof, to Buyer, within 90 days or such longer period as permitted for asserting a mechanic's lien under 10 M.R.S. §§ 3251, *et seq.*, after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 - b. Have either received a rejection in whole or in part from Seller or not received within 30 days of furnishing the above notice any communication from Seller by which Seller had indicated the claim will be paid directly or indirectly; and
 - c. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Buyer stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Seller.
5. If a notice required by Paragraph 4 is given by Buyer to Seller or to Surety, that is sufficient compliance.
6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Buyer to Seller under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By Seller furnishing and Buyer accepting this Bond, they agree that all funds earned by Seller in the performance of the Contract are dedicated to satisfy obligations of Seller and Surety under this Bond, subject to Buyer's priority to use the funds for the completion of the furnishing the Goods and Special Services.
9. Surety shall not be liable to Buyer, Claimants or others for obligations of Seller that are unrelated to the Contract. Buyer shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Goods relevant to the claim are located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Buyer or Seller shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Buyer or Seller, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Seller shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions
 - 15.1 *Claimant*: An individual or entity having a direct contract with Seller or with a Subcontractor of Seller to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for furnishing the Goods and Special Services by Seller and Seller's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2. *Contract*: The agreement between Buyer and Seller identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3. *Buyer Default*: Failure of Buyer, which has neither been remedied nor waived, to pay Seller as required by the Contract or to perform and complete or comply with the other terms thereof.

This is Exhibit "I" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS



GENERAL AGREEMENT OF INDEMNITY

This General Agreement of Indemnity is between the Indemnitors, KMW Energy Inc., 462673 Ontario Inc. o/a Nor-Arc, Eric Rosen (in a personal capacity), Gerry Higgins (in a personal capacity), jointly and severally, in favor of Surety with respect to any Bond requested from or issued by Surety before or after the date of this Agreement, for any Principal, as these capitalized terms are defined below.

Indemnitors desire the Surety to execute, renew, continue, extend, replace or refrain from canceling Bonds issued on their behalf; and, at Indemnitors' request and understanding that the Agreement is executed for Surety's benefit and that Surety will rely thereupon, the Indemnitors requested Surety to execute or procure Bonds in the past and may request Surety to do so on an ongoing basis. In consideration of these promises and intending to be legally bound hereby, Indemnitors for themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, hereby covenant and agree with Surety, its successors and assigns, as follows:

1. DEFINITIONS:

Agreement: this General Agreement of Indemnity and any written amendment thereto.

Bond: individually and collectively: any surety bond, undertaking, recognizance, instrument of guarantee or any other alleged surety obligation; any letter regarding bonding that is provided to an obligee or owner prior to contract award; and any renewal, continuation, extension, or replacement of same issued by Surety.

Change in Control: (a) the transfer, merger or consolidation (in one transaction or a series of transactions) of all or substantially all of the assets of any non-individual Indemnitor or Principal; (b) the acquisition (in one transaction or a series of transactions) by any person or group or trust, directly or indirectly, of fifty (50%) percent or more of the beneficial ownership or control of any Indemnitor or Principal; or (c) the acquisition by any Indemnitor or Principal, directly or indirectly, of fifty (50%) percent or more of the beneficial ownership or control in any joint venture, subsidiary, division, affiliate, limited partnership, limited liability partnership, limited liability company or other entity through the issuance of ten (10%) percent or more of the voting power of the total outstanding voting stock of any Indemnitor or Principal.

Events of Default: any of the following, unless waived in writing by Surety:

- (a) any abandonment, forfeiture or breach of a bonded contract, bonded obligation, or Bond;
- (b) a default by any Indemnitor or Principal in discharging any indebtedness, obligation, or liability incurred in connection with a bonded contract, bonded obligation, or Bond, when due;
- (c) any breach of the Agreement or Other Agreements by any Indemnitor or Principal;
- (d) any failure by any Indemnitor or Principal to fulfill its respective obligations to the Surety in connection with any bonded contract, bonded obligation, or Bond, including: (i) failure to provide legal representation satisfactory to the Surety in its sole judgment; (ii) the fraudulent conveyance of any one or more of Indemnitor's assets; or (iii) negligently or intentionally providing false or misleading information regarding any Principal, Indemnitor or related to any Bonds or failing to provide relevant information (including the information required in Paragraph 13. Books and Records);
- (e) the establishment of a Loss reserve by the Surety;
- (f) any assignment by any Indemnitor or Principal for the benefit of creditors, or of the appointment or any application for the appointment, of a receiver or trustee for any Indemnitor or Principal whether insolvent or not, or the actual insolvency of any Indemnitor or Principal;
- (g) any proceeding which deprives an Indemnitor or Principal of the ability to complete its obligations under bonded contracts or bonded obligations, or of the use of any of the machinery, supplies, equipment, plant, tools or material required therefor;
- (h) if any Indemnitor or Principal is an individual, his or her death, disappearance, incompetence, insolvency, conviction of a felony, or imprisonment;
- (i) Breach by any Indemnitor or Principal of any financial covenant required by Surety or any other creditor, unless such breach is cured or waived by surety or other creditor in writing;
- (j) any breach of the following general representations and warranties by any non-individual Indemnitor or Principal: (i) such Indemnitor or Principal is a legal entity duly organized and validly existing under the laws of its State of incorporation, as applicable; (ii) the execution, delivery and performance by such Indemnitor or Principal of this Agreement does not and will not conflict with or result in a breach of any other agreement or relationship; (iii) such Indemnitor or Principal has not granted, and shall not grant during the term of this Agreement, any right to any other person or entity which would conflict with the rights of the Surety under this Agreement; (iv) such Indemnitor or Principal is not aware of any action, suit, inquiry or investigation by any person or government entity that could threaten the validity of or the ability of such Indemnitor or Principal to perform under this Agreement.

Indemnitor: individually and collectively, the persons and entities listed in the introductory paragraph of the Agreement, and any other person or entity that executes this Agreement, including any Indemnitor added by amendment executed by such Indemnitor only, pursuant to Paragraph 17(a) herein. Individual Indemnitor means an indemnitor that is not a business entity.

Loss: any loss, fees, costs and expenses, including pre- and post-judgment interest at the maximum rate permitted by law, court costs, counsel fees, accounting, engineering and outside consulting fees, which Surety may sustain or incur or otherwise determine to pay in its sole and absolute discretion, by reason of: (a) a request for a Bond; (b) execution or procurement of a Bond, including any cost incurred by Surety in fulfilling its obligations under any Bond; (c) the failure of Indemnitors to comply with any covenants or conditions of this Agreement or Other Agreement; or (d) in enforcing any of the covenants and conditions of this Agreement or Other Agreements.

Other Agreement: any written agreement between an Indemnitor or Principal, and Surety related in any manner to the consideration of or provision of any surety credit.

Principal: individually and collectively, any one or more of the following named as principal on a Bond: (a) Indemnitors; (b) any subsidiaries, members, general partners, limited partners, joint venturers, or affiliates of any Indemnitor or Principal, whether now existing or formed hereafter, and whether partially or wholly owned, held or controlled by any Indemnitor or Principal, and (c) any other entity or person named at the request of any Indemnitor or Principal, including requests from their agents, brokers or producers; and, as to all of the foregoing, whether they act alone or with others (in joint venture, as members in limited liability companies, or otherwise) whether or not said others are named herein.

Surety: any member of the Liberty Mutual Group, including but not limited to Liberty Mutual Insurance Company and any other company that is part of or added to the Liberty Mutual Group, severally not jointly. If Surety procures the execution of any Bond by any other sureties, executes any Bond with co-sureties, or reinsures any portion of any Bond with reinsuring sureties, then those entities and their successors and assigns shall be included in this definition and the terms and conditions of this Agreement and Other Agreements shall inure to their benefit.

2. **BENEFICIAL INTEREST:** Indemnitors represent and warrant that each is specifically, materially and beneficially interested in the procurement or issuance of each Bond for each Principal.
3. **PREMIUMS:** Indemnitors will pay Surety promptly upon demand all premiums, costs and charges, and where such premium, costs and charges are annual, continue to pay the same, until Indemnitors deliver evidence satisfactory to Surety of its discharge or release from Bonds and all liability by reason thereof.
4. **INDEMNITY:** Indemnitors shall exonerate, hold harmless, indemnify, and keep Surety indemnified from all liability for Loss. Indemnitors shall pay Surety for Loss promptly upon demand. If Surety makes any Loss payment, Indemnitors agree that in any accounting between Surety and Principals, between Surety and Indemnitors, or either or both of them, Surety is entitled to recover from Indemnitors all disbursements made by it in good faith under the belief that it is or was or might be liable for the sums and amounts disbursed or that it was necessary or expedient to make such disbursements, whether or not such liability, necessity or expediency existed; and that the vouchers or other evidence of any such payments made by Surety shall be prima facie evidence of the fact and amount of the liability to Surety.
5. **COLLATERAL:** Upon an Event of Default or determination by Surety that a potential Loss exists, Surety may demand that Indemnitors deposit a sum of money equal to an amount determined by Surety, or collateral security of a type and value satisfactory to Surety, to cover the Loss, whether or not Surety has: (a) established or increased any reserve; (b) made any Loss payment; or (c) received any notice of any claims therefor. At Surety's sole option, this collateral may be in addition to and not in lieu of any other collateral, and Surety may make multiple demands for collateral. Unless the Indemnitors and Surety agree otherwise in writing, Surety shall have the right to use any collateral or any part thereof in payment or settlement of any liabilities for which Indemnitors would be obliged to indemnify Surety and Surety shall have no obligation to invest or to provide a return on any collateral provided.
6. **ASSIGNMENT:** Indemnitors hereby assign, transfer, pledge and convey to Surety as collateral security for the full performance of this Agreement, Other Agreements, and the payment of any other indebtedness or liability to Surety, whether incurred in the past or the future, all right, title and interest in and growing out of the following and the proceeds thereof:
 - (a) All bonded contracts, bonded obligations, and Bonds, or growing in any manner out of such contracts, bonded obligations, and Bonds;
 - (b) All subcontracts let or to be let in connection with any bonded contract, including any related surety bonds or other payment security;
 - (c) All machinery, supplies, equipment, plant, tools and materials in which Indemnitors and/or Principals have an interest which are now or in the future may be on the site of any bonded contract or elsewhere, including materials purchased for or chargeable to any bonded contract, materials in the process of construction, in storage, or in transportation to any and all sites;
 - (d) All actions, causes of actions, claims and demands whatsoever in connection with or on account of any bonded contract or obligation;
 - (e) All retained percentages and funds due or which may become due on any bonded contracts and all other contracts whether bonded or not in which the Indemnitors have an interest;
 - (f) All accounts and accounts receivable of the Principals, or any one of them;
 - (g) All deposit accounts;
 - (h) All chattel paper, documents, instruments, inventory, and investment property as those terms are defined by the Uniform Commercial Code as adopted in the relevant state;
 - (i) Tax refunds, claims for tax refunds, general intangibles;
 - (j) All equity interests (including, without limitation, all shares and membership, limited partnership, general partnership, limited liability company interests, and any interest and rights in any joint venture, consortium, or teaming agreement), to the extent the Surety determines such interest is related to its obligations under Bonds;
 - (k) Licenses, patents, copyrights and trade secrets, or a license (without cost to Surety) for the use of any of these, to the extent Surety determines, in its sole discretion, is required for fulfillment of its obligations under Bonds;
 - (l) All warehouse receipts, bills of lading;
 - (m) The proceeds of any insurance policy affording coverage for all or part of any Bond or bonded obligation.

These assignments are effective on the date of each Bond or, in the case of any obligation of Indemnitors not related to a specific Bond or related to Bonds issued prior to the execution of this Agreement, on the effective date of this Agreement without limiting the right of Surety to claim under any prior assignment. The assignments shall be triggered only upon the occurrence of an Event of Default.

7. **UNIFORM COMMERCIAL CODE:** This Agreement constitutes a Security Agreement to the Surety and a Financing Statement, covering the assigned collateral identified in Paragraph Six herein, both documents as defined in and in accordance with the Uniform Commercial Code of every jurisdiction wherein such Code is in effect and may be used by Surety without in any way abrogating,

restricting or limiting the rights of Surety under this Agreement or under law, or in equity. A carbon, photographic or other reproduction of this Agreement may be filed as a Financing Statement.

8. **TAKEOVER:** In the event of any breach, default, or termination asserted by any Bond obligee or upon an Event of Default, Surety shall have the right, at its option and sole discretion, to take possession of all or part of the bonded work and to complete or arrange for completion at the expense of Indemnitors. Indemnitors agree to use their best efforts to cause each Principal to permit Surety to do same.
9. **ADVANCES:** Without any obligation to do so, Surety may guarantee loans, advance, or lend Indemnitor money for the purpose of a bonded contract or pursuant to any Other Agreement. All money expended, loaned, advanced, or loans guaranteed on behalf of any Indemnitor or Principal (including costs of investigation, administration, or for completion of any contract by the Surety) and all other costs and expenses incurred by the Surety in relation thereto, shall be presumed to be Loss for which Indemnitors shall be responsible notwithstanding any Indemnitor or Principal using all or part of the money for other purposes.
10. **TRUST FUND:** To the extent permitted by law, Indemnitors covenant and agree that all of their interest, title and rights in any bonded contract or obligation in or growing in any manner out of any Bond, including but not limited to payments for or on account of any bonded contract, shall be held as a trust fund or as a constructive or equitable trust in which Surety has an interest. The fund shall inure to the benefit of Surety, as trust beneficiary, for any Loss it may sustain; and, further, it is expressly understood and declared that all monies due and to become due under any bonded contract or obligation are trust funds, whether in the possession of Indemnitors or otherwise, for the benefit and payment of all obligations for which Surety would be liable under any Bond. This Agreement constitutes notice of and acceptance by Indemnitors of such trust. Indemnitors expressly agree to be trustees and fiduciaries with respect to the trust funds, in both their corporate and individual capacity, to hold such funds in trust, and to use the trust funds for the sole and separate bonded obligations as set forth herein and for no other purpose, for the benefit of Surety as beneficiary.
11. **ATTORNEY IN FACT:** Indemnitors hereby irrevocably nominate, constitute, appoint and designate Surety as their attorney-in-fact, granting Surety the full right and authority, but not the obligation, to exercise all the rights of Indemnitors assigned, transferred and set over to Surety in this Agreement, including full power and authority to execute on behalf of and sign the name of any Indemnitor to: (a) any voucher, financing statement, release, satisfaction, check, bill of sale of all or any property assigned to the Surety by this Agreement or by any Other Agreement; and (b) any other documents or papers deemed necessary and proper by Surety to give full effect not only to the intent and meaning of the within assignments, but also to the full protection intended to be given to Surety under all other provisions of this Agreement. Indemnitors hereby ratify and confirm all acts and actions taken and done by Surety as such attorney-in-fact and agree to protect and hold harmless Surety for acts herein granted as attorney-in-fact.
12. **SETTLEMENTS:** Surety shall have the right, at its option and sole discretion, to adjust, settle or compromise any claim, demand, suit or judgment upon any Bond.
13. **BOOKS AND RECORDS:** Unless directed otherwise by Surety in writing, Indemnitors shall provide Surety financial statements prepared in accordance with Generally Accepted Accounting Principles, and reports prepared by reputable accounting firms prepared in accordance with the AICPA's Statements on Standards for Accounting and Review Services ("SARS") within 120 days of their fiscal year end. Reports prepared by reputable accounting firms in accordance with the AICPA's Statements on Auditing Standards in the ordinary course of their financial reporting, shall be supplied instead of reports in accordance with SARS, if available. Indemnitors shall provide internally prepared financial statements within 30 days of Surety request and any management letters received from their accountants within 30 days of receipt. Until Surety determines all liability under all Bonds is terminated or until it is fully reimbursed all amounts due to it under the Agreement or Other Agreements, Surety shall have the right of reasonable access to the books, records and accounts of Indemnitors for the purpose of inspection, copying or reproduction; and any financial institution, depository, materialman, supply house or other person, firm or corporation is hereby specifically authorized by each Indemnitor to furnish Surety upon request, any information requested. The Indemnitors agree to provide Surety with releases, requests, waivers or any other documents required to permit Surety access to the requested information. Furthermore, Indemnitors agree to provide Surety with any information requested regarding the status of any bonded or unbonded work, or any other information regarding the operations of the company, whether such requirements are in writing or otherwise.
14. **CHANGE IN CONTROL:** As permitted by law, Indemnitor shall provide Surety with at least forty five (45) days' prior written notice of any Change in Control. If more than one Indemnitor exists, Indemnitors agree that the Indemnitor providing notice of Change in Control to the Surety shall be designated to act on behalf of all of them for the purposes of this Paragraph 14. Following receipt of such notice, the Surety shall advise the Indemnitor in writing of its election to either: (a) approve such Change in Control; or (b) demand that Indemnitors procure the discharge of the Surety from any Bonds and all liability by reason thereof. If the Indemnitors fail to give the Surety timely notice of a Change in Control or if the Surety does not approve the Change in Control, and if such discharge is not procured to the sole satisfaction of the Surety, then, immediately upon Surety's written demand, Indemnitors shall deposit collateral of a type and value satisfactory to Surety and in an amount equal to the aggregate penal sum of Bonds determined by the Surety to be outstanding. Indemnitors acknowledge that if they or any one of them breaches the obligations set forth in this paragraph, the Surety will not have an adequate remedy at law, will suffer irreparable harm and shall be entitled to injunctive relief, enforcing the terms of this paragraph, as well as a final decree, order or judgment granting Surety specific performance of the terms of this Agreement.
15. **HOMESTEAD:** To the extent permitted by applicable law, Indemnitors waive all rights to claim any of their property, including their respective homesteads, as exempt from levy, execution, sale or other legal process under the laws of any state, territory or possession.
16. **BOND ISSUANCE AND BOND CHANGES:** To the effect that Indemnitors shall be and continue to be liable under this Agreement:
 - (a) **PROVISION OF BONDS/CANCELLATION:** Surety has no obligation to execute, renew, continue, extend, amend or replace any Bond, including the issuance of final bonds for a project for which a bid or proposal bond was provided, and may decline to do so at its sole discretion. Surety may cancel any Bond unless prohibited by law or if the Bond states otherwise. Indemnitors shall make no claim to the contrary, and shall make no claim relating to the failure or refusal of any person or entity to accept any Bond or to award any contract to any Principal;

