

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

B E T W E E N:

**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

**SUPPLEMENTARY MOTION RECORD OF THE TORONTO-DOMINION BANK
(Returnable May 18, 2023)**

May 17, 2023

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)
Tel: (416) 593-3927
egolden@blaney.com

Chad Kopach (LSO #48084G)
Tel: (416) 593-2985
ckopach@blaney.com

Lawyers for The Toronto-Dominion Bank

TO:

MANIS LAW

Barristers & Solicitors
2300 Yonge Street, Suite 1600
Toronto, ON M4P 1E4

Howard Manis (LSO #34366V)

Tel: (416) 417-7257

Email: hmanis@manislaw.ca

Lawyers for Neptune Security Services Inc.

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**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

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TAB A

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

**AMENDED NOTICE OF MOTION
(Lift Stay, Substitute Proposal Trustee, Appoint Receiver)**

THE TORONTO DONIMION BANK (“TD”) will make a motion to a judge of the Commercial List on ~~a date to be fixed in Chambers before Justice Penny, on Friday the 12th~~ Thursday, the 18th day of May, 2023, at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue in Toronto.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom co-ordinates to be established by the Court prior to the motion date.

THE MOTION IS FOR AN ORDER:

1. abridging the time for service of the Motion Record and related Amended Notice of Motion, validating service of the Motion Record and related Amended Notice of Motion, and dispensing with further service thereof;
2. that the 30-day stay period (the “**Stay Period**”) provided for in s. 50.4(8) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (“**BIA**”), which commenced on May 5, 2023 when Neptune Security Services Inc. (“**Neptune**”) filed its Notice of Intention to Make a Proposal (the “**Neptune NOI**”), be terminated forthwith pursuant to s. 50.4(11) of

the BIA;

3. in the alternative, that s. 69 of the BIA no longer operates in respect of TD, pursuant to s. 69.4 of the BIA;
4. appointing msi Spergel Inc. (“Spergel”) as receiver (in such capacity, the "Receiver"), without security, of all of the current and future assets, undertakings and property of Neptune pursuant to s. 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”), on the terms set out in the draft Order attached as Schedule “A”;
5. pursuant to section 14.04 of the BIA substituting/appointing Spergel as the trustee in bankruptcy of Neptune effective immediately upon the termination of the Stay Period as requested herein;
6. costs of this motion on a substantial indemnity scale; and,
7. such further and other relief as counsel may advise and this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

Neptune Background

1. Neptune is a private security company that operates in various provinces, and whose main source of revenue is government contracts;
2. it recently came to the attention of TD that Neptune had also began operating as a construction company at some point;
3. on Friday, May 5, 2023, being the last business day before TD’s demand for payment and s. 244 BIA Notice was set to expire on Monday, May 8, 2023, the Neptune NOI was filed

pursuant to section 50.4(1) of the BIA (the “**Neptune NOI**”). Harris & Partners was named as Proposal Trustee;

4. Robert Butler (“**Butler**”) is the actual principal of Neptune, and the sole decision maker in charge of Neptune’s operations. He alleges that his spouse, Hanane Outair (the “**Spouse**”), is the sole owner and administrator of Neptune. However the Spouse is simply a figurehead;
5. in September, 2022, Butler inserted 13994929 Canada Corporation as Neptune’s payroll administrator outside of Quebec (the “**Payroll Administrator**”). In January, 2023, this was expanded to include Quebec. Butler is the actual principal of 13994929 Canada Corporation, and the sole decision maker in charge of the Payroll Administrator’s operations. He alleges that his mother, Najat Raissouni (the “**Mother**”), is the sole owner and administrator of 1399499 Canada Corporation. However, the Mother is simply a figurehead;
6. it has recently come to light that Butler uses two identities. He is also known as Badreddine Ahmadoun, which is the name he uses when he is running a real estate agency called Land/Max;

TD’s Lending Position

7. in or about June, 2017, TD established a Demand Operating loan facility for Neptune (the “**Operating Loan**”), pursuant to a Demand Operating Facility Agreement between TD and Neptune dated on or about August 8, 2017, as amended (the “**TD-Neptune Operating Loan Agreement**”);
8. the Operating Loan is payable on demand;

9. the Operating Loan is secured by way of a General Security Agreement between TD and Neptune dated July 21, 2017, over all of Neptune's assets and undertaking (the "**GSA**");
10. TD holds properly perfect first ranking security over the assets and undertaking of Neptune, whose only asset of significance is its accounts receivable (the "**Neptune AR**");
11. as of April 28, 2023, Neptune was indebted to TD for the following amounts:
 - (a) Operating Loan: \$9,020,493.70; and
 - (b) \$87,906.01 in respect of a Visa credit card loan facility

TD Attempts to Investigate the Allegations Against Neptune

12. on or about March 23, 2023, Neptune's account at TD was transferred to TD's Financial Restructuring Group ("**TD FRG**") following the first of the four investigative stories about Neptune published by the Canadian Broadcasting Corporation/Radio Canada (collectively, the "**CBC**") beginning on March 23, 2023;

<https://www.cbc.ca/news/canada/montreal/public-contracts-private-security-government-police-double-identity-investigation-1.6788315> (March 23, 2023)

<https://www.cbc.ca/news/canada/montreal/private-security-firm-banned-quebec-identities-fraud-1.6792647> (March 27, 2023)

<https://www.cbc.ca/news/canada/montreal/neptune-private-security-firm-contracts-double-identity-1.6807730> (April 12, 2023)

<https://www.cbc.ca/news/canada/montreal/neptune-pay-security-firm-quebec-1.6821031> (April 24, 2023)