- (b) **BOND CHANGES:** Assent by the Surety to changes in any Bonds or bonded obligations or the refusal of Surety to assent to such changes shall not release or in any way affect the obligations of any Indemnitor to the Surety;
- (c) **NOTICE:** Indemnitors waive notice of all transactions referenced in this paragraph, it being expressly agreed that they remain bound under the terms of this Agreement even though any such transaction by Surety may substantially increase their liability.
17. **CHANGES TO THIS AGREEMENT:** No change or modification to this Agreement shall be effective unless made by written amendment executed to form a part hereto, or by Other Agreement.
- (a) **ADDITIONAL INDEMNITORS:** Indemnitors specifically consent to the addition of an Indemnitor hereto by written amendment executed by only such additional Indemnitor;
- (b) **ADDITION, MODIFICATION, RELEASE OF TERMS AND CONDITIONS:** Indemnitors consent to changes in the obligations of any Indemnitor by written amendment executed by only such Indemnitor;
- (c) **NOTICE:** Indemnitors expressly waive notice from Surety of the acceptance of the Agreement and any Other Agreement and any change to these agreements, including those set forth in (a) and (b) of this Paragraph. Indemnitors acknowledge that each remains bound under the Agreement and any Other Agreement though Surety may accept, release, modify or reduce any obligation or underwriting condition, without notice to or knowledge of each Indemnitor, for any reason.
18. **OTHER INDEMNITY AGREEMENTS:** Indemnitors agree that the rights, powers and remedies which Surety may have or may acquire against Indemnitors and Principals or others under this Agreement or Other Agreements shall be in addition to and not in lieu of the rights afforded Surety under this Agreement and Other Agreements, or by operation of law or otherwise. Furthermore, Indemnitors waive any defenses to the enforcement of this Agreement based on the execution of Other Agreements, the addition or release of any Indemnitor, or any change in any underwriting conditions.
19. **JOINT AND SEVERAL:** Each Indemnitor explicitly confirms its joint and several liability under the Bonds, this Agreement, Other Agreements or by operation of law or otherwise, and represents and warrants it is informed and remains informed of the business and financial affairs of each Principal and furthermore agrees that Surety has no obligation whatsoever to inform Indemnitors of information regarding the business activities and financial affairs of any Principal. Indemnitors waive notice of any default related to Bonds, this Agreement or Other Agreements, or other act giving rise to any claim under any Bond, notice of liability of Surety under any Bond and any and all liability on Surety's part, to the end and effect that Indemnitors shall be and continue to be liable hereunder, notwithstanding any notice to which they might have been or be entitled and notwithstanding any defenses they might otherwise have been entitled to make. Indemnitors waive and subordinate all rights of indemnity, subrogation and contribution against each other until all obligations to the Surety under the Agreement, Other Agreements, and at law or in equity have been satisfied in full.
20. **TERMINATION:** Any Indemnitor may terminate its liability under this Agreement upon twenty (20) days' written notice sent by registered and certified mail or courier requiring proof of delivery signature to Surety, but any such notice of termination shall not operate to modify, bar, or discharge Indemnitors as to any Bonds:
- (a) that may have been executed or authorized prior to the expiration of the notice period;
- (b) which may be executed after the expiration of the notice period in fulfillment of any commitment given by the Surety prior to the expiration of such notice period;
- (c) executed in connection with any project as to which any bid bond was executed or authorized prior to the expiration of such notice period; and/or
- (d) that are renewed, extended, substituted or modified after the expiration of such notice period.
- Such termination of liability as to any Indemnitor or Principal in no way affects the obligation of any other Indemnitor or Principal who has not given notice as herein provided.
21. **INVALIDITY:** Invalidity of any provision of this Agreement by reason of the laws of any jurisdiction shall not render the other provisions hereof invalid. If any Indemnitor fails to execute this Agreement, or if the execution hereof by any Indemnitor be defective or invalid for any reason including lack of authority to bind any party, such failure, defect or invalidity shall not in any manner affect the validity of this Agreement or the liability hereunder of any Indemnitor that executes the Agreement. Each and every Indemnitor executing the Agreement shall be and remain fully bound and liable hereunder to the same extent as if such failure, defect or invalidity had not existed. Each Indemnitor agrees to execute promptly any documentation necessary to cure any such failure, defect or invalidity.
22. **SUITS:** Separate suits may be brought under this Agreement as causes of action accrue, and the bringing of suit or the recovery of judgment upon any cause of action shall not prejudice or bar the bringing of other suits upon other causes of action, whether theretofore or thereafter arising.
23. **JURISDICTION:** As to any legal action or proceeding related to this Agreement, Indemnitors consent to the general jurisdiction of any local, state or Federal court of the United States, its territories, and commonwealths having proper subject matter jurisdiction or in any court of the United States, its territories, or commonwealths in which any claim may be brought against Surety under any Bonds, and waive any claim or defense in any such action or proceeding based on any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar basis. Indemnitors further waive personal service or any and all process.
24. **CURRENCY EXCHANGE:** Should Surety, when making any payment or incurring any expense directly or indirectly related to Bonds, expend funds in currencies other than U.S. Dollars, then Indemnitors shall either reimburse Surety in U.S. Dollars equal to the amount expended by Surety at the time the foreign currency was purchased or shall defray the cost of any exchange variation, thereby indemnifying Surety for any decrease in the valuation of the currency purchased.
25. **PRINCIPAL DOING FOREIGN CONTRACTS/GOVERNING LAW:** The Indemnitors hereby agree that as to any legal action or proceeding related to any Bond issued in connection with a contract to be performed outside the United States, its territories and commonwealths, this Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the conflict of laws principles thereof), except to the extent superseded by United States Federal law.
26. **AUTHORITY OF SURETY TO ELECT REMEDIES AND NON-WAIVER:** Each right, remedy and power of Surety provided in this Agreement, Other Agreements or by law or in equity shall be cumulative, and the exercise, delay or failure to exercise by Surety of any right, remedy, or power will not preclude Surety's simultaneous or subsequent exercise nor constitute a waiver of any or all other

rights, powers or remedies. The Surety shall be free to determine, in its sole discretion, when any right shall be exercised. No notice or demand upon Surety by Indemnitors will limit or impair Surety's right to take any action under this Agreement or to exercise any right, power, or remedy.

- 27. **NOTICES:** All notices to Surety shall be sent to: Liberty Mutual Surety, Interchange Corporate Center, 450 Plymouth Road, Suite 400, Plymouth Meeting, PA 19462-1644.
- 28. **COUNTERPARTS, COPIES:** This Agreement may be executed in counterparts, each of which is deemed an original and all of which taken together only constitute one original. Any Indemnitor may execute this Agreement by signing any such counterpart. All parties agree that any scanned or electronically digitized copy of this Agreement made by Surety as part of its record storage and retention programs shall be as effective as the original for all purposes.
- 29. **ENTIRE AGREEMENT:** THE PRINCIPALS AND THE INDEMNITORS REPRESENT TO SURETY THAT THEY HAVE CAREFULLY READ THIS ENTIRE AGREEMENT AND THAT THERE ARE NO OTHER AGREEMENTS OR UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, THAT IN ANY WAY MODIFY, CHANGE OR VITIATE THE OBLIGATIONS OF THIS AGREEMENT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

DATED as of this 16 day of DEC, 2016.

ATTEST OR WITNESS:

BY:

By: [Signature]
 Insert Name and Title (should be Secretary)
Gerry Higgins, President

KMW Energy Inc.
 Address: 635 Wilton Grove Rd London ON N6V1N7
 By: [Signature] (Seal)
 Insert Name and Title (should be President) Eric Rose, CEO

By: [Signature]
 Insert Name of Witness

462673 Ontario Inc. o/a Nor-Arc
 Address:
 By: [Signature] (Seal)
 Insert Name and Title (should be Manager)
MARIO LEVEILLE

By: [Signature]
 Insert Name of Witness Ryan Done

Eric Rosen
 Address: 131 Leland Rd London ON
 Telephone: 226-663-4553 N6K1T0
 By: [Signature]
 Insert Name of Indemnitor, Individually

By: [Signature]
 Insert Name of Witness Ryan Done

Gerry Higgins
 Address: 1472 WICKLEBURGH RD N6G65X
 Telephone: 519 319 5014
 By: [Signature]
 Insert Name of Indemnitor, Individually

NOTARY ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Province Ontario
State of Ontario)

County of Middlesex)

On January 19, 2017 (Date) before me, Ryan Done (Notary), personally appeared Eric Rosen (Signor), who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person(s), or the entity(ies) upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Province Ontario that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)

Notary Public residing at: 1021 Medway Park Drive, London, ON N6G 1A2
My commission expires: N/A

Indemnity and Security Agreement

LIBERTY MUTUAL INSURANCE COMPANY
181 Bay Street, Suite 1000, Brookfield Place, Toronto, Ontario M5J 2T3

The following parties are hereinafter collectively called the "Principal":

KMW Energy Inc.

The beneficiary of the present agreement is: Liberty Mutual Insurance Company, c/o Liberty International Underwriters, 181 Bay Street, Suite 1000 Toronto, ON Canada M5J 2T3 (hereinafter called the "Surety") and any other person described in paragraph 9 herein.

IN CONSIDERATION OF THE ISSUE BY THE SURETY OF BONDS AS DEFINED HEREUNDER,
THE UNDERSIGNED COVENANT AND AGREE AS FOLLOWS:

1. *Date and place of execution of the present agreement* - The present agreement, for all legal intents and purposes, is deemed to have been executed the 16 day of DEC 2016 in the Province of Ontario.
2. *The "Principal"* - All references herein to the "Principal" mean one or the other or each of the parties designated hereinabove as the "Principal"
3. *The "Indemnitors"* - For purposes of the present agreement, "Indemnitors" means:
 - a) all the parties designated as the "Principal" and, should the case arise,
 - b) the other signatories of the present agreement.
4. *Purpose of the present agreement and definition of "Bonds"* - The purpose of the present agreement is:
 - a) to set forth the rights of the Surety and other beneficiaries, and
 - b) to set forth the rights and obligations of the Indemnitors, and
 - c) to create and obtain hypothecs, assignments and security interests,

flowing from the execution of one or several bonds to guarantee the obligations of any Principal (including, but not limited to bid bonds, performance bonds, labour and material payment bonds, claimant's payment bonds, maintenance bonds, lien bonds, bonds relating to advances by obligees, holdback bonds, credit or financial guarantee bonds as well as letters of intent or of undertaking and consents of surety) or other forms of guarantee or obligation (herein called the "Bonds"); the word "Bonds" includes any alteration, renewal, continuance, replacement or extension thereof.

5. **"Bonded Contracts"** - For purposes of the present agreement, any reference to the term "Bonded Contracts" means contracts in respect of which one or more Bonds have been issued.
6. **Indemnitors' interest in the Principal** - The Indemnitors acknowledge that the present agreement will remain in full force and effect and continue to bind them even if they never had or no longer have any interest in the Principal or each of them.
7. **Consideration for the present agreement** - The Indemnitors acknowledge that the Surety requires their signatures to the present agreement in consideration:
 - a) of the issue of Bonds, whether past, present or future, by the Surety or by others referred to in paragraph 9 herein, directly or indirectly, or
 - b) of the Surety refraining from cancelling such Bonds, and
 - c) (outside the Province of Quebec), of the sum of Two Dollars and other good and valuable consideration paid and furnished by the Surety to each of the Indemnitors (the receipt and sufficiency of which are hereby acknowledged).
8. **Bonds covered by and duration of the present agreement** - The present agreement applies to all Bonds issued by the Surety since **November 2, 2016** (the absence of any date means that the present agreement applies only to Bonds issued from the date hereof), for an indeterminate term, until such time as the present agreement is terminated in accordance with its terms.
9. **Additional beneficiaries of the present agreement** - All of the terms and conditions of the present agreement are for the benefit of:
 - a) any successors or assigns of the Surety, including as a result of mergers, acquisitions of portfolios, or otherwise, and
 - b) any surety, joint or several, any re-insurance company and any other surety procured by the Surety upon the request of the Principal to issue a Bond or Bonds, whether or not such Bond or Bonds are issued by the Surety or whether or not the Surety retains any interest in any such Bond or Bonds.
10. **Parties bound by the present agreement** - Each of the Indemnitors acknowledges that it is bound by all of the terms and conditions of the present agreement, as are its representatives, successors and assigns.
11. **Joint and several obligation of the Indemnitors** - The Indemnitors agree that they bind themselves jointly and severally (solidarily) with respect to all of the obligations assumed hereunder; this means that each of the Indemnitors may be compelled separately to perform all of the Indemnitors' obligations hereunder.
12. **Waiver of the benefit of division** - The Indemnitors specifically waive the benefit of division, which would, in the absence of the present waiver, permit any one Indemnitor to require the Surety to divide its claim proportionately amongst all the Indemnitors.
13. **Waiver of the benefit of discussion** - The Indemnitors specifically waive the benefit of discussion, which would, in the absence of the present waiver, permit the Indemnitors to require the Surety to exhaust its recourses against the Principal, before calling upon the Indemnitors under the present agreement.
14. **Obligations in respect of Bonds, Bonded Contracts and the present agreement** - The Principal agrees to fulfil and the Indemnitors, other than the Principal, agree to cause the Principal to fulfil all of the Principal's obligations under:
 - a) Bonds,
 - b) Bonded Contracts, and
 - c) sub-contracts and supply contracts entered into by the Principal.

The Principal undertakes moreover to first use funds received from obligees under Bonded Contracts for the purpose of fulfilling its obligations under Bonded Contracts and under related sub-contracts and supply contracts to which it is a party. The Indemnitors undertake to do nothing which could give rise to a claim or a default under the terms of the present agreement, of any Bond or of any Bonded Contract.

15. ***Use of tools, equipment, materials and work in process*** - The Principal agrees to keep available and to use for the performance of Bonded Contracts, all tools, equipment, materials and work in process necessary for such execution.
16. ***Indemnification of the Surety*** - The Indemnitors undertake to indemnify the Surety in full for any loss or damages that it may suffer arising from the issue of one or several Bonds, or arising from a decision of the Surety not to issue any Bond, or arising from any default by the Indemnitors under the present agreement. The present undertaking includes, without limitation, the obligation of the Indemnitors to reimburse to the Surety all sums which it might be called upon to pay:
- a) as a result of a judgment, arbitration award or settlement;
 - b) as damages of any nature, including punitive and exemplary damages, as the case may be;
 - c) in respect of any claim, liability or loss;
 - d) as expenditure, costs or fees that it may incur, including the cost of internal or external adjusters and consultants;
 - e) in satisfaction of judicial and extra-judicial fees and disbursements of the Surety's counsel on a solicitor and client basis and legal fees of claimants' counsel;
 - f) as administration costs related to claims under Bonds and under this agreement.
17. ***Loan and guarantee by the Surety of a loan or advance*** - In the event that the Surety decides in its sole discretion to:

- a) lend any sum of money to the Principal or
- b) guarantee any loan or advance made by anyone to the Principal,

so as to permit the Principal to fulfil its obligations under Bonded Contracts, the Indemnitors undertake to reimburse to the Surety the full amount of such loan in principal, interest and costs, and they acknowledge that all the terms and conditions of the present agreement apply to such undertaking.

18. ***Obligation to pay the premium*** - The Indemnitors undertake to pay to the Surety:
- a) the initial premium for the issue of any Bond, in conformity with the Surety's tariff in force, or such other tariff as may be agreed upon with the Principal; and
 - b) thereafter, any additional or other premium, in conformity with the Surety's tariff in force or such other tariff as may be agreed upon with the Principal until such time as the Surety receives proof to its satisfaction, confirming its complete release from all Bonds issued by it, and from the renewal or extension of such Bonds.
19. ***Assignment of the Principal's rights - Outside Quebec*** - As a continuing and collateral security for the obligations of the Indemnitors towards the Surety under the present agreement, each Principal hereby grants, bargains, sells and conveys to the Surety, a continuing, specific and fixed assignment, transfer, mortgage, charge, hypothec and security interest in the following:
- a) all of the claims and debts which it holds against all persons, and without limitation, against:
 - i. all persons with whom it has or will enter into Bonded Contracts; and
 - ii) all persons with whom it has or will enter into a sub-contract or a supply contract; and
 - iii) all persons with whom it has or will enter into unbonded contracts;

- the said claims including, without limiting the generality hereof, all sums due in virtue of the said Bonded Contracts, sub-contracts, supply contracts, unbonded contracts, deferred and final payments, holdbacks, balances of contract funds whether earned or unearned, claims for extras and claims in damages; and
- b) any construction lien or mechanic's lien that it may hold; and
 - c) any insurance contract, particularly insurance contracts relating directly or indirectly to Bonded Contracts; and
 - d) all of the sub-contracts and supply contracts which it has granted or will grant, comprising all guarantees and warranties attached thereto, together with all materials included thereunder relating to the execution of the Bonded Contracts; and
 - e) any bond issued to guarantee the obligations of sub-contractors or suppliers of the Principal; and
 - f) all the equipment, tools, materials, work in process, patents, royalties, trade marks, computer programs, computers, disks, diskettes, files and records of the Principal, required, in the opinion of the Surety, for the performance of the Bonded Contracts, being:
 - i) on the job sites of the Bonded Contracts; or
 - ii) in the possession of the Principal or other parties engaged by the Principal; or
 - iii) at any of the Principal's place or places of business; or
 - iv) in storage elsewhere; or
 - v) in transit between the job sites of the Bonded Contracts and the Principal's place or places of business or storage facilities; and
 - g) all proceeds and personal property in any form derived directly or indirectly from any dealing with the Collateral as defined hereunder, or any part thereof and all proceeds of proceeds and any part thereof; and
 - h) all of the Principal's property, assets, rights and undertakings of every nature, item and kind, now or at any time and from time to time, wherever situate;

all items listed above from a) to h) being collectively defined as the "Collateral".

20. ***Obligations secured - Outside Quebec*** - The Collateral constitutes and will constitute continuing security for the following obligations (collectively, the "Obligations") of the Indemnitors to the Surety:

- a) the prompt payment, as and when due and payable, of all amounts now or hereafter owing by the Indemnitors to the Surety, including by way of guarantee and indemnity, whether now existing or hereafter incurred, matured or unmatured, direct, indirect, joint or several, or contingent including any extensions and renewals thereof, and all further advances or readvances; and
- b) the strict performance and observation by the Indemnitors of all agreements, warranties, representations, covenants, conditions and undertakings of the Indemnitors made pursuant to this agreement or any other agreement between any one or more of the Indemnitors and the Surety all as now in effect or as hereafter entered into or amended.

21. ***Trust funds - Outside Quebec*** -

- a) The Principal agrees and hereby expressly declares that all funds due or to become due under any Bonded Contract, are, whether in the possession of the Principal or another, trust funds for the benefit of and payment to all persons to whom the Principal incurs, in the performance of such Bonded Contract, obligations for which the Surety would be liable under any Bond. If the Surety assumes or discharges any such obligation, it shall be entitled to assert the claim of such person to the trust funds;
- b) The Principal shall, upon demand and in implementation of any trust hereby created, open an account or accounts with a bank or similar depository designated by the Principal and approved by the Surety, which account or accounts shall be designated as a trust account or accounts for the deposit of such trust funds, and shall deposit therein all monies received pursuant to said Bonded Contract or contracts. Withdrawals from such accounts shall be by cheque or similar instrument signed by the Principal and countersigned by a representative of the Surety;

- c) Said trust or trusts shall terminate on the payment by the Principal of all the contractual obligations for the payment of which the trust or trusts are hereby created or upon the expiration of twenty years from the date hereof, whichever shall first occur.
22. ***Carrying on of an enterprise - Province of Quebec*** - Each Principal declares that it is carrying on an enterprise within the meaning of the Civil Code of Quebec.
23. ***Movable hypothec on claims and on rights deriving from contracts - Province of Quebec*** - To guarantee the obligations of the Principal created by virtue of the present agreement, each Principal, acting as **Grantor** for himself and not in the name of another, hereby grants in favour of the Surety as **Holder**, a movable hypothec on:
- a) the universality of the claims and debts which it holds against all persons, and in particular:
- i) all persons with whom it has entered into or will enter into Bonded Contracts; and
 - ii) all persons to whom it has granted or will grant a sub-contract or a supply contract; and
 - iii) all persons with whom it has or will enter into unbonded contracts;
- the said claims including, without limiting the generality hereof, all sums due in virtue of the said Bonded Contracts, sub-contracts, supply contracts, unbonded contracts, deferred and final payments, holdbacks, balances of contract funds whether earned or unearned, claims for extras and claims in damages;
- b) all of its right, title and interest in all of the sub-contracts and supply contracts which it has granted or will grant, comprising all guarantees and warranties attached thereto, together with all materials included thereunder relating to the execution of the Bonded Contracts;
- c) all of its right, title and interest in any bond issued to guarantee the obligations of the sub-contractors and suppliers of the Principal; and
- d) all rights in virtue of any insurance contract, and more particularly all insurance contracts relating directly or indirectly to Bonded Contracts.
- The **Grantor** grants this hypothec on the understanding that the **Holder** authorises the **Grantor** to collect all claims hypothecated, until such time as the **Holder** exercises its legal right to withdraw such authorization.
24. ***Assignment of the Principal's rights in legal hypothecs - Province of Quebec*** - To guarantee the obligations of the Principal created by virtue of the present agreement, and as an accessory to the movable hypothec on claims granted in the preceding paragraph, each Principal assigns to the Surety all of its own rights under any legal hypothec in favour of persons who have taken part in the construction or renovation of an immovable property.
25. ***Movable hypothec on certain property - Province of Quebec*** - To guarantee the obligations of the Principal created by virtue of the present agreement, each Principal acting as **Grantor** for itself and not in the name of another hereby grants in favour of the Surety as **Holder** a movable hypothec on all of the equipment, tools, materials, work in process, patents, royalties, trade marks, computer programs, computers, disks, diskettes, files and records of the Grantor and required, in the Surety's opinion, for the performance of the Bonded Contracts, being:
- a) on the job sites of the Bonded Contracts; or
 - b) in the possession of the Grantor or other parties engaged by the Grantor; or
 - c) at any of the Grantor's place or places of business; or
 - d) in storage elsewhere; or
 - e) in transit between the job sites of the Bonded Contracts and the Grantor's place or places of business or storage facilities.
26. ***Amount of movable hypothecs and address of the Principal's places of business - Province of Quebec***
- In respect of the movable hypothecs granted by the terms of the present agreement:

- a) the amount of each of the movable hypothecs granted under paragraphs 24 and 26 above is 13 000 000, 00\$ for each Principal;
- b) the address of the Grantor's establishment or establishments directly concerned is:

Co. Name and Address
 Co. Name and Address
 Co. Name and Address
 Co. Name and Address
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 Co. Name and Address
 Co. Name and Address
 Co. Name and Address

(If there is insufficient space, provide the additional addresses by annex).

27. **Assignment of the Principal's rights in its sub-contracts - Province of Quebec** - In order to allow the Surety to complete the Bonded Contracts upon default by the Principal, the latter assigns and transfers to the Surety all of its right, title and interest in:

- a) all of the sub-contracts and supply contracts which it has granted or will grant, comprising all guarantees and warranties attached thereto, together with all materials included thereunder relating to the execution of the Bonded Contracts; and
- b) any bond issued to guarantee the obligations of the sub-contractors and suppliers of the Principal.

28. **Consent to the delivery and publication of the present agreement, and waiver** - In order to give effect to the hypothecs, assignments and security interests granted hereunder and to allow them to be set-up against third parties, the Indemnitors specifically acknowledge and agree that the Surety may, at any time:

- a) deliver or transmit a copy of the present agreement to any person, firm or corporation; and
- b) publish, file or register the present agreement and any right or security thereunder, in any appropriate office or registry.

Each of the Indemnitors further waives its right (if applicable) to receive a copy of any financing statement, financing change statement and verification statement outside Quebec or, everywhere, any notice delivered, filed or issued in respect of this agreement.

29. **Power of attorney given to the Surety resulting from the securities and security interests granted herein and authorization to collect and to endorse any cheque, money order or other instrument** - In order to give effect to the securities and security interests granted or created by the present agreement, each Principal specifically constitutes the Surety, its irrevocable attorney:

- a) to enforce any of the securities and security interests granted or created by the present agreement and particularly privileges ("construction liens" or "mechanic's liens") as well as legal or movable hypothecs, assignments and other security interests; and

- b) to collect and to endorse in the name of the payee and to cash any cheque, money order or other instrument created or issued in payment of funds payable under Bonded Contracts and unbonded contracts, and to retain and disburse such cash; and
 - c) to sign any document and deed, give any notice or make any inscription or registration in order to give effect to the provisions of the present agreement and particularly, the hypothecs, charges, assignments and other security interests.
30. ***Signature of other documents by the Indemnitors*** - The Indemnitors undertake to sign all other documents required by the Surety in order to give effect to the hypothecs, assignments and security interests granted by the present agreement.
31. ***Reduction of obligations*** - The Obligations as defined in paragraph 21 above and the Indemnitors' obligations hereunder, may be reduced to zero from time to time without affecting the validity, perfection or enforceability of this agreement for subsequent obligations or of the hypothecs, assignments and security interests created hereby until this agreement is terminated in accordance with the terms hereof.
32. ***Subordination of Indemnitors*** - None of the Indemnitors shall enforce any rights of contribution or indemnity against any Principal or its property and undertakings until such Principal's obligations to the Surety under this agreement have been satisfied in full.
33. ***Indemnitors' obligation to advance funds required by the Surety to meet its obligations*** - In order to permit the Surety to meet its obligations under the Bonds, the Indemnitors undertake to advance to the Surety upon demand, funds or satisfactory guarantees sufficient to allow the Surety to perform any or all of its obligations under the Bonds, which could be subject to indemnification under the terms of the present agreement, even before any payment has been made by the Surety to a third party. Without limiting the generality of the foregoing, the Indemnitors undertake to advance funds or furnish guarantees, as soon as the Surety establishes or increases a reserve with respect to a claim or a situation relating to any Bonds, up to the amount of such reserve which will be established by the Surety in its sole discretion.
34. ***Advance and payment to the Surety when the Principal requires the Surety to take part in an action or a defence*** - The Indemnitors undertake to advance and pay to the Surety funds sufficient to satisfy any judgment or arbitration award which could be rendered against the Surety, as well as disbursements or costs incurred by the Surety or awarded against it, including judicial or extra-judicial fees and disbursements of the Surety's counsel on a solicitor and client basis, when the Principal requires the Surety to take part in any legal action or in the defence of any legal proceedings. The Indemnitors undertake to make further advances and payments when required by the Surety.
35. ***Investment and use of advances to the Surety and of funds collected from obligees*** - The Surety may hold any advance made by any Indemnitor and any sums collected from obligees under Bonds, in such form as the Surety may in its sole discretion decide, and shall have no obligation to invest, or provide any income or return on any such advance. The Surety may use all or any part of such advance and any income earned thereon, in payment or compromise of any of the Indemnitors' obligations hereunder.
36. ***Surety's right to intervene in Bonded Contracts*** - In the event of:
- a) any default of the Principal under any Bond; or
 - b) any default of the Principal under any Bonded Contract or under any sub-contract or supply contract relating to a Bonded Contract; or
 - c) any default of an Indemnitor under the present agreement; or
 - d) any action by an Indemnitor which could affect the rights of the Surety under any Bond or under the present agreement; or
 - e) any act of bankruptcy of the Principal or the insolvency of the Principal or the making by the Principal of any arrangement with its creditors; or
 - f) any default by the Principal with respect to any of its secured creditors; or
 - g) any default by the Principal on a contract not bonded by the Surety; or

- h) any other act, event, circumstance or occurrence which, in the Surety's reasonable discretion, gives rise to any concern as to the enforcement of its rights hereunder,

the Surety may, without notice of default, intervene in any Bonded Contract, for the purpose of assuming its obligations and exercising any of its rights under Bonds. The Surety will then have the right, without prejudice to its other rights and recourses in virtue of the present agreement, to take possession of and to use the equipment, tools, materials, work in process, patents, royalties, trademarks, computer programs, computers, disks, diskettes, files and records, for purposes of completing the Bonded Contracts.

37. **Decision as to the payment of claims** - The Indemnitors acknowledge that the Surety will have the right, in its sole and entire discretion, to decide whether to pay, settle or contest any claim under a Bond, without any obligation to consult or advise the Indemnitors in advance of so doing.
38. **Proof of payments made by the Surety** - The Indemnitors acknowledge their obligation to indemnify the Surety in virtue of the present agreement, upon presentation by the latter of a release or a copy of a cheque or any other proof of payment, which will be deemed to be complete proof of the amount paid and of the Surety's right to make such payment as a result of the issue of the Bonds and, consequently, its right to demand reimbursement from the Indemnitors under the terms of the present agreement.
39. **Surety's right of access to the books and records of the Indemnitors** - The Indemnitors hereby grant to the Surety full right of access to, examination of and making of copies of, during normal business hours, their books, records, files, computer records and accounts, for such period as any rights and obligations under Bonds remain in effect or so long as the Indemnitors are potentially or actually indebted to the Surety for any sum or sums whatsoever.
40. **Undertaking to furnish certain information** - So long as the Surety has any potential liability under any Bond, the Indemnitors undertake to furnish to the Surety, on demand, all information or pertinent documentation required by the Surety relevant to:
- a) the Indemnitors' financial position; and
 - b) any modification to the corporate or partnership structure of any of the Indemnitors, particularly any change of name, merger, amalgamation, etc.; and
 - c) the state of the work on any contract, particularly Bonded Contracts, and the financial situation of such contracts.
41. **Undertaking to deliver certain documents to the Surety** - So long as the Surety has any potential liability under any Bond, the Indemnitors undertake, without delay, to deliver to the Surety copies of the following documents:
- a) the annual or interim financial statements of each Indemnitor; and
 - b) any petition for a receiving order, petition in bankruptcy or proceeding for arrangement with its creditors made against or by an Indemnitor; and
 - c) any proposal by an Indemnitor to its creditors; and
 - d) any notice of default or action involving an Indemnitor, which could result in a claim under a Bond.
42. **Cooperation and discharge** - The Indemnitors undertake to cooperate with the Surety in any way which may assist the Surety in limiting, reducing or discharging its obligations under any Bond in accordance with its terms and particularly in respect of any proceeding taken against the Surety, without any obligation on the Surety's part to indemnify them. The present undertaking includes that of being present at any examination or trial relating to any Bond or to any right granted to the Surety under the present agreement. The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond.
43. **Information concerning the Indemnitors** - The Indemnitors specifically authorize the Surety to obtain any credit or other personal information concerning any or all Indemnitors which it desires and which is pertinent to the conclusion or the execution of the present agreement and to the issue of any Bond,

and any person, credit bureau, bank, financial institution, obligee, architect, engineer, accountant, sub-trade or supplier, possessing any such information is, by this agreement, authorized to communicate such information to the Surety, on demand, during the life of the present agreement and, if necessary, thereafter.

44. **Authorization to the Surety to make changes** - The Surety is hereby authorized to make the following changes, without notice to the Indemnitors:
- a) in the terms of any Bond or Bonded Contract; and
 - b) in the designation of any obligee of a Bond; and
 - c) respecting any renewal, continuation, replacement, reinstatement or extension of any Bond; and
 - d) correcting errors in and executing any substitute to any Bond with the same or different conditions, provisions, amounts and obligees; and
 - e) for the purpose of completing the present agreement or any Bond or of correcting errors of declaration or description of Bonds or of the present agreement.
45. **Validity of the present agreement notwithstanding the absence of the signatures of one or more Indemnitors or witnesses** - The present agreement will be and will remain in full force, even if one or more of the Indemnitors designated herein, or one or more of the witnesses have not signed the present agreement or their signature has been adjudged invalid.
46. **Failure of the Principal to sign or deliver any Bond** - The Indemnitors are fully responsible under the present agreement even in the event that the Principal has not signed any Bond signed by the Surety or that a Bond has not been delivered to an obligee, without prejudice to the Surety's right to assert that it is not liable under such Bond.
47. **Settlement with one or several Indemnitors** - In the event of a claim by the Surety against the Indemnitors in virtue of the present agreement or in virtue of any other rights of the Surety, the Indemnitors specifically authorize the Surety to settle such claim with one or several of the Indemnitors, without reference to the others and such settlement shall not affect or reduce the obligations of such others. The Indemnitors expressly renounce and waive any rights which they may have to be discharged from their obligations or to have such obligations reduced by reason of the discharge of one or several Indemnitors.
48. **Surety's rights following settlement with one Indemnitor** - The Indemnitors agree that any settlement made by the Surety with one of them will not effect novation of the obligations of the Indemnitor in question (i.e. substituting or extinguishing its obligations) and the present agreement will retain all of its force in the event of a default by such Indemnitor to honour the terms of the settlement and without prejudice to all of the Surety's rights against the other Indemnitors.
49. **Interest rate** - All sums due by the Indemnitors in virtue of the present agreement will bear interest in favour of the Surety, at an annual rate of 2% over the "prime rate" from the date upon which an Indemnitor has been advised of the amount of the Surety's claim. The term "prime rate" means the annual interest rate declared from time to time by the Royal Bank of Canada, as being the base rate in force from which interest rates on loans made in Canada, in Canadian dollars, are determined.
50. **Persons authorized to request the execution of Bonds** - Requests to the Surety to execute any Bond may be made by any of the Principal or (where a Principal is not an individual) any officer, employee or partner of any of the Principal, or by an agent or broker which the Surety reasonably believes represents any Principal, or by any Indemnitor. Such requests, whether made in writing (mailed, delivered or telecopied), by telegraph, by personal interview or by telephone, shall be regarded as sufficient and ample authority for the Surety to execute any such Bond.
51. **Surety's right to refuse to issue a Bond** - The Indemnitors acknowledge that the Surety, in its sole and entire discretion, has the right to refuse to issue, furnish or procure any Bond and the Indemnitors renounce and waive any recourse against the Surety resulting from such refusal.

52. ***Surety's right, having issued a bid Bond or a letter of intent, to refuse to issue final bonds*** - Even if the Surety issues, furnishes or procures bid Bonds or letters of intent or undertaking, the Indemnitors acknowledge that the Surety will not, because of that, be obliged to issue, upon request from the Principal, final bonds of any nature, including performance bonds, labour and material payment bonds or maintenance bonds at the time the Principal is awarded the contract in respect of which its bid was made and the bid Bond issued by the Surety. The Indemnitors renounce and waive any recourse against the Surety resulting from such refusal.
53. ***Notice of issue of Bonds*** - The Indemnitors expressly agree that the Surety is not obliged to advise them of the issue of any Bond nor to deliver a copy to the Indemnitors.
54. ***Notice of changes in any Bonds or any Bonded Contracts*** - The Indemnitors expressly agree that the Surety is not obliged to advise them of any change, addition, substitution or extension made to any Bond or Bonded Contract; moreover, the Indemnitors renounce any right to raise such changes, additions, substitutions or extensions for the purpose of reducing or eliminating their obligations in virtue of the present agreement.
55. ***Termination of the present agreement and its effect upon outstanding Bonds*** - The present agreement shall only be terminated by any Indemnitor, upon prior written notice to the Surety by registered mail and at its head office, at least thirty days prior to its effective date; however, the said prior notice of termination will not modify, nor exclude, nor discharge the Indemnitors' obligations relating to Bonds issued prior to the effective date of termination or Bonds issued after the effective date of termination by reason of undertakings by the Surety prior to such date; the present agreement will remain in full force and effect as regards the other Indemnitors without any obligation on the part of the Surety to advise such other Indemnitors of such termination.
56. ***Effect of the execution of a new indemnity and security agreement*** - The execution of a new indemnity and security agreement with respect to any Principal, shall not have the effect of terminating the present agreement which shall remain in full force and effect, unless expressly terminated in writing according to the terms hereunder.
57. ***Events not affecting the obligations of the Indemnitors*** - The Indemnitors acknowledge that the following events are in addition to any other rights of the Surety under the present agreement and shall not in any way release, waive or abridge any right or remedy of the Surety under the present agreement:
- a) the fact that another guarantee has been or will be given to the Surety (particularly any other security or indemnity agreement); or
 - b) the fact that the Surety has consented to any action taken by the Principal; or
 - c) any action, judgment, arbitration award or settlement arising from the present agreement; or
 - d) the fact that the Surety has renounced or waived any recourse against whomsoever or has given to whomsoever a release in virtue of the present agreement or other agreements or in respect of any security.
58. ***Surety's additional rights*** - The rights of the Surety by virtue of the present agreement are in addition to any rights which the Surety may have by law or otherwise.
59. ***Modifications of the terms of the present agreement*** - No derogation from the terms of the present agreement, nor any modification of such terms, may be set up against the Surety without the prior written consent of one of its officers.
60. ***Change in control*** - The Indemnitors agree to provide the Surety with, at least, forty five (45) days prior written notice of a Change in Control (defined below) and to designate the name and address of the Indemnitor with whom the Surety should correspond with respect to this paragraph, which Indemnitor, all Indemnitors agree is designated to act on behalf of them pursuant to this paragraph. Upon receipt of such notice, the Surety shall advise the Indemnitor designated above, in writing, of its election to (i) approve such Change in Control or (ii) demand that the Indemnitors' procure the discharge of the Surety from any Bonds and all liability by reason thereof. If the Indemnitors fail to give the Surety timely notice of a Change in Control or if the Surety does not approve the Change in Control and if such discharge is not procured to the sole satisfaction

of the Surety then, immediately, upon the Surety's written demand, the Indemnitors shall deposit a sum of money or collateral, of a type and value satisfactory to the Surety, equal to the aggregate penal sum of the then outstanding Bonds, as determined by the Surety in its sole discretion. The Surety shall send its written demand to the Indemnitor designated above by overnight courier or by registered or certified mail. The Indemnitors hereby acknowledge that if they or any one of them breaches the obligations set forth in this paragraph, the Surety will not have an adequate remedy at law and shall be entitled to injunctive relief, including without limitation specific performance of the terms of this agreement.

"Change in Control" shall mean: (a) the transfer, merger or consolidation (in one transaction or a series of transactions) of all or substantially all of the assets of any non-individual Principal or Indemnitor; (b) the acquisition (in one transaction or a series of transactions) by any person or group, directly or indirectly, of fifty (50%) percent or more of the beneficial ownership or control of any Principal or Indemnitor; or (c) the acquisition by any Principal or Indemnitor, directly or indirectly, of fifty (50%) percent or more of the beneficial ownership or control in any joint venture, subsidiary, division, affiliate, limited partnership, limited liability partnership, limited liability company or other entity through the issuance of ten (10%) percent or more of the voting power of the total outstanding voting stock of any Principal or Indemnitor.

61. **Applicable law** - The present agreement will be interpreted in accordance with the laws in force in the Province named in Paragraph 1 hereof. Notwithstanding the foregoing, (i) the provisions contained in paragraphs 24 to 28 hereof shall always be interpreted in accordance with the laws in force in the Province of Quebec, and (ii) should the Province named in Paragraph 1 hereof be the Province of Quebec, the provisions contained in paragraphs 20 to 22 hereof shall always be interpreted in accordance with the laws in force in the Province of Ontario.
62. **Seal and corporate resolution** - The Indemnitors agree that the absence of any corporate seal or corporate resolution will not invalidate the obligations of any Indemnitor under the present agreement.
63. **Gender and number** - In the present agreement the singular form includes the plural and the plural includes the singular; also the feminine includes the masculine and the masculine includes the feminine.
64. **Headings** - The insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
65. **Language** - The parties hereto have requested that the present agreement be drafted in the English language. Les parties aux présentes ont requis que la présente convention soit rédigée dans la langue anglaise.

THE UNDERSIGNED ACKNOWLEDGE HAVING RECEIVED A COPY OF THE AGREEMENT, CAREFULLY READ IT AND THAT THEY UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THE PRESENT AGREEMENT AND THAT THERE EXIST NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY COULD LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.

PERSONAL INDEMNITORS SIGN HEREUNDER:

WITNESSES

PERSONAL INDEMNITORS

Ryan Dore
Written Name of Witness

[Signature]
Signature

Address:
200 Queens Ave, London, ON,
Suite 2010 N6A 5R8

Ryan Dore
Written Name of Witness

[Signature]
Signature

Address:
200 Queens Ave, London, ON,
Suite 2010 N6A 5R8

Written Name of Witness

Signature

Address:

Signed at: London, Ontario

Eric Rosen
Written Name

[Signature]
Signature of personal indemnitor

Address:
131 Leland Rd London ON N6K 1T2

Signed at: London, Ontario

Gerry Higgins
Written Name

[Signature]
Signature of personal indemnitor

Address:
1572 WICKHAMBOURGH DR. N6B 5A1

Signed at: LONDON

Written Name

Signature of personal indemnitor

Address:

CORPORATE INDEMNITORS AND/OR PARTNERSHIPS SIGN HEREUNDER, AFFIX THEIR SEAL AND ATTACH THE RELEVANT RESOLUTION FROM THEIR BOARD OF DIRECTORS.

WITNESSES

INDEMNITORS

Ryan Dane
Name of Witness

[Signature]
Signature

Address:
200 Queen Ave, London, ON
Suite 2010 N6A 5R8

KMW Energy Inc.
Name of corporation or partnership

Signed at: London

Eric Rosen, CEO
Name of authorized officer and title

[Signature]
Signature of authorized officer

Address: 635 Wilton Grove Rd.
London, ON N6N 1N7

Seal

Yves Leveille
Name of Witness

[Signature]
Signature

Address:
228 St-Joseph CRT
New Liskard

462673 Ontario Inc. o/a Nor-Arc
Name of corporation or partnership

Signed at: EARLTON

MARIO LEVEILLE PRESIDENT
Name of authorized officer and title

[Signature]
Signature of authorized officer

Address: 331567 Highway 11 North, P.O. Box 565
Earlton ON P0J1E0

Seal

This is Exhibit "J" referred to in the Affidavit of Eric Bertil Rosen
sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS



R. Graham Phoenix
Direct Line: (416) 748-4776
E-mail: gphoenix@loonix.com

April 9, 2020
File No: 03551-0009

VIA REGISTERED MAIL and EMAIL (ghiggins@kmwenergy.com)

KMW Energy Inc.
635 Wilton Grove Road - 2nd Floor
London, ON N6N 1N7
Attn: Gerry Higgins

Mr. Higgins,

RE: DEMAND FOR PAYMENT
and SERVICE OF SECTION 244 NOTICE

We are the lawyers for 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators (the "**Nor-Arc**") in respect of the matters set out herein.

Indebtedness

From or about April 2010 to and including December 2019, Nor-Arc rendered fabrication services to KMW Energy Inc. ("**KMW**"). All of Nor-Arc's invoices were to be paid within thirty (30) days.

As at March 24, 2020, KMW is indebtedness to Nor-Arc in the total amount of \$2,778,084.92, with interest, costs and fees continuing to accrue (the "**Indebtedness**"). We enclose herewith an acknowledgment with respect to such debt for execution by KMW which we ask be executed and returned to us immediately.

Additionally, we note that Nor-Arc also has a contingent liability claim against KMW in the approximate amount of \$6,400,000, plus any interest, costs and fees as may be applicable, as an indemnitor of KMW under a performance bond in favour of Georges River Energy LLC.

In addition, KMW is liable for such legal costs and other enforcement costs as may be incurred by Nor-Arc in respect of the enforcement of its Security (*as defined below*), from time to time, the particulars of which can be provided upon request (collectively, the "**Costs**").

Security

As security for the payment and performance of all of its indebtedness, liabilities and obligations, present and future, direct or indirect, absolute or contingent, to Nor-Arc, the Debtor executed a **general security** agreement in favour of Nor-Arc on April 12, 2011, which security was registered under the Ontario Personal Property Security Act (the "**Security**").

{1.1745494.1}



Demand

KMW is in default of its payment obligations to Nor-Arc.

As a result of KMW's default in its payment obligations, Nor-Arc is entitled to and does hereby demand from KMW the immediate payment in full of the Indebtedness and Costs, by or before April 19, 2020.

To obtain an updated pay-out statement, including Costs, and to arrange deliver of payment, please contact the undersigned.

If KMW fails to pay the indebtedness and Costs by or before April 19, 2020, Nor-Arc will pursue its legal rights and remedies for the collection of such amounts, which includes the right to exercise all rights and remedies available at law, under the Security and in equity. Nor-Arc may exercise such rights without further notice to KMW.

In the event that KMW qualifies as an "insolvent person" within the meaning of such term under the *Bankruptcy and Insolvency Act*, we enclose herewith a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (the "**244 Notice**"). *We enclose herewith a waiver of the associated statutory notice period associated with such 244 Notice, which we ask be executed and returned to us immediately.*

In the interim, Nor-Arc expressly reserves all of its right to take whatever measure it may consider appropriate to preserve and protect its interests and to pursue its remedies under the Security, any statute, at common law and/or in equity, including without limitation the right to seek the appointment of a receiver by a Court of competent jurisdiction. Nothing in this letter shall be construed as a waiver of such rights.

For greater certainty, nothing herein or in the attached notice shall affect or limit Nor-Arc's rights under the Security or otherwise.

LOOPSTRA NIXON LLP

Per:

R. Graham Phoenix
RGP

Encl.

cc. Harvey Chaiton, Chaitons LLP (harvey@chaitons.com)

NOTICE OF INTENTION TO ENFORCE SECURITY

(Subsection 244(1) of the Bankruptcy and Insolvency Act)

[THE EXECUTION AND DELIVERY OF THIS NOTICE DOES NOT CONSISTUTE AN ACKNOWLEDGMENT THAT THE CREDITOR IS OBLIGED TO SEND THIS NOTICE OR THAT SECTION 244 OF THE BANKRUPTCY AND INSOLVENCY ACT APPLIES TO THIS CASE OR AN ALLEGATION THAT THE DEBTOR IS AN INSOLVENT PERSON WITHIN THE MEANING OF THE BANKRUPTCY AND INSOLVENCY ACT.]

TO: KMW ENERGY INC.
635 Wilton Grove Road
London, ON N6N 1N7

TAKE NOTICE that:

1. 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators ("**Nor-Arc**"), a secured creditor, intends to enforce its security on all or substantially all of your present and after acquired property, assets and undertaking and/or proceeds thereof.
2. The security that is to be enforced comprises, among other things, a general security agreement in favour of Nor-Arc executed on April 12, 2011 (the "**Security**").
3. The total amount of indebtedness secured by the Security and sought via the demand delivered herewith is \$2,778,084.92 as at March 24, 2020, together with accruing interest and all other charges and expenses of enforcement claimable thereunder. (Which amount is in addition to any contingent liability that may arise under the Security at a later date).
4. Nor-Arc will not have the right to enforce the security until the expiry of a 10-day period following the sending of this Notice, unless you consent to an earlier enforcement by execution of the attached waiver.

DATED at Toronto, this 9th day of April 2020.

462673 ONTARIO INC. o/a Nor-Arc Steel Fabricators, by its solicitors Loopstra Nixon LLP


Per: R. Graham Phoenix

WAIVER

THE UNDERSIGNED hereby waives the notice period provided for under section 244(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, C. B-3, as amended and consents to the immediate enforcement by 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators of its security in the attached Notice of Intention to Enforce Security dated April 9, 2020.

DATED at London, Ontario this 9th day of April 2020.

KMW ENERGY INC.



Per: Eric Rosen
Title: CEO

I have authority to bind the corporation.

This is Exhibit "K" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.

A handwritten signature in black ink, appearing to read "Sam Rappos". The signature is fluid and cursive, with a large initial "S" and a long, sweeping tail.

Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

KMW Energy Inc.
 Projected cash flows
 For the period ended July 5 2020

Currency: CAD		Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13
Week beginning	Notes	6-Apr-20	13-Apr-20	20-Apr-20	27-Apr-20	4-May-20	11-May-20	18-May-20	25-May-20	1-Jun-20	8-Jun-20	15-Jun-20	22-Jun-20	29-Jun-20
Opening cash balance		87,757	78,943	(55,351)	(33,598)	(187,860)	(177,449)	(242,510)	(304,166)	(231,760)	(280,959)	(280,959)	(346,019)	(407,478)
Receipts														
Collection from new sales		-	-	39,250	-	-	-	25,000	116,380	-	-	-	35,000	157,000
Collections from existing Accounts Receivables		-	-	-	3,415	-	-	-	27,845	-	-	-	-	3,658
HST refund		-	20,000	-	-	-	-	-	-	-	-	-	-	-
HST received		-	-	5,103	444	-	-	3,744	18,749	-	-	-	5,241	20,886
Total receipts		-	20,000	44,353	3,859	-	-	28,744	162,974	-	-	-	40,241	181,544
Disbursements														
Payment to suppliers		-	40,000	20,000	7,303	-	-	80,000	-	-	-	-	90,000	-
Payroll (including taxes)		-	42,239	-	42,239	-	42,239	-	-	42,239	-	42,239	-	42,239
Contractors		-	-	-	7,000	-	-	-	7,000	-	-	-	-	7,000
Rent		7,800	-	-	-	7,800	-	-	-	7,800	-	-	-	-
Professional fees		-	-	-	80,000	-	-	-	65,000	-	-	-	-	60,000
Operating and other miscellaneous expenses		-	64,230	-	8,248	-	20,196	-	8,148	100	-	20,196	-	8,248
HST payments		1,014	7,826	2,600	13,332	1,014	2,626	10,400	10,419	1,027	-	2,626	11,700	9,782
HST payable (receivable) to CRA		-	-	-	-	(19,225)	-	-	-	(1,966)	-	-	-	992
Total disbursements		8,814	154,294	22,600	158,121	(10,411)	65,060	90,400	90,567	49,199	-	65,060	101,700	128,261
Closing cash balance		78,943	(55,351)	(33,598)	(187,860)	(177,449)	(242,510)	(304,166)	(231,760)	(280,959)	(280,959)	(346,019)	(407,478)	(354,195)

The Statement of Projected Weekly Cash flow for the period from April 6, 2020 to July 5, 2020 has been prepared solely for the purpose of complying with S. 50.4(2)(a) of the *Bankruptcy and Insolvency Act* and must be read in conjunction with the the attached assumptions (hypothetical and/or probable) to these projections and the Trustee's Report on Cash-flow Statement (Form 29) and the Report on Cash-flow Statement by the Person Making the Proposal (Form 30).

MNP LTD.,
 Trustee acting in re the Proposal of
 KMW Energy Inc.

Per: 
 Sheldon Title CA, CPA, CIRP, LIT

Dated: April 20, 2020

KMW Energy Inc.

Per: 
 Eric Rosen
 CEO

The Statement of Projected Weekly Cash Flow of KMW Energy Inc. (the “**Company**”) includes the following Assumptions:

1. The forecasted collection time on post-NOI sales is approximately 30 days and is dependent on successful completion of milestone as per the Purchase Order.
2. Sales are based on Management’s best estimate.
3. Existing accounts receivable will be collected within 45 days from the date of the Company’s Notice of Intention to Make a Proposal (“**NOI**”).
4. Operating expenses are assumed to be paid on a current basis.
5. Pursuant to Section 69(1) of the Act, all creditors' claims are subject to a stay of proceedings.
6. Subject to #11 below, no provision has been made for payment of obligations incurred prior to April 11, 2020, the filing date of the NOI, except for payment of certain employee reimbursements that accrued prior to the NOI filing but were not required to be remitted until after the NOI filing.
7. Professional fees include charges for Company’s counsel and the Trustee’s fees and expenses, including the fees and disbursements of the Trustee’s independent legal counsel.
8. Other disbursements are based on management's best estimates.
9. No provision for income taxes has been made.
10. The payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the 'actual' payroll costs prior to NOI, adjusted to reflect the reductions to payroll arising out of terminations and layoffs.
11. Opening bank balance considered in the projections is different from the bank balance as per bank statement to the extent of cheques issued but not yet cleared. Such cheques primarily pertain to a continuing critical supplier.
12. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company’s business and the economy in general has yet to be determined. In developing the Statement of Projected Cash Flow, Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by COVID-19 pandemic and various government regulatory actions may cause actual results to differ from the projected amounts and these variations may be material.
13. The Company has not considered benefits of government assistance related to Covid-19 pandemic in the cash flow projections. They are currently evaluating the Company’s eligibility to apply for such relief.

Dated at the City of Toronto in the Province of Ontario, this 17th day of April 2020.

MNP Ltd. - Licensed Insolvency Trustee



300 - 111 Richmond Street West

Toronto ON M5H 2G4

Phone: (416) 596-1711 Fax: (416) 323-5242

The Statement of Projected Weekly Cash Flow of KMW Energy Inc. (the "Company") includes the following Assumptions:

1. The forecasted collection time on post-NOI sales is approximately 30 days and is dependent on successful completion of milestone as per the Purchase Order.
2. Sales are based on Management's best estimate.
3. Existing accounts receivable will be collected within 45 days from the date of the Company's Notice of Intention to Make a Proposal ("NOI").
4. Operating expenses are assumed to be paid on a current basis.
5. Pursuant to Section 69(1) of the Act, all creditors' claims are subject to a stay of proceedings.
6. Subject to #11 below, no provision has been made for payment of obligations incurred prior to April 11, 2020, the filing date of the NOI, except for payment of certain employee reimbursements that accrued prior to the NOI filing but were not required to be remitted until after the NOI filing.
7. Professional fees include charges for Company's counsel, certain other legal expenses and the Trustee's fees and expenses, including the fees and disbursements of the Trustee's independent legal counsel.
8. Other disbursements are based on management's best estimates.
9. No provision for income taxes has been made.
10. The payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the 'actual' payroll costs prior to NOI, adjusted to reflect the reductions to payroll arising out of terminations and layoffs.
11. Opening bank balance considered in the projections is different from the bank balance as per bank statement to the extent of cheques issued but not yet cleared. Such difference primarily pertains to a cheque issued to a continuing critical supplier.
12. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company's business and the economy in general has yet to be determined. In developing the Statement of Projected Cash Flow, Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by COVID-19 pandemic and various government regulatory actions may cause actual results to differ from the projected amounts and these variations may be material.
13. The Company has not considered benefits of government assistance related to Covid-19 pandemic in the cash flow projections. They are currently evaluating the Company's eligibility to apply for such relief.

Dated at the City of Toronto in the Province of Ontario, this 17th day of April 2020.



KMW Energy Inc.

District of: Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

-- FORM 29 --
Trustee's Report on Cash-Flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

The attached statement of projected cash flow of KMW Energy Inc., as of the 17th day of April 2020, consisting of Statement of Projected Cash-flow dated April 17, 2020 for the period from April 6, 2020 to July 5, 2020, has been prepared by the management of the insolvent person (or the insolvent debtor) for the purpose described in the notes attached, using the probable and hypothetical assumptions set out in the notes attached.

Our review consisted of inquiries, analytical procedures and discussion related to information supplied to us by: the management and employees of the insolvent person or the insolvent person. Since hypothetical assumptions need not be supported, our procedures with respect to them were limited to evaluating whether they were consistent with the purpose of the projection. We have also reviewed the support provided by: management or the insolvent person for the probable assumptions and preparation and presentation of the projection.

Based on our review, nothing has come to our attention that causes us to believe that, in all material respects,

- (a) the hypothetical assumptions are not consistent with the purpose of the projection;
- (b) as at the date of this report, the probable assumptions developed are not suitably supported and consistent with the plans of the insolvent person or do not provide a reasonable basis for the projection, given the hypothetical assumptions; or
- (c) the projection does not reflect the probable and hypothetical assumptions.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material. Accordingly, we express no assurance as to whether the projection will be achieved.

The projection has been prepared solely for the purpose described in the notes attached, and readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of Toronto in the Province of Ontario, this 20th day of April 2020.

MNP Ltd. - Licensed Insolvency Trustee



300 - 111 Richmond Street West
Toronto ON M5H 2G4
Phone: (416) 596-1711 Fax: (416) 323-5242

District of: Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

FORM 29 - Attachment
Trustee's Report on Cash-flow Statement
(Paragraphs 50(6)(b) and 50.4(2)(b) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

Purpose:

The Statement of Projected Cash-flow dated April 17, 2020 has been prepared solely for the purpose of complying with S. 50.4(2)(a) of the Bankruptcy and Insolvency Act.

Projection Notes:

The projections are based on hypothetical and/or probable assumptions.

Hypothetical Assumptions

Hypothetical assumptions as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals are assumptions that assume a set of economic conditions or courses of action that are not necessarily the most important in the insolvent person's judgment, but are consistent with the purpose of the Statement of Projected Cash-flow.

Probable Assumptions

Probable assumptions as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals are assumptions that the Insolvent Person believes reflects the most probable set of economic conditions and planned courses of action, are suitably supported, consistent with the plans of the Insolvent Person and provide a reasonable basis for the Statement of Projected Cash-flow.

Assumptions:

The Statement of Projected Weekly Cash Flow of KMW Energy Inc. (the "Company") includes the following Assumptions:

1. The forecasted collection time on post-NOI sales is approximately 30 days and is dependent on successful completion of milestone as per the Purchase Order.
2. Sales are based on Management's best estimate.
3. Existing accounts receivable will be collected within 45 days from the date of the Company's Notice of Intention to Make a Proposal ("NOI").
4. Operating expenses are assumed to be paid on a current basis.
5. Pursuant to Section 69(1) of the Act, all creditors' claims are subject to a stay of proceedings.
6. Subject to #11 below, no provision has been made for payment of obligations incurred prior to April 11, 2020, the filing date of the NOI, except for payment of certain employee reimbursements that accrued prior to the NOI filing but were not required to be remitted until after the NOI filing.
7. Professional fees include charges for Company's counsel, certain other legal expenses and the Trustee's fees and expenses, including the fees and disbursements of the Trustee's independent legal counsel.
8. Other disbursements are based on management's best estimates.
9. No provision for income taxes has been made.
10. The payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the 'actual' payroll costs prior to NOI, adjusted to reflect the reductions to payroll arising out of terminations and layoffs.
11. Opening bank balance considered in the projections is different from the bank balance as per bank statement to the extent of cheques issued but not yet cleared. Such difference primarily pertains to a cheque issued to a continuing critical supplier.
12. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company's business and the economy in general has yet to be determined. In developing the Statement of Projected Cash Flow, Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by COVID-19 pandemic and various government regulatory actions may cause actual results to differ from the projected amounts and these variations may be material.
13. The Company has not considered benefits of government assistance related to Covid-19 pandemic in the cash flow projections. They are currently evaluating the Company's eligibility to apply for such relief.

Dated at the City of Toronto in the Province of Ontario, this 20th day of April 2020.

MNP Ltd. - Licensed Insolvency Trustee



300 - 111 Richmond Street West
Toronto ON M5H 2G4
Phone: (416) 596-1711 Fax: (416) 323-5242

District of: Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

- FORM 30 -
Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

The Management of KMW Energy Inc., has/have developed the assumptions and prepared the attached statement of projected cash flow of the insolvent person, as of the 17th day of April 2020, consisting of Statement of Projected Cash-flow dated April 17, 2020 for the period from April 6, 2020 to July 5, 2020.

The hypothetical assumptions are reasonable and consistent with the purpose of the projection described in the notes attached, and the probable assumptions are suitably supported and consistent with the plans of the insolvent person and provide a reasonable basis for the projection. All such assumptions are disclosed in the notes attached.

Since the projection is based on assumptions regarding future events, actual results will vary from the information presented, and the variations may be material.

The projection has been prepared solely for the purpose described in the notes attached, using a set of hypothetical and probable assumptions set out in the notes attached. Consequently, readers are cautioned that it may not be appropriate for other purposes.

Dated at the City of London in the Province of Ontario, this 20th day of April 2020.



KMW Energy Inc.
Debtor



Name and title of signing officer

Name and title of signing officer

District of: Ontario
Division No. 05 - London
Court No. 35-2638322
Estate No. 35-2638322

FORM 30 - Attachment
Report on Cash-Flow Statement by the Person Making the Proposal
(Paragraphs 50(6)(c) and 50.4(2)(c) of the Act)

In the matter of the proposal of
KMW Energy Inc.
of the City of London
in the Province of Ontario

Purpose:

The Statement of Projected Cash-flow dated April 17, 2020 has been prepared solely for the purpose of complying with S. 50.4(2)(a) of the Bankruptcy and Insolvency Act.

Projection Notes:

The projections are based on hypothetical and/or probable assumptions.

Hypothetical Assumptions

Hypothetical assumptions as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals are assumptions that assume a set of economic conditions or courses of action that are not necessarily the most important in the insolvent person's judgment, but are consistent with the purpose of the Statement of Projected Cash-flow.

Probable Assumptions

Probable assumptions as defined in the Standards of Professional Practice of the Canadian Association of Insolvency and Restructuring Professionals are assumptions that the Insolvent Person believes reflects the most probable set of economic conditions and planned courses of action, are suitably supported, consistent with the plans of the Insolvent Person and provide a reasonable basis for the Statement of Projected Cash-flow.

Assumptions:

The Statement of Projected Weekly Cash Flow of KMW Energy Inc. (the "Company") includes the following Assumptions:

1. The forecasted collection time on post-NOI sales is approximately 30 days and is dependent on successful completion of milestone as per the Purchase Order.
2. Sales are based on Management's best estimate.
3. Existing accounts receivable will be collected within 45 days from the date of the Company's Notice of Intention to Make a Proposal ("NOI").
4. Operating expenses are assumed to be paid on a current basis.
5. Pursuant to Section 69(1) of the Act, all creditors' claims are subject to a stay of proceedings.
6. Subject to #11 below, no provision has been made for payment of obligations incurred prior to April 11, 2020, the filing date of the NOI, except for payment of certain employee reimbursements that accrued prior to the NOI filing but were not required to be remitted until after the NOI filing.
7. Professional fees include charges for Company's counsel, certain other legal expenses and the Trustee's fees and expenses, including the fees and disbursements of the Trustee's independent legal counsel.
8. Other disbursements are based on management's best estimates.
9. No provision for income taxes has been made.
10. The payroll costs (i.e. wages, benefits, government remittances, etc.) are based on the 'actual' payroll costs prior to NOI, adjusted to reflect the reductions to payroll arising out of terminations and layoffs.
11. Opening bank balance considered in the projections is different from the bank balance as per bank statement to the extent of cheques issued but not yet cleared. Such difference primarily pertains to a cheque issued to a continuing critical supplier.
12. On March 17, 2020, the Province of Ontario declared a state of emergency due to the COVID-19 pandemic. The effect of this declaration along with other federal, provincial and municipal actions regarding the COVID-19 pandemic on the Company's business and the economy in general has yet to be determined. In developing the Statement of Projected Cash Flow, Management has reflected its current view of the potential impact of the COVID-19 pandemic on its cash flow. However, the ongoing uncertainty and instability caused by COVID-19 pandemic and various government regulatory actions may cause actual results to differ from the projected amounts and these variations may be material.
13. The Company has not considered benefits of government assistance related to Covid-19 pandemic in the cash flow projections. They are currently evaluating the Company's eligibility to apply for such relief.

Dated at the City of London in the Province of Ontario, this 20th day of April 2020.



KMW Energy Inc.

This is Exhibit "L" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

April 24, 2020

KMW Energy Inc.
275 Colborne St.
London, ON N6B 2S7

Attention: Eric Rosen

Re: 2751602 Ontario Inc. (the “Lender”) credit facility in favour of KMW Energy Inc. (the “Borrower”)

We understand that on April 11, 2020, the Borrower filed a notice of intention to make a proposal pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) naming MNP Ltd. as proposal trustee (the “**Proposal Trustee**”), and that in connection with the BIA proceedings (the “**Proposal Proceedings**”) the Borrower requires interim financing and will be seeking an interim financing Order pursuant to section 50.6(1) of the BIA (the “**Interim Financing Order**”). The Lender is pleased to offer interim financing by way of the credit facility described in this term sheet (the “**Term Sheet**”) subject to the terms and conditions set forth herein. Unless otherwise indicated, all amounts are expressed in Canadian currency. All capitalized terms not otherwise defined in the body of this Term Sheet shall have the meanings ascribed thereto in **Schedule “A”**.

Borrower: KMW Energy Inc.

Lender: 2751602 Ontario Inc.

Facility: Non-revolving, super priority credit facility up the maximum amount of \$500,000 (the “**Facility**”).

Purpose: The purpose of the Facility is to fund (i) working capital needs in accordance with the cash flow projections approved by the Proposal Trustee and the Lender from time to time (the “**Cash Flow Projections**”); (ii) the Lender’s Fees and Expenses (*as defined below*), and (iii) professional fees and expenses incurred by the Borrower and the Proposal Trustee in respect of the Facility and the Proposal Proceedings.

Repayment: The Borrower shall repay all obligations owing under the Facility on the earlier of (i) demand; (ii) the occurrence of an Event of Default (*as defined below*); (iii) the date on which the period for the Borrower to file a proposal in the Proposal Proceedings is not extended or is terminated; (iv) the date on which the Borrower becomes bankrupt; (v) the date upon

which a sale of substantially all of the business and assets of the Borrower is completed; and (vi) July 1, 2020 (such earlier date being the "**Repayment Date**").

**Facility
Advances:**

The Facility shall be available by multiple advances (individually, an "**Advance**" and collectively, "**Advances**"), normally to be issued once a week in accordance with the following:

1. the Borrower shall submit written requests for an Advance on the Thursday preceding the week for which the Advance relates;
2. the Lender shall fund an Advance on the Tuesday following the receipt of request for the same;
3. notwithstanding the quantum of any Advance requested, the Lender shall only be required to fund such portion thereof that is consistent with the necessary weekly funding set out in the Cash Flow Projections, plus a maximum variation thereto of ten percent (10%) (for any Advance, the "**Maximum Advance Value**");
4. the funding of any portion of an Advance in excess of the Maximum Advance Value shall be at the sole discretion of the Lender; and
5. all Advances shall be wire transferred to a deposit account with a Canadian bank in the name of the Borrower, to be identified by the Borrower.

Nothing in this Term Sheet creates a legally binding obligation on the Lender to advance any amount under the Facility at any time unless the Lender is completely satisfied, acting reasonably, that the Borrower is in compliance with every provision of this Term Sheet, each Condition Precedent to this Term Sheet is continuously satisfied and that no fact exists or event has occurred which changes the manner in which the Lender previously evaluated the risks inherent in advancing amounts to the Borrower under the Facility, whether or not the Lender was or should have been aware of such facts or events differently at any time.

**Interest Rate
and Expenses:**

Interest: Interest on the principal amount of each Advance outstanding from time to time shall be calculated at a rate of eleven percent (11%) per annum and shall accrue to and be repaid, together with all other amounts comprising the Facility, on the Repayment Date.

Expenses: The Borrower shall pay all fees and expenses (collectively, the "**Lender's Fees and Expenses**") incurred by the Lender in connection with the preparation, registration and ongoing administration of this Term

Sheet, the Interim Financing Order, the Interim Financing Charge and with the enforcement of the Lender's rights and remedies thereunder or at law or in equity, including, without limitation all reasonable legal fees and disbursements incurred by the Lender, on a full indemnity basis. For purposes of greater certainty, "Lender's Fees and Expenses" shall include all reasonable fees and expenses incurred by the Lender in connection with the Proposal Proceedings and all court attendances in respect thereof. If the Lender has paid any expense for which the Lender is entitled to reimbursement from the Borrower, such expense shall be added to the Facility and shall accrue interest at the rate set out above. All such fees and expenses and interest thereon shall be secured by the Interim Financing Charge whether or not any funds under the Facility are advanced.

Facility Fee: Concurrently with each Advance, a Facility fee of 1.5% of the amount of such Advance, all of which fees shall accrue to and be repaid, together with all other amounts comprising the Facility, on the Repayment Date.

Security: All debts, liabilities, and obligations of the Borrower under the Facility shall be secured by the Interim Financing Charge (*as defined herein*).

Conditions Precedent: The availability of the Facility is subject to and conditional upon the following:

1. receipt of the entered Interim Financing Order in a form satisfactory to the Lender including:
 - (a) approving this Term Sheet, and the Facility contemplated herein;
 - (b) granting the Lender a priority charge in and to all present and future properties, assets and undertakings of the Borrower, subject only to an administration charge in the maximum aggregate amount of \$100,000 for the payment of the fees and expenses of (i) counsel to the Borrower, and (ii) the Proposal Trustee and its counsel (the "**Interim Financing Charge**");
 - (c) granting the Lender the right, upon the occurrence of an Event of Default, to terminate the Facility and to enforce the rights and remedies available to it, with Court approval obtained on not more than three (3) days' notice to the Borrower pursuant to the Interim Financing Order, this Term Sheet, the Interim Financing Charge, and any additional rights and remedies available to it, at law or in equity;

- (d) declaring that the granting of the Interim Financing Charge, the execution and delivery of all other documents and instruments contemplated herein, and the payment of all amounts by the Borrower to the Lender, including any and all fees and interest, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any Applicable Law;
 - (e) declaring the Interim Financing Order, including the Interim Financing Charge granted thereunder, binding upon a trustee in bankruptcy of the Borrower, the Proposal Trustee, a receiver, interim-receiver, receiver-manager or any other officer of the Court appointed in respect of the Borrower; and
 - (f) declaring the Lender to be an “unaffected creditor” under any proposal made by any Borrower and that the indebtedness to the Lender under the Facility shall not be compromised under any such proposal;
2. receipt of an Order approving the stalking horse sale process and stalking horse asset purchase agreement in a form satisfactory to the Lender (the “**Sale Process Approval Order**”);
 3. the Interim Financing Order shall not have been varied in a manner adverse to the Lender, or stayed, without the consent of the Lender;
 4. receipt of a duly executed copy of this Term Sheet; and
 5. delivery by the Borrower to the Lender of any such further security or documentation that the Lender and its lawyers may reasonably require to give effect to the foregoing.

Each of the following is a condition precedent to any subsequent Advance to be made hereunder:

1. all of the conditions contained in this Term Sheet shall have been satisfied and shall as at the time of the making of the subsequent Advance in question continue to be satisfied;
2. no Event of Default shall have occurred and be continuing.

The making of an Advance hereunder without the fulfillment of one or

Covenants:

more conditions set forth in this Term Sheet shall not constitute a waiver of any such condition, and the Lender reserves the right to require fulfillment of such condition in connection with any subsequent Advance. The Borrower covenants and agrees with the Lender, so long as any amounts are outstanding by the Borrower to the Lender hereunder, to:

1. pay all sums of money when due hereunder;
2. not request, obtain or consent to a variation of the Interim Financing Order if, in the opinion of the Lender, such variation may be prejudicial to the Lender, without the prior written consent of the Lender, such consent not to be unreasonably withheld or delayed;
3. make all reasonable efforts to provide the Lender with at least three (3) Business Days' advance notice of all court filings made by it, together with copies of all related court materials;
4. provide the Lender with prompt written notice of any event which constitutes, or which, with notice, lapse of time, or both, would constitute an Event of Default, a breach of any covenant or other term or condition of this Term Sheet, or of any document given in connection therewith;
5. use the proceeds of the Facility solely for the purposes provided for herein;
6. keep and maintain books of account and other accounting records in accordance with generally accepted accounting principles;
7. permit the Lender or its representatives, at any time and from time to time with such frequency as the Lender, in its sole discretion, may require, to visit and inspect the Borrower's premises, properties and assets and to examine and obtain copies of the Borrower's records or other information and discuss the Borrower's affairs with the auditors, counsel and other professional advisors of the Borrower all at the reasonable expense of the Borrower;
8. carry on the business of the Borrower in the normal course, except with the consent of the Lender, consistent with past practice and orders of the Court made in the Proposal Proceedings;
9. not incur any expense except in accordance with the Cash Flow Projections, without the prior written consent of the Lender, not to be unreasonably withheld;

10. to pay or make provision for payment of all Priority Claims due and payable from and after the commencement of the Proposal Proceedings, as and when such Priority Claims are due; and
11. keep the Borrower's assets fully insured against such perils and in such manner as would be customarily insured by companies owning similar assets naming the Lender as first loss payee and to ensure all assets secured by the Interim Financing Charge are in existence and in the possession and control of the Borrower.

**Events
of Default:**

Without limiting the right of the Lender to demand payment at anytime, if any one or more of the following events (an "Event of Default") has occurred and is continuing:

1. the Borrower fails to pay when due any principal, interest, fees or other amounts due under this Term Sheet;
2. the Borrower breaches any covenant, term, condition or other provision of this Term Sheet or any other document delivered to the Lender in respect thereof;
3. if Interim Financing Order or the Sale Process Approval Order is stayed, set aside or varied in a manner adverse to the Lender, without the consent of the Lender, in its sole discretion, or any other order is made which is or may be prejudicial to the Lender's interests;
4. the stay of proceedings resulting from the Proposal Proceedings is terminated or lifted in whole or in part;
5. any default or failure by the Borrower to make any payment of any Priority Claims due and payable from and after the commencement of the Proposal Proceedings;
6. the Borrower becomes bankrupt or the appointment of a receiver, receiver and manager, or other officer of the Court for, all or any significant part of the assets of any Borrower;

then, in such event, the Lender may, by written notice to the Borrower declare all monies outstanding under the Facility to be immediately due and payable and upon seeking an Order of the Court on not more than three (3) days prior notice, enforce, without further notice, demand or delay, all of its rights and remedies against the Borrower and its property, assets and undertaking including, without limitation, the enforcement of the Interim Financing Charge.

Nothing contained in this section shall limit any right of the Lender under this Term Sheet to demand payment of the Facility. On demand or the occurrence of an Event of Default, at the discretion of the Lender, the Borrower shall not be entitled to any further advance under the Facility. Any advance made by the Lender after the occurrence of an Event of Default shall not oblige the Lender to make further advances thereafter.

**Evidence of
Indebtedness:**

The Lender shall maintain records evidencing the Facility. The Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the Lender pursuant to this Term Sheet.

**Representations
and Warranties:**

The Borrower represents and warrants to the Lender that:

1. it is a corporation duly incorporated, validly existing and duly registered or qualified to carry on business in the Province of Ontario or any other jurisdiction where they may carry on business;
2. subject to the issuance of the Interim Financing Order, the execution, delivery and performance by the Borrower of this Term Sheet has been duly authorized by all necessary actions and do not violate the constating documents or any Applicable Laws or agreements to which the Borrower is subject or by which it is bound;
3. no event has occurred which constitutes, or which, with notice, lapse of time, or both, would constitute, an Event of Default, a breach of any covenant or other term or condition of this Term Sheet or any document given in connection therewith; and
4. the Borrower has good and marketable title to all of their respective properties, assets and undertakings.

General:

Non-Merger: The provisions of this Term Sheet shall not merge on the first advance hereunder but shall continue in full force and effect for the benefit of the parties hereto.

Further Assurances and Documentation: The Borrower shall do all things and execute all documents deemed necessary or appropriate by the Lender for the purposes of giving full force and effect to the terms, conditions, undertakings hereof and the Interim Financing Charge granted or to be granted hereunder.

Severability: If any provisions of this Term Sheet is or becomes prohibited or unenforceable in any jurisdiction, such prohibition or unenforceability shall not invalidate or render unenforceable the provision concerned in any other jurisdiction nor shall it invalidate, affect or impair any of the remaining provisions of this Term Sheet.

Governing Law: This Term Sheet and all agreements arising hereinafter shall be deemed to have been made and accepted in the City of Toronto, Ontario and construed in accordance with and be governed by the laws of the Province of Ontario and of Canada applicable therein.

Counterparts: This Term Sheet and all agreements arising hereinafter may be executed in any number of separate counterparts by any one or more of the parties thereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Term Sheet by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterpart.

Assignment: The Lender may assign all or part of this Term Sheet without notice to and without the Borrower's consent. The Borrower may not assign or transfer all or any part of its rights or obligations under this Term Sheet, any such transfer or assignment being null and void and of no force or effect.

Time: Time shall be of the essence in all provisions of this Term Sheet.

Whole Agreement, Amendments and Waiver: This Term Sheet and any other written agreement delivered pursuant to or referred to in this Term Sheet constitute the whole and entire agreement between the parties in respect of the Facility. There are no verbal agreements, undertakings or representations in connection with the Facility. No amendment or waiver of any provision of this Term Sheet will be effective unless it is in writing signed by the Borrower and the Lender. No failure or delay on the part of the Lender in exercising any right or power hereunder or under the Interim Financing Charge shall operate as a waiver thereon. No course of conduct by the Lender will give rise to any reasonable expectation which is in any way inconsistent with the terms and conditions of this Term Sheet and the Interim Financing Charge or the Lender's rights thereunder.

Best Efforts:

Upon the Borrower's acceptance of this Term Sheet, the Borrower will use its best efforts to obtain the Interim Financing Order. In the event that the Interim Financing Order is not obtained on or before 5:00 pm on May 1, 2020, this Term Sheet will expire and of no force or effect.

Expiration: This Term Sheet must be accepted by the Borrower by no later than 5:00 pm on 27th day, April 2020, after which this Term Sheet will expire.

If the terms and conditions of this Term Sheet are acceptable to you, please sign in the space indicated below and return the signed copy of this Term Sheet to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Term Sheet.

Yours truly,

2751602 Ontario Inc.

Per: 
Name: Mario Leveille
Title: Authorized Signing Officer

I have authority to bind the corporation.

ACCEPTANCE

The undersigned hereby accepts this Term Sheet this 24 day of April 2020.

KMW ENERGY INC.

Per: _____
Name: Eric Rosen
Title: Authorized Signing Officer

I have authority to bind the corporation.

Expiration: This Term Sheet must be accepted by the Borrower by no later than 5:00 pm on 23rd day, April 2020, after which this Term Sheet will expire.

If the terms and conditions of this Term Sheet are acceptable to you, please sign in the space indicated below and return the signed copy of this Term Sheet to us. Acceptance may also be effected by facsimile or scanned transmission and in counterpart.

We thank you for allowing us the opportunity to provide you with this Term Sheet.

Yours truly,

462673 ONTARIO INC. o/a NOR-ARC STEEL FABRICATORS

Per: _____
Name: Mario Leveille
Title: Authorized Signing Officer

I have authority to bind the corporation.

ACCEPTANCE

The undersigned hereby accepts this Term Sheet this _____ day of April 2020.

KMW ENERGY INC.

Per:  _____
Name: Eric Rosen
Title: Authorized Signing Officer

I have authority to bind the corporation.

SCHEDULE "A"

In addition to terms defined elsewhere in this Term Sheet, the following terms shall have the following meanings:

- (a) **"Applicable Laws"** means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction.
- (b) **"Priority Claims"** means the aggregate of any amounts accrued or payable by the Borrower which under any law may rank prior to or *pari passu* with the Interim Financing Charge or otherwise in priority to any claim by the Lender for payment or repayment of any amounts owing under this Term Sheet, including: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) pension plan contributions; (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Canadian Pension Plan contributions and employee Employment Insurance premiums, additional amounts payable on account of employer Canada Pension Plan contributions and employer Employment Insurance premiums; (v) harmonized sales tax; (vi) provincial sales or other consumption taxes; (vii) Workers' Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes; (ix) rent and other amounts payable in respect of the use of real property; (x) amounts payable for repair, storage, transportation or construction or other services which may give rise to a possessory or registerable lien; and (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the BIA; and (xii) WEPPA Claims.
- (c) **"WEPPA Claims"** means any claims made against the Borrower pursuant to the *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.

This is Exhibit "M" referred to in the Affidavit of Eric Bertil Rosen sworn April 24, 2020.



Commissioner for Taking Affidavits (or as may be)

SAM RAPPOS

STALKING HORSE ASSET PURCHASE AGREEMENT

This Agreement made this 24 day of April 2020.

BETWEEN:

KMW ENERGY INC.

(the "Vendor")

- and -

2751602 ONTARIO INC.

(the "Purchaser")

WHEREAS the Vendor has filed a notice of intention to make a proposal under the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA Proceedings**");

AND WHEREAS MNP Ltd. has been appointed as proposal trustee of the Vendor under the BIA Proceedings (the "**Proposal Trustee**");

AND WHEREAS the Vendor will bring a motion for the Sales Process Order (*as hereinafter defined*) to authorize the Vendor to enter into this Agreement and conduct a sales process with respect to the Purchased Assets (*as hereinafter defined*);

AND WHEREAS, subject to the granting of the Approval and Vesting Order (*as hereinafter defined*), the Vendor has agreed to sell to the Purchaser and the Purchaser has agreed to purchase from the Vendor its right, title and interest in and to the Purchased Assets and the Assumed Obligations (*each as defined below*) upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties hereto agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Definitions

In this Agreement, the following terms shall have the meanings set out below unless the context requires otherwise:

"**Administration Charge**" means the charge, in the maximum amount of \$150,000, in favour of the Vendor's Lawyers, the Proposal Trustee and the Proposal Trustee's lawyers, granted by the Court in the BIA Proceedings as security for their respective fees and expenses;

"**Agreement**" means this asset purchase agreement, including all written amendments and written restatements thereto from time to time;

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

"**Approval and Vesting Order**" has the meaning given in Section 4.1;

"**Article**" or "**Section**" " mean the specified Article, or Section to this Agreement and the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular Section or other portion of this Agreement;

"**Affiliate**" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person;

"**Assumed Contracts**" has the meaning given in Section 2.10;

"**Assumed Obligations**" has the meaning given in Section 2.8;

"**Bid Deadline**" means May 29, 2020 (extendable at the discretion of Proposal Trustee for up to ten (10) days, but not beyond June 8, 2020, as set out in Schedule "A");

"**BIA**" means the *Bankruptcy and Insolvency Act* (Canada), R.S.C., 1985, c.B-3;

"**BIA Proceedings**" has the meaning given in the recitals above;

"**Books and Records**" means all of the books and records relating to the Purchased Assets, including, without limitation, all personnel files/records relating to all Transferred Employees and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, business reports, projections and all other documents, plans, files, records, correspondence, and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media, excluding any of the foregoing as applicable to any Excluded Asset;

"**Business**" means the biomass combustion boiler and heater systems manufacturing business carried on by the Vendor;

"**Business Day**" means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday recognized in the Province of Ontario;

"**Claims**" means any and all claims, demands, complaints, actions, applications, suits, causes of action, orders, or other similar processes, and "**Claim**" means any one of them;

"**Closing**" means the completion of the purchase and sale of the Purchased Assets in accordance with the provisions of this Agreement;

"**Closing Date**" means subject to the terms hereof, one (1) Business Day following the date on which the conditions set forth in Article 4 have been satisfied or waived by the appropriate Party or such other date as may be agreed;

"**Closing Time**" has the meaning given in Section 3.1;

"**Contracts**" means the right, title and interest of the Vendor to and in all pending and/or executory contracts, agreements, leases and arrangements Related to the Business to or by which any of the Vendor, the Purchased Assets or Business is bound or affected;

"**Court**" means the Ontario Superior Court of Justice (Commercial List);

"**D&O Charge**" means the charge, in the maximum amount of \$50,000, in favour of the directors and officers of the Vendor granted by the Court in the BIA Proceedings;

"**Deposit**" has the meaning given in Section 2.3(a);

"**DIP Lender**" means 2751602 Ontario Inc.;

"**DIP Lender's Charge**" means the charge in favour of the DIP Lender granted by the Court in the BIA Proceedings as security for the Vendor's obligations under the DIP Term Sheet;

"**DIP Loan**" means the loan by the DIP Lender pursuant to the DIP Term Sheet approved by the Court in the BIA Proceedings;

"**DIP Term Sheet**" means the term sheet by and between 2751602 Ontario Inc., as DIP Lender, and the Vendor, as borrower, and dated April 24, 2020;

"**Effective Time**" means 12:01 a.m. on the Closing Date;

"**Employee**" means an individual who was formerly employed or engaged by the Vendor or, as at the Effective Time, is employed or engaged by the Vendor in connection with the Business, and "**Employees**" means every Employee;

"**Employee Liabilities**" means any and all Liabilities (whether by statute, contract, common law or otherwise) owed to any of the Employees, or otherwise arising out of, or resulting from, the relationship between the Vendor (or any predecessor of the Vendor) and any of the Employees, including any Liability arising as a result of such party being deemed to be a successor employer, related employer or otherwise responsible or liable for payment of any amounts owing to, on behalf of, or in respect of, any of the Employees (including, but not limited to, the Transferred Employees), whether pursuant to the *Employment Standards Act* (Ontario), the *Pay Equity Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario). Without limiting the foregoing, Employee Liabilities shall include:

- (a) all salaries, wages, bonuses, commissions, vacation pay, public holiday pay and other compensation relating to the employment of the Employees (including accrued but unpaid vacation pay and any retroactive pay) and all Liabilities under employee benefit plans relating to employment of the Employees; and

- (b) all termination pay, severance pay, damages in lieu of reasonable notice and other related Liabilities (under statute, contract, common law or otherwise) in respect of the termination and/or severance of employment of the Employees.

"Encumbrances" means any security interests (whether contractual, statutory, or otherwise), mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, leases, title retention agreements, reservations of ownership, demands, executions, levies, charges, options or other rights to acquire any interest in any assets, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including the Administration Charge and all contracts to create any of the foregoing, or encumbrances of any kind or character whatsoever, other than Permitted Encumbrances;

"Excluded Assets" means any assets that the Purchaser elects to exclude in writing prior to Closing pursuant to Section 2.6.

"Governmental Authorities" means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

"HST" means all of the harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada);

"Intellectual Property" means any or all of the following items, wherever located: all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, copyrights and copyright rights, brand names, trade dress, business and product names, domain names, corporate names, logos, slogans, trade secrets, inventions, processes, formulae, industrial models, designs, specifications, data, technology, methodologies, computer programs (including all source code), confidential and proprietary information, whether or not subject to statutory registration, all related technical information, manufacturing, engineering and technical drawings, know how, all pending applications for and registrations of patents, trademarks, service marks and copyrights, including all obligations of third parties relating to the protection of the foregoing, the goodwill associated with the foregoing, and the right to sue for past payment, if any, in connection with any of the foregoing, and all documents, disks and other media on which any of the foregoing is stored, including without limitation;

"Interim Period" means the period from and including the date of this Agreement to and including the Closing Date;

"Liability" means any debt, loss, damage, adverse claim, fines, penalties, liability or obligation (whether direct or indirect, known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, matured or unmatured, determined or determinable, disputed or undisputed, liquidated or unliquidated, or due or to become due, and whether in or under statute, contract, tort,

strict liability or otherwise), and includes all costs and expenses relating thereto (including all fees, disbursements and expenses of legal counsel, experts, engineers and consultants and costs of investigation), including, without limitation, Employee Liabilities; and, "**Liabilities**" means the plural thereof;

"**Licences and Permits**" means all licences, permits, filings, certificates, authorizations, approvals or indicia of authority Related to the Business or the Purchased Assets or necessary for the operation or use of the Purchased Assets;

"**NOI Date**" means April 11, 2020, being the date on which the Vendor filed a notice of intention to make a proposal under the BIA.

"**Parties**" means the Vendor and the Purchaser collectively, and "**Party**" means any one of them;

"**Permitted Encumbrances**" means all security interests and other interests arising exclusively from the Assumed Contracts;

"**Person**" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity;

"**Personal Property**" means all of the Vendor's machinery, equipment, furniture, including, without limitation, desks, chairs, tables, copiers, telephone lines and numbers, telecopy machines and other telecommunication equipment, cubicles, cabinets, televisions, all computer hardware, including servers, computers and peripherals, printers and miscellaneous office furnishings and supplies, if any, laptops, cell phones and all other tangible personal property used in the Business, including all property subject to the Assumed Contracts;

"**Prepaid Amounts**" means all prepayments, prepaid charges, deposits, security deposits, sums and fees Related to the Business or in respect of the Purchased Assets;

"**Priority Payables**" has the meaning given in Section 2.2(d).

"**Proposal Trustee**" has the meaning given in the recitals above;

"**Proposal Trustee's Certificate**" has the meaning give in Section 4.2;

"**Purchase Price**" has the meaning given in Section 2.2;

"**Purchased Assets**" means collectively, all of the Vendor's right, title and interest in all of the assets, properties and undertakings Related to the Business, including, but not limited to, the following assets;

- (a) the Assumed Contracts;
- (b) the Personal Property;

- (c) the Receivables;
- (d) the Intellectual Property;
- (e) the Licenses and Permits;
- (f) the Prepaid Amounts;
- (g) the Books and Records;
- (h) all cash, bank balances, moneys in possession of banks and other depositories, term or time deposits and similar cash items of, owned or held by or for the account of the Vendor;
- (i) all rights and interests under or pursuant to all warranties, representations and guarantees, express implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or otherwise Related to the Business,
- (j) all goodwill and other intangible assets associated with the Business, including all telephone and facsimile numbers used in Related to the Business; and
- (k) all other property, assets and undertaking of the Vendor used in or relating to the Business of whatsoever nature or kind, including without limitation all property, assets and undertaking of the Vendor,

other than the Excluded Assets.

"Purchaser Debt" means collectively, all Liabilities of the Vendor to 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators and assigned to the Purchaser pursuant to the Assignment Agreement dated April 20, 2020 [estimated to be \$2,778,000, as at March 24, 2020, plus interest and costs continuing to accrue];

"Purchaser Security" means all security documents granted by the Vendor to 462673 Ontario Inc. o/a Nor-Arc Steel Fabricators and assigned to the Purchaser pursuant to to the Assignment Agreement dated April 20, 2020;

"Purchaser's Lawyers" means Loopstra Nixon LLP c/o R. Graham Phoenix;

"Qualified Bid(s)" shall mean an offer to purchase all or any of the Purchased Assets which includes a purchase price equal or greater than the aggregate of (i) the Purchaser Debt, (ii) any and amounts secured by the DIP Lender's Charge; (iii) any and all amounts secured by the Administration Charge; and, (iv) any and all amounts secured by the D&O Charge; and (v) any and all Priority Payables;

"Related to the Business" means, directly or indirectly, used in, arising from, or relating in any manner to the Business or the Purchased Assets;

"Receivables" means the right, title and interest of the Vendor to all accounts receivable, bills receivable, trade accounts, book debts, insurance claims, and choses-in-action, now or hereafter due or owing to any of the Vendor, Related to the Business together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits, attributable to the period prior to Closing;

"Rights" has the meaning ascribed thereto in Section 2.11 hereof;

"Sales Process Order" means an order or orders to be sought from the Court upon terms acceptable to the Parties, each acting reasonably, that alone or in combination, among other things, authorizes the Vendor to enter into this Agreement and to conduct a marketing and sale process for the right, title and interest of the Vendor in and to the Purchased Assets and the Excluded Assets substantially in accordance with the sales process attached as Schedule "A" hereto;

"Stalking Horse Bid" has the meaning ascribed thereto in Section 4.1(a) hereof;

"Taxes" means all taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments or similar charges in the nature of a tax, including, Canada Pension Plan and provincial pension plan contributions, employment insurance payments and workers compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

"Transferred Employees" means Employees who have accepted an offer of employment from the Purchaser as of the Closing;

"Winning Bidder" has the meaning ascribed thereto in Section 4.1(b) hereof; and

"Vendor's Lawyers" means Chaitons LLP c/o Harvey Chaiton.

1.2 Section References

Unless the context requires otherwise, references in this Agreement to Sections are to Sections of this Agreement.

ARTICLE 2 **PURCHASE AND SALE**

2.1 Purchase and Sale of Purchased Assets

At the Closing Time, subject to the terms and conditions of this Agreement, the Vendor shall sell and the Purchaser shall purchase the Purchased Assets and the Purchaser shall assume the Assumed Obligations.

2.2 Purchase Price

The purchase price payable by the Purchaser to the Vendor (or as it may otherwise direct) for the Purchased Assets shall be equal to the aggregate of the following amounts, without duplication (the "**Purchase Price**"):

- (a) the amount of \$500,000;
- (b) any and all amounts secured by the DIP Lender's Charge;
- (c) any and all amounts secured by the Administration Charge at Closing
- (d) any and all amounts secured by the D&O Charge; and
- (e) any and all other amounts and claims which rank in priority to the Purchaser Security, if any, including, without limitation, on account of unremitted source deductions (collectively, the "**Priority Payables**").

2.3 Deposit

- (a) Contemporaneously with the execution and delivery of this Agreement by the Purchaser and in accordance with the terms of the Sales Process Order, the Purchaser has paid a deposit payable to the order of the Proposal Trustee, in trust, in the amount of \$100,000 (the "**Deposit**").
- (b) The Deposit shall be held, pending Closing, by the Proposal Trustee in a non interest-bearing account with a bank.
- (c) If the Closing does not occur by reason of the uncured default of the Purchaser, the full amount of the Deposit (plus accrued interest), less any applicable withholding Tax, shall become the property of the Vendor and be paid over by the Proposal Trustee to the Vendor as liquidated damages and not as a penalty. The Vendor's recourse against the Purchaser in such circumstances shall be limited to the right of the Vendor to retain the Deposit and to seek recovery of an additional amount for any actual damages of the Vendor, provided however that the recovery for such additional damages is not to exceed the value of damages actually incurred as a result of such failure to close.
- (d) If the Closing does not occur for any reason other than the default of the Purchaser, the full amount of the Deposit, less any accrued interest and/or any applicable withholding Tax, shall be returned by the Proposal Trustee to the Purchaser and the Purchaser shall have no further recourse against the Proposal Trustee or the Vendor.

2.4 Satisfaction of Purchase Price

The Purchaser shall satisfy the Purchase Price as follows:

- (a) by the application of the amount of the Deposit, to be credited against the Purchase Price;
- (b) by the cancellation of any and all amounts secured by the DIP Lender's Charge on Closing;
- (c) by payment to the Proposal Trustee, in trust, of any and all amounts secured by the Administration Charge on Closing by way of a certified cheque, wire transfer or bank draft to be credited against the Purchase Price on Closing;
- (d) by payment to the Proposal Trustee, in trust, of any and all Priority Payables on Closing by way of a certified cheque, wire transfer or bank draft to be credited against the Purchase Price on Closing;
- (e) by (i) payment of any and all amounts secured by the D&O Charge or (ii) the assumption of amounts secured by the D&O Charge, to be credited against the Purchase Price; and
- (f) by the cancellation of such portion of the Purchaser Debt as Purchaser deems appropriate, to be credited against the Purchase Price.

2.5 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets in the manner agreed to by the Purchaser and the Vendor prior to the Closing Date.

2.6 Excluded Assets

Save and except as otherwise expressly set out herein, the Purchaser may, at its option, exclude any of the Purchased Assets from the transaction contemplated hereby at any time prior to Closing upon delivery of prior written notice to the Vendor, whereupon such assets shall be deemed to form part of the Excluded Assets, provided, however, that there shall be no reduction in the Purchase Price as a result of such exclusion.

2.7 Sales and Transfer Taxes; HST and Receivables Elections

- (a) The Purchaser shall be responsible for the payment on Closing of any Taxes that are required to be paid or remitted in connection with the consummation of the transactions contemplated in this Agreement.
- (b) At the Closing, the Vendor and the Purchaser shall, if applicable, jointly execute an election under Section 167 of the *Excise Tax Act* (Canada) to cause the sale of the Purchased Assets to take place on a HST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser shall file such election with its HST return for the applicable reporting period in which the sale of the Purchased Assets takes place.
- (c) The Vendor, when transferring Receivables to the Purchaser, and the Purchaser shall execute jointly an election in prescribed form under Section 22 of the *Income*

Tax Act (Canada) in respect of the Receivables and shall each file such election with their respective tax returns for their respective taxation years that include the Closing Date.

2.8 Assumed Obligations

At Closing, the Purchaser shall assume and be liable for the following (collectively, the "**Assumed Obligations**"):

- (a) the Vendor's Liabilities under the Assumed Contracts that arise out of, are incurred, or relate to the period from and after Closing;
- (b) the Vendor's Liabilities under the D&O Charge, if assumed pursuant to Section 2.4(e);
- (c) all Liabilities and Claims arising or accruing from the use of the Purchased Assets from and after the Closing;
- (d) all Employee Liabilities in respect of any of the Transferred Employees, in each case in respect of the period commencing at the Closing Time;
- (e) all Permitted Encumbrances; and
- (f) all Taxes arising or accruing from and after the Closing from the use of the Purchased Assets, including, without limitation, HST to be collected and remitted to Canada Revenue Agency when due.

2.9 Excluded Liabilities

The Purchaser is not assuming, and shall not be deemed to have assumed, any Liabilities of the Vendor (collectively, the "**Excluded Liabilities**"), which Excluded Liabilities include, but are not limited to, the following:

- (a) all Liabilities and Claims arising or accruing from the use of the Purchased Assets prior to the Closing; and
- (b) all Employee Liabilities that arise out of or result from the employment or engagement by the Vendor of any of the Employees (other than Transferred Employees) (unless otherwise imposed by law) and/or the termination or severance of such engagement or employment.

2.10 Assumed Contracts

- (a) Save and except as hereinafter set out, the Purchaser shall give notice to the Vendor in writing, at least five (5) Business Days prior to the Closing Date, of those Contracts that it elects to assume on Closing (which Contracts shall be referred to as the "**Assumed Contracts**"). This Agreement and any document delivered under this Agreement will not constitute an assignment or an attempted assignment of any

Contract contemplated to be assigned to the Purchaser under this Agreement which is not assignable without the consent of a third Person if such consent has not been obtained and such assignment or attempted assignment would constitute a breach of such Contract, in which event, the provisions of Section 2.11 hereof shall govern. The Purchaser shall be responsible for any pre-Closing Liabilities of the Vendor required to be paid to any Person in order to complete the assignment of any Assumed Contract to the Purchaser.

- (b) So as to facilitate the Purchaser's determination of which Contracts shall constitute Assumed Contracts hereunder, immediately following the issuance of the Sales Process Order and execution of this Agreement, the Vendor will provide access to and undertake all reasonable efforts to make available to the Purchaser those Persons (or representatives of such Persons) who are then parties with any Contracts with the Vendor for the purpose of permitting the Purchaser to independently assess the status of those Contracts; to determine whether such Contracts are desirable on their existing terms; to determine if the parties to any such Contract would entertain amendments to the same; and, to negotiate and obtain any consent that be by required in with the potential assumption of the same.

2.11 Assignment of Purchased Assets

Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an assignment or transfer of the Purchased Assets or any right thereunder if an attempted assignment or transfer, without the consent of a third Person, would constitute a breach or in any way adversely affect the rights of the Purchaser hereunder. To the extent that any of the Purchased Assets to be transferred to the Purchaser on the Closing, or any claim, right or benefit arising under or resulting from such Purchased Assets (collectively, the "**Rights**" and each a "**Right**") is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of a Right would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained, then, except as otherwise expressly provided in this Agreement, and without limiting the rights and remedies of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an assignment or transfer of such Rights unless and until such approval, consent or waiver has been obtained or an order of the Court is granted under the BIA Proceedings compelling assignment. After the Closing and until all such Rights are transferred to the Purchaser, the Vendor shall:

- (a) hold the Rights as bare trustee for the Purchaser;
- (b) cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of such Rights to the Purchaser; and
- (c) enforce, at the reasonable request of and at the expense of the Purchaser, any rights of the Vendor arising from such Rights against any third Person, including the right to elect to terminate any such Rights in accordance with the terms of such Rights upon the written direction of the Purchaser.

In order that the full value of the Rights may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser and in consultation with the Proposal Trustee, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the opinion of the Purchaser, acting reasonably, necessary or proper in order that the obligations of the Vendor under such Rights may be performed in such manner that the value of such Rights is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under the Rights are received by the Purchaser. The Vendor shall hold as bare trustee and promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Right. To the extent that such approval, consent, waiver or order of the Court has not been obtained by the 90th day following the Closing, such Right shall be deemed to be an Excluded Asset and the Vendor may terminate any agreement pertaining to such Right. The Purchaser shall indemnify and hold the Vendor harmless from and against any claim or liability under or in respect of such Rights arising because of any action of the Vendor taken in accordance with this Section.

ARTICLE 3 CLOSING ARRANGEMENTS

3.1 Closing

Closing shall take place at 10:00 a.m. (the "**Closing Time**") on the Closing Date at the offices of the Purchaser's Lawyers, or such other time and location as the Parties may agree upon in writing (including by electronic exchange of documents).

3.2 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel and money may be tendered by official bank draft drawn upon a Canadian chartered bank, by negotiable cheque payable in Canadian funds and certified by a Canadian chartered bank or trust company, or by wire transfer of immediately available funds to the account specified by that Party.

3.3 Vendor's Closing Deliveries

At the Closing, the Vendor shall deliver to the Purchaser the following, each in form and substance satisfactory to the Vendor and the Purchaser, acting reasonably:

- (a) if applicable, the elections referred to in Section 2.7;
- (b) a copy of the Approval and Vesting Order and the Proposal Trustee's Certificate contemplated thereby;
- (c) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Vendor contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date;

- (d) a general conveyance and assumption of liabilities with respect to Purchased Assets and Assumed Obligations;
- (e) a Purchase Price allocation agreement; and
- (f) such further and other documentation as is referred to in this Agreement or as the Purchaser or the Purchaser's Lawyers may reasonably require to complete the transactions provided for in this Agreement.

3.4 Purchaser's Closing Deliveries

At the Closing, the Purchaser shall deliver to the Vendor the following, each in form and substance satisfactory to the Vendor and the Purchasers, acting reasonably:

- (a) all payments in respect of the amounts referred to in Section 2.4;
- (b) satisfactory evidence of cancellation of any and all amounts secured by the DIP Lender's Charge or satisfactory evidence of the assumption of all obligations of the Vendor under the DIP Term Sheet on terms satisfactory to the DIP Lender;
- (c) satisfactory evidence of cancellation of the Purchaser Debt;
- (d) a general conveyance and assumption of liabilities with respect to Purchased Assets and the Assumed Obligations;
- (e) a Purchaser Price allocation agreement;
- (f) if applicable, the elections referred to in Section 2.7;
- (g) a bring down certificate dated as of the Closing Date, confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct as of the Closing Date, with the same effect as though made on and as of the Closing Date; and
- (h) such further and other documentation as is referred to in this Agreement or as the Vendor or the Vendor's Lawyers may reasonably require to complete the transactions provided for in this Agreement.

3.5 Delivery of the Proposal Trustee's Certificate

When the conditions set out in Article 4 below have been satisfied or waived, the Proposal Trustee will deliver an executed copy of the Proposal Trustee's Certificate to the Purchaser. Upon such delivery, the Closing will be deemed to have occurred. The Proposal Trustee will file a copy of the Proposal Trustee's Certificate with the Court and provide evidence of such filing to the Purchaser.

ARTICLE 4
SALES PROCESS AND CONDITIONS PRECEDENT

4.1 Sales Process

- (a) The Vendor shall bring a motion for the Sales Process Order on or before April 29, 2020. The Sales Process Order shall recognize the within offer by the Purchaser and Purchase Price as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**") and shall also provide for a marketing and sale process of the Purchased Assets to be administered by the Proposal Trustee. The Purchaser acknowledges and agrees that the aforementioned process is in contemplation of determining whether a superior bid can be obtained for the Purchased Assets.
- (b) In the event that one or more Persons submits a Qualified Bid on or before the Bid Deadline, the Proposal Trustee shall conduct an auction for the determination and selection of a winning bid (the Person submitting such bid being the "**Winning Bidder**"). Upon the selection of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Vendor. The Vendor shall forthwith bring a motion following the selection of the Winning Bidder for an order approving the agreement reached with the Winning Bidder and to vest the Purchased Assets in the Winning Bidder and, if granted, shall proceed with closing the transaction forthwith.
- (c) Notwithstanding anything contained herein to the contrary, in the event that the Purchaser is not the Winning Bidder, then upon the making of the order by the Court contemplated in Subsection 4.1(b) above to approve a transaction with such Winning Bidder (the "**Alternate Transaction**"), this Agreement shall be terminated and the Purchaser shall be entitled only to the return of the Deposit (if applicable and as soon as practicable) and neither Party hereto shall have any further liability or obligation, except as expressly provided for in this Agreement.
- (d) If no Qualified Bids are received by the Bid Deadline (other than the Stalking Horse Bid), the Vendor shall forthwith bring a motion to the Court to obtain the Approval and Vesting Order and, if granted, shall proceed with completing the transaction contemplated hereby forthwith.

4.2 Approval and Vesting Order

In the event that the Purchaser is the Winning Bidder, the Approval and Vesting Order shall approve this Agreement and the transactions contemplated hereby and vest, upon the delivery of the Proposal Trustee's Certificate to the Purchaser, all right, title and interest of the Vendor in and to the Purchased Assets to the Purchaser, free and clear of all Claims and Encumbrances pursuant to the terms and conditions of this Agreement, other than Permitted Encumbrances (the "**Approval and Vesting Order**"). The Approval and Vesting Order shall be substantially in the form of the model order approved by the "Ontario Commercial List Users Committee", which shall contemplate the delivery of a certificate by the Proposal Trustee to evidence the completion of the transactions contemplated by this Agreement (the "**Proposal Trustee's Certificate**"). The

Approval and Vesting Order shall be served upon the necessary parties, and in the time frame, as approved by the Purchaser, acting reasonably

4.3 Conditions Precedent of the Purchaser

The Purchaser shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Purchaser and may be waived, in whole or in part, in writing, by the Purchaser at any time; and the Vendor agrees with the Purchaser to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Vendor in Section 5.1 shall be true and correct at the Closing Time;
- (b) *Vendor's Compliance.* The Vendor shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered to the Purchaser at the Closing Time all the deliveries contemplated in Section 3.3 or elsewhere in this Agreement; and
- (c) *Material Change.* There shall be no material change in (i) the nature or conduct of the Business from that existing on the date of this Agreement without consent of the Purchaser or (ii) the nature and extent of the Purchased Assets between the date of this Agreement and the Closing Time.

4.4 Conditions Precedent of the Vendor

The Vendor shall not be obliged to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the following conditions has been satisfied, it being understood that the following conditions are included for the exclusive benefit of the Vendor, and may be waived, in whole or in part, in writing by the Vendor at any time; and the Purchaser agrees with the Vendor to take all such actions, steps and proceedings within its reasonable control as may be necessary to ensure that the following conditions are fulfilled at or before the Closing Time:

- (a) *Representations and Warranties.* The representations and warranties of the Purchaser in Section 5.2 shall be true and correct at the Closing Time; and
- (b) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed by or complied with at or before the Closing Time and shall have executed and delivered to the Vendor at the Closing Time all the deliveries contemplated in Section 3.4 or elsewhere in this Agreement.

4.5 Non-Satisfaction of Conditions

If any condition precedent set out in Section 4.3 or 4.4 is not satisfied or performed prior to the time specified therefor, the Party for whose benefit the condition precedent is inserted may:

- (a) waive compliance with the condition, in whole or in part, in its sole discretion by written notice to the other Party (but may not claim for any matter waived) and without prejudice to any of its rights of termination in the event of non-fulfilment of any other condition in whole or in part; or
- (b) elect on written notice to the other Party to terminate this Agreement.

4.6 Mutual Conditions

The obligations of the Vendor and the Purchaser hereunder are subject to the mutual conditions that:

- (a) the Purchaser becomes the Winning Bidder;
- (b) the Approval and Vesting Order shall have been made by the Court within 10 days of the Purchaser becoming the Winning Bidder (or such later date agreed upon by the Parties) approving this Agreement and vesting in the Purchaser all the right, title and interest of the Vendor in and to the Purchased Assets free and clear of all Encumbrances, other than Permitted Encumbrances; and
- (c) the Approval and Vesting Order will not have been stayed, varied or vacated and no order will have been issued to restrain or prohibit the completion of the transactions herein contemplated.

The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendor and the Purchaser and cannot be waived by either Party.

4.7 Condition not Fulfilled

If any condition in Section 4.6 shall not have been fulfilled on or before June 30, 2020 or such later date agreed upon by the Parties, then the Vendor or the Purchaser, in its sole discretion, may terminate this Agreement by notice to the other Party in which event each Party shall be released from all obligations under this Agreement.

ARTICLE 5 **REPRESENTATIONS AND WARRANTIES**

5.1 Representations and Warranties of the Vendor

As a material inducement to the Purchaser entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendor set out in this Section 5.1, the Vendor hereby represents and warrants to the Purchaser as follows:

- (a) *Incorporation and Power.* The Vendor is a corporation duly incorporated under the laws of the Province of Ontario and are duly organized, validly subsisting and in good standing under such laws;
- (b) *Corporate Power and Authorization.* The Vendor has the requisite power to own its property and assets, including the Purchased Assets, and to carry on the Business as it is currently conducted;
- (c) *Due Authorization.* Subject to the granting of the Sales Process Order and Approval and Vesting Order, the Vendor has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by them as contemplated by this Agreement and to carry out their obligations under this Agreement and such other agreements and instruments;
- (d) *Enforceability of Obligations.* Subject to the granting of the Sales Process Order and the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Vendor, enforceable against the Vendor, in accordance with its terms;
- (e) *HST.* The Vendor is a registrant under Part IX of the *Excise Tax Act* (Canada); and
- (f) *Residency.* The Vendor is not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada).

5.2 Representations and Warranties of the Purchaser

As a material inducement to the Vendor entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendor is entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 5.2, the Purchaser hereby represents and warrants to the Vendor as follows:

- (a) *Incorporation of the Purchaser.* The Purchaser is a corporation duly incorporated under the laws of the jurisdiction of its incorporation and is duly organized, validly subsisting and in good standing under such laws;
- (b) *Due Authorization.* The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated by this Agreement and to carry out its obligations under this Agreement and such other agreements and instruments;
- (c) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Purchaser, enforceable against the Purchaser, in accordance with its terms;
- (d) *Approvals and Consents.* Except as otherwise provided herein, no authorization, consent or approval of or filing with or notice to any Governmental Authority or other Person is required in connection with the execution, delivery or performance

of this Agreement by the Purchaser or the purchase of any of the Purchased Assets hereunder; and

- (e) *Residency.* The Purchaser is not a non-resident within the meaning of Section 116 of the *Income Tax Act* (Canada).

5.3 Survival of Representations and Warranties

- (a) The representations and warranties of the Vendor contained in Section 5.1 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive for six (6) months following Closing.
- (b) The representations and warranties of the Purchaser contained in Section 5.2 or any other agreement, certificate or instrument delivered pursuant to this Agreement shall survive for six (6) months following Closing.

5.4 Acquisition of Assets on "As Is, Where Is" Basis

The Purchaser acknowledges that the Vendor is selling the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date, subject to the terms of the Approval and Vesting Order. The Purchaser also acknowledges that the Proposal Trustee shall administer the sales process contemplated hereby but shall do so in its capacity as an independent officer of the Court and is not, and shall not be construed as, the Vendor hereunder; and, that in conducting the sales process, the Proposal Trustee does not make any representation, warranty of condition on behalf of the Vendor and has no authority or ability to bind the Vendor. The Purchaser further acknowledges that it has entered into this Agreement on the basis that neither the Vendor nor the Proposal Trustee guarantees title to the Purchased Assets and that the Purchaser has conducted such inspections of the condition of and title to the Purchased Assets as it deemed appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrances, description, fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of the Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations, expressed or implied, pursuant to the *Sale of Goods Act* (Ontario) or similar legislation do not apply hereto and have been waived by the Purchaser. The Purchaser further acknowledges that all written and oral information obtained by the Purchaser from the Vendor, the Proposal Trustee or any of their respective directors, officers, employees, professional consultants or advisors with respect to the Purchased Assets or otherwise relating to the transactions contemplated in this Agreement has been obtained for the convenience of the Purchaser only and is not warranted to be accurate or complete. The Purchaser further acknowledges that neither the Vendor nor the Proposal Trustee shall be under no obligation to deliver the Purchased Assets to the Purchaser and that it shall be the Purchaser's responsibility to take possession of the Purchased Assets.

ARTICLE 6
INTERIM PERIOD

6.1 Access

During the Interim Period and subject to the terms herein, the Purchaser shall have reasonable access to the Purchased Assets during normal business hours and at such other times as agreed to by the Vendor to, among other things, conduct such inspections of the Purchased Assets as it deems appropriate. Such inspection shall only be conducted in the presence of a representative of the Vendor or the Proposal Trustee. The Purchaser shall not be provided with access to any of the foregoing to the extent that such access would violate or conflict with:

- (a) any Applicable Law to which the Vendor or any of the Purchased Assets is subject;
or
- (b) any agreement, instrument or understanding by which the Vendor is bound.

The Purchaser shall indemnify and hold harmless the Vendor from and against all claims, demands, losses, damages, actions and costs incurred or arising from or in any way related to the inspection of the Purchased Assets by the Purchaser or attendance by the Purchaser at the Lands, save and except for any claims, demands, losses, damages, actions and costs incurred or resulting from the negligence or wilful misconduct of the Vendor.

6.2 Risk of Loss

The Purchased Assets shall remain at the risk of the Vendor, to the extent of its interest, until the Closing and after Closing, the Purchased Assets shall be at the risk of the Purchaser.

6.3 Purchaser's Right to Close or Terminate

In the event that the Purchased Assets shall be damaged prior to Closing, then the Vendor shall advise the Purchaser, in writing, within twenty-four (24) hours of the Vendor learning of same. In the event that the Purchased Assets shall be materially damaged prior to Closing then the Vendor or Purchaser shall be entitled, in its sole and absolute discretion, to elect to terminate this Agreement by notice, in writing, to the other party and in such event the Parties hereto shall be released from all obligations and liabilities hereunder. If the Parties shall not elect to terminate this Agreement as set out above, then the Transaction shall be completed and the Purchaser shall be entitled to all proceeds of insurance payable in respect thereof, if any.

ARTICLE 7
EMPLOYEES

7.1 Discussions with Employees

- (a) Immediately following the issuance of the Sales Process Order and execution of this Agreement, the Vendor will provide access to and undertake all reasonable efforts to make available to the Purchaser all individuals who are then Employees of the Vendor for the purpose of permitting the Purchaser to conduct interviews

and/or to offer to employ or otherwise engage any of these Employees after the Effective Time on terms substantially similar to their respective terms and conditions of employment with the Vendor existing as of the Closing Date, determines, but any such offer to employ or any expression of interest shall be made subject to (a) confidentiality; (b) the issuance of the Approval and Vesting Order; and (c) Closing.

- (b) The Purchaser shall provide the Vendor and the Proposal Trustee with a running list, updated and delivered each Friday during the Interim Period and with a final listing provided two (2) Business Days before Closing, indicating:
 - (i) those Employees to whom offers of employment or expressions of interest have been made;
 - (ii) those Employees who have accepted any such offer; and
 - (iii) those Employees who the Purchaser has determined will not be offered employment with the Purchaser.

7.2 Employment Offers

The Purchaser may, in its sole discretion, offer new employment, conditional upon Closing and effective as of the Effective Time, to such of the Employees as determined by the Purchaser, in its sole discretion, on terms and conditions substantially similar to their respective terms and conditions of employment with the Vendor existing as of the Closing Date.

ARTICLE 8 **TERMINATION**

8.1 Termination by the Parties

This Agreement may be terminated:

- (a) upon the mutual written agreement of the Vendor and the Purchaser;
- (b) pursuant to Sections 4.5(b) or 4.7 by either Party; and
- (c) pursuant to Section 6.3.

8.2 Remedies for Breach of Agreement

If this Agreement is terminated as a result of any breach of a representation or warranty, or failure to satisfy a covenant or obligation of a Party, subject to Section 2.3, the terminating Party's right to pursue all legal remedies with respect to such breach shall survive such termination. For greater certainty, if any order of the Court is made which directly or indirectly results in the termination of this Agreement, then no Party shall have any remedy, legal or otherwise, against the other Party or its property.

ARTICLE 9 **POST-CLOSING MATTERS**

9.1 Post-Closing Receipts

If, following the Closing Date, any of the Purchased Assets are paid to or otherwise received by the Vendor, or if any of the Excluded Assets are paid to or otherwise received by the Purchaser, then the Vendor or the Purchaser, as the case may be, shall hold such assets in trust for the other and shall promptly deliver such assets to the Vendor or the Purchaser, as the case may be.

9.2 Books and Records

The Purchaser shall preserve and keep the Books and Records which relate to the Purchased Assets for a period of six years from the Closing Date or for any longer period as may be required by any Applicable Law or Governmental Authority. Upon reasonable advance notice, after the Closing Date, the Purchaser will grant the Vendor and the Trustee (or any of their assigns) and, in the event the Vendor is adjudged bankrupt, any trustee of the estate of any of the Vendor and their respective representatives, reasonable access during normal business hours, to use such Books and Records included in the Purchased Assets, including, without limitation, any personnel files/records of the Transferred Employees relating to the period up to the Closing and any Employees engaged by the Vendor at or in respect of the Purchased Assets up to and including the Closing Date, and computer systems, tapes, disks, records and software acquired as part of the Purchased Assets.

ARTICLE 10 **GENERAL CONTRACT PROVISIONS**

10.1 Headings and Sections

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

10.2 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

10.3 Currency

Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian dollars.

10.4 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section as amended, restated or re-enacted from time to time.

10.5 Time Periods

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

10.6 Consent

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

10.7 No Strict Construction

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party, including, without limitation, the doctrine of *contra proferentum*.

10.8 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 sets out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement.

10.9 Expenses

Each Party shall pay their respective legal, accounting, and other professional advisory fees, costs and expenses incurred in connection with the transactions contemplated in this Agreement, and the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement.

10.10 Announcements

Except as required by Applicable Law, all public announcements concerning the transactions provided for in this Agreement or contemplated by this Agreement shall be jointly approved in advance as to form, substance and timing by the Parties after consultation.

10.11 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile:

- (a) in the case of notice to the Vendor at:

275 Colborne St.
London, ON N6B 2S7

Attention: Eric Rosen
Email: erosen@kmwenergy.com

with a copy to:

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

Attention: Harvey Chaiton
Fax: (416) 218-1849
Email: harvey@chaitons.com

with a copy to the Proposal Trustee:

MNP Ltd.
111 Richmond Street West, Suite 300
Toronto, ON M5H 2G4

Attention: Sheldon Title
Email: stitle@mnt.ca

with a copy to:

Weisz Fell Kour LLP
100 King St W, Suite 5600
Toronto M5X 1C9

Attention: Caitlin Fell
Fax: (416) 613 8290
Email: cfell@wfkllaw.ca

(b) in the case of a notice to the Purchaser at:

331567 Hwy 11 North – Suite PO Box 280
Earlton, ON P0J 1E0

Attention: Mario Leveille
Email: mario.levaille@norarc.com

with a copy to:

Loopstra Nixon LLP
135 Queens Plate Drive, Suite 600
Toronto, ON M9W 6V7

Attention: Graham Phoenix
Fax: (416) 746-8319
Email: gphoenix@loonix.com

Any notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving notice to the other Party in accordance with the provisions of this Section.

10.12 Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party) and permitted assigns including a receiver or trustee in bankruptcy of the Vendor. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the above, the Purchaser may at any time assign any of its rights or obligations arising under this Agreement to any Affiliate of the Purchaser and, upon such assignment and completion of the transactions contemplated by this Agreement, the Purchaser shall be released and discharged from all obligations hereunder but not before Closing. Additionally, notwithstanding the above, the Purchaser may direct that, on Closing, the Purchased Assets vest in any Affiliate of the Purchaser.

10.13 Third Party Beneficiaries

Unless where provided to the contrary by the specific terms hereof, this Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

10.14 Time of the Essence

Time shall be of the essence in respect of the obligations of the Parties arising prior to Closing under this Agreement.

10.15 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, shall be binding unless executed in writing by the Party to be bound thereby.

10.16 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing Date, provided that the reasonable costs and expenses of any actions taken after the Closing Date at the request of a Party shall be the responsibility of the requesting Party.

10.17 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

10.18 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the Courts of the Province of Ontario. The Parties consent to the jurisdiction and venue of the Court for the resolution of any disputes under this Agreement.

10.19 Execution and Delivery

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed and delivered either in original or faxed form or by electronic delivery in portable document format (PDF) and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

10.20 Non-Merger

The representations, warranties and covenants of each Party contained in this Agreement (other than Article 4) will not merge on and will survive the closing of the Transaction and will continue in full force and effect, notwithstanding the closing of the Transaction or any investigation or knowledge acquired by or on behalf of the other Party.

10.21 Independent Legal Representation or Advice

As this Agreement has been prepared with the assistance of the Vendor's Solicitors, the Parties acknowledge that they are aware that such solicitors have had a continuing solicitor/client relationship with certain of the shareholders of the Vendor's and that the Vendor's Solicitors may continue now and in the future to act for such shareholders, and no Party hereto shall in any manner attempt to have the Vendor's Solicitors continuing role terminated for any reason.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.
SIGNATURES ON SEPARATE PAGE.]*

IN WITNESS OF WHICH the Parties have executed this Agreement.

KMW ENERGY INC.

Per: 

Name: Eric Rosen

Title: Authorized Signing Officer

I have the authority to bind the corporation

2751602 ONTARIO INC

Per: _____

Name: Mario Leveille

Title: Authorized Signing Officer

I have the authority to bind the limited partnership

IN WITNESS OF WHICH the Parties have executed this Agreement.

KMW ENERGY INC.

Per: _____

Name: Eric Rosen

Title: Authorized Signing Officer

I have the authority to bind the corporation

2751602 ONTARIO INC

Per:  _____

Name: Mario Leveille

Title: Authorized Signing Officer

I have the authority to bind the limited partnership

SCHEDULE "A"
STALKING HORSE SALES PROCESS

[see attached]

STALKING HORSE SALE PROCESS

KMW ENERGY INC.

Defined Terms

1. These terms and conditions, and the process described herein shall collectively be hereinafter referred to as the “**Sale Process**”.
2. All capitalized terms contained herein but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement to which this schedule is appended.
3. For greater certainty, “**Stalking Horse Bid**” shall mean the transaction contemplated by the stalking horse asset purchase agreement between the Company, as vendor, and 2751602 Ontario Inc., as purchaser, approved by the Court pursuant to the Sale Process Order.

Role of the Proposal Trustee

4. The Sale Process will be administered by the Proposal Trustee on behalf of the Company. The roles and responsibilities of the Proposal Trustee are described in further detail throughout this Sale Process, however, the Proposal Trustee’s role in the Sale Process does not include managing, operating, or taking possession or control of the Company’s property, assets or undertakings.
5. The Company and its principals, employees and professional advisors shall cooperate with the Proposal Trustee throughout the Sale Process and provide documents and information requested as part of the Sale Process to the Proposal Trustee in a prompt fashion.

Commencement of the Sale Process

6. The Sale Process shall commence immediately upon the date on of the Sale Process Order (the “**Commencement Date**”).
7. Within five (5) business days of the Commencement Date, the Proposal Trustee shall contact parties identified by the Company who may be interested in purchasing the business and/or assets of the Company together with any other parties who may be identified by the Company and Proposal Trustee as potentially interested in purchasing the assets of the Company (the “**Prospective Participants**”) and provide those parties with a copy of a “teaser” document. The teaser document shall contain general details about the opportunity to purchase the assets of the Company (the “**Opportunity**”), as well as some general background information about the Company.
8. Within seven (7) business days of the Commencement Date, or as soon thereafter as is practical, the Proposal Trustee shall also (a) publish a notice advertising the Opportunity in the National Post and/or such other trade publications or other publications as the

Proposal Trustee may deem appropriate or advisable, and (b) post the Opportunity on its website.

Due Diligence

9. Any Prospective Participants who advise the Proposal Trustee of their interest in participating in the Sale Process shall execute a non-disclosure agreement (the “**NDA**”) in a form satisfactory to the Proposal Trustee.
10. Commencing on the Commencement Date (and after each respective Prospective Participant has executed the NDA), the Proposal Trustee shall make available to the Prospective Participant the following:
 - a) a copy of a template asset purchase agreement (the “**Template APA**”); and
 - b) access to an electronic data room, to be maintained by the Proposal Trustee, which shall contain information pertaining to the Opportunity along with other corporate financial and other documents as provided by the Company.

Bid Deadline

11. All offers must be submitted in writing to and received by the Proposal Trustee at 111 Richmond Street West, Suite 300, Toronto, ON, M5H 2G4, attention: Sheldon Title, or electronically to stitle@mdp.ca by no later than 5:00pm (Toronto time) on May 29, 2020 (the “**Bid Deadline**”), provided that should the Proposal Trustee deem it appropriate, acting commercially reasonably, such deadline may be extended by a maximum of ten (10) days, not to surpass June 8, 2020. Each offer must remain open for acceptance until the June 30, 2020.

Qualified Bids

12. An offer will only be considered in this Sale Process, in which case it shall be considered a “**Qualified Bid**”, if it is submitted before the Bid Deadline and if it meets the following minimum criteria:
 - a) it must be submitted in writing, substantially in the form of Template APA, with any changes to the offer blacklined against the Template APA;
 - b) it must be for a price equal to or greater than the sum of (i) the Purchaser Debt; (ii) any and all amounts secured by the DIP Lender’s Charge; (iii) any and all amounts secured by the Administration Charge; (iv) the Priority Payables; and (v) any and all amounts secured by the D&O Charge;
 - c) it must be irrevocable until five business days after the Auction (*as defined herein*);
 - d) it must be accompanied by a deposit in the form of a certified cheque or bank draft (or in the form of confirmed wire transfer in the case of offers submitted

electronically) payable to the Proposal Trustee “in trust” which is equal to at least ten (10%) percent of the total purchase price payable under the offer;

- e) it includes an acknowledgement that the purchaser has relied solely on its own independent review and investigation and that it has not relied on any representation by the Company, the Proposal Trustee or their respective agents, employees or advisers;
- f) it must not contain any condition or contingency relating to due diligence or financing or any other material conditions precedent to the offeror’s obligation to complete the transaction; and
- g) it must include written evidence, satisfactory to the Proposal Trustee, that the offeror has the financial means to complete the proposed acquisition,

provided however that the Proposal Trustee may, exercising its reasonable discretion, waive compliance with one or more of the foregoing Qualified Bid requirements and deem such non-compliant offer to be a Qualified Bid.

- 13. The Stalking Horse Bid shall be deemed to be a Qualified Bid.
- 14. Offers for all or part of the business, assets and undertakings of the Company will be considered.

Auction

- 15. If no Qualified Bid is received by the Bid Deadline (other than the Stalking Horse Bid), the Auction (*as defined herein*) will not be held.
- 16. If more than one Qualified Bid is received by the Bid Deadline, the Proposal Trustee shall extend invitations by phone, fax and/or email by 10:00 a.m. E.S.T. on the second (2nd) Business Day after the Bid Deadline to all bidders who submitted Qualified Bids and to the Stalking Horse Bidder to attend an auction (the "**Auction**"). The Auction shall be held at 10:00 a.m. on the fifth (5th) Business Day after the Bid Deadline at the offices of the Proposal Trustee or by teleconference, video conference or other form of electronic telecommunications, as the Proposal Trustee may deem fit.
- 17. The Proposal Trustee shall conduct the Auction. At the Auction, the bidding shall begin initially with the highest Qualified Bid and subsequently continue in multiples of \$50,000, or such other amount as the Proposal Trustees determines to facilitate the Auction. Additional consideration in excess of the amount set forth in the highest Qualified Bid must be comprised only of cash consideration (which, for clarity, may be satisfied by way of credit bid). The format and other procedures for the Auction shall be determined by the Proposal Trustee in its sole discretion.

Selection of the Winning Bid

- 18. The winning bid (the “**Winning Bid**”) shall be, either:

- a. in the event that no other Qualified Bid is received by the Bid Deadline, the Stalking Horse Bid;
or,
- b. in the event that multiple Qualified Bids are received, following the conclusion of the Auction (if applicable), the party submitting the highest and best offer through the Auction, which the Proposal Trustee is satisfied, acting reasonably, is capable of being completed as required by the Sales Process Order.

Court Approval

19. As soon as practicable after determination of the Winning Bid, the Company will make a motion to the Court (the “**Approval Motion**”) for an approval and vesting order in respect of the Winning Bid and the underlying purchase agreement (the “**Final APA**”).
20. The Proposal Trustee shall serve and file a report with respect to the Sale Process and Winning Bid in advance of the Approval Motion.

Other Terms

21. All deposits received (except such deposit forming part of the Winning Bid) shall be held by the Proposal Trustee “in trust”. All deposits submitted by Prospective Participants who did not submit the Winning Bid shall be returned, without interest, as soon as practicable following the date on which any such offers are rejected hereunder. The deposit forming part of the Winning Bid shall be dealt with in accordance with the Final APA.
22. In the event that a deposit is forfeited for any reason it shall be forfeited as liquidated damages and not as a penalty.
23. All Qualified Bids (other than the Winning Bid) shall be deemed rejected on the earlier of (a) the date on which the transaction contemplated by the Final APA is completed and (b) June 30, 2020.
24. Subject to the Sale Process Order or other order of the Court, the Company, in consultation with the Proposal Trustee, shall have the right to adopt such other rules for, or extend any deadlines in, the Sale Process that, at its sole discretion, will better promote the goals of the Sale Process.

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF KMW ENERGY INC.

Estate File Number: 35-2638322
Court File No.: 35-2638322

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

**PROCEEDING COMMENCED AT
TORONTO**

MOTION RECORD

(returnable May 1, 2020)

(re approval of DIP Loan, sale process and other relief)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

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Lawyers for KMW Energy Inc.