13. as a result, representatives of TD FRG and of ~~msi Spergel Inc.~~ ("**Spergel**") attended at Neptune's premises on April 5, 2023;
14. on April 6, 2023, an engagement letter was forwarded to Neptune (the "**Engagement**

- Letter**”), for the purposes of TD FRG appointing Spergel as TD’s consultant to review and assess the assets, financial position, business and operations of Neptune, and to advise TD FRG in connection with Neptune’s indebtedness to TD (the “**Consultant**”);
15. as part of Spergel’s proposed appointment as Consultant, by way letter dated April 6, 2023, Spergel also sought specific financial documentation from Neptune to commence its review and fulfill our mandate (the “**Financial Disclosure Request**”);
 16. Neptune repeatedly refused to comply the Financial Disclosure Request or execute the Engagement Letter;

Neptune Status

17. The reporting by from the CBC/Radio Canada recently revealed that:
 - (a) Butler was using two identities;
 - (b) Butler was not named in Neptune’s corporate structure submitted to the *Autorité des marchés publics* (AMP), the agency that oversees public contracts in Quebec;
 - (c) as a result, the AMP added Neptune to Quebec’s registry of companies inadmissible to public contracts. The AMP also said the company's use of multiple numbered companies unauthorized to hold contracts allows it to evade the law;
 - (d) Neptune was then banned for five years from accepting public contracts Quebec;
 - (e) Neptune is challenging that decision in court, and on April 6, 2023, a Quebec Superior Court judge issued a temporary suspension of the AMP decision until May 18, 2023, when arguments will be heard about Neptune's eligibility. Until that time, the company continues to be legally allowed to be awarded public contracts or subcontracts;

- (f) however, on April 12, 2023, the federal government suspended Neptune's contracts until further notice. Neptune is now barred from bidding on federal contracts until a “full evaluation” is completed. In some cases, Neptune’s federal contracts have been cancelled according to Public Services and Procurement Canada; and,
 - (g) in addition, on April 24, 2023, Neptune closed its operations in Quebec;
18. based on the Neptune NOI list of creditors, Neptune is facing a priority tax claim for almost \$18 million following an assessment from Revenue Quebec, consisting of \$6,587,000.00 in unremitted QST and \$11,148,600.00 in unremitted source deductions (the “**Neptune Tax Liability**”);
 19. Neptune alleges that the Neptune Tax Liability is an error;
 20. as of April 24, 2023, the Neptune AR secured in favour of TD for Quebec was \$16,127,357.17 (most under 60 days), and \$13,754.953 for the rest of Canada (with almost \$5.5 million over 60 days);
 21. however, by May 8, 2023, the Neptune AR had been depleted by \$10 million, to \$10,600,882.16 for Quebec and \$9,567,971.83 for the rest of Canada (over half of which is now over 90 days);
 22. furthermore, the Neptune’s indebtedness to TD under the Operating Loan increased from \$6,940,000.00 on April 4, 2023 to \$9,020,493.70 as of April 28, 2023;
 23. Neptune cannot currently meet its payroll obligations. The Proposal Trustee alleges that Neptune is hoping to do so from the Neptune AR, which has already been significantly depleted over the last two weeks (from approximately \$30 million to \$20 million);
 24. based on the contents of the Neptune financial production made by the Proposal Trustee to

TD on the evening of May 10, 2023, no reliance can be placed on Neptune's financial books and records;

TD Demand and TD Position

25. on April 28, 2023, TD made demand on the Operating Loan and issued its Notice pursuant to s. 244 of the BIA;
26. on May 5, 2023, Neptune filed the Neptune NOI;
27. Neptune listed TD as its only secured creditor at almost \$9 million;
28. the Neptune Tax Liability represents 97% of its unsecured debt. If Neptune's allegation that the Neptune Tax Liability is in error, then Neptune's indebtedness to TD represents almost all of Neptune's total indebtedness. If it is not in error, the Neptune Tax Liability survives;
29. TD has lost all confidence in Neptune and its management;
30. Neptune is in breach of myriad terms of the TD-Neptune Operating Loan Agreement and the Neptune GSA;
31. Neptune has not acted, and is not acting, in good faith or with due diligence;
32. Neptune will not be able to make a viable proposal before the expiration of the Stay Period;
33. Neptune will not be able to make a proposal, before the expiration of the Stay Period that will be accepted by TD;
34. TD will be materially prejudiced if the Stay Period is not immediately lifted;

Basis and Need for a Receiver

35. s.12(a)(xii) of the Neptune GSA provides for the appointment of a receiver upon default;

36. TD holds properly perfected first ranking security over the assets and undertaking of Neptune;
37. it is just and equitable and in the interests of TD that a Receiver be appointed over Neptune, so as to protect the interests of TD;
38. Spergel has consented to act as Receiver over Neptune;

Basis and Need to Substitute Trustee

39. as a result of the termination of the proposal process, Neptune will be deemed bankrupt, and Harris & Partners will automatically become its trustee in bankruptcy. The pending receivership requested by TD will result in two separate licensed trustees administering the bankruptcy and the receivership, which is not cost effective or desirable;
40. Rules 1.04, 2.03 and 3.02 and 37 of the *Rules of Civil Procedure*;
41. Sections 14.04, 50.4(8), 50.4(11), 69, and 69.4 and 243(1) of the BIA and section 101 of the CJA; and,
42. such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING OF THE MOTION:

1. the affidavits of Kathryn Furfaro sworn May 12, 2023 and May 17, 2023, to be sworn;
and
2. such further and other grounds as counsel may advise and this Honourable Court may permit.

May ~~17th~~, 2023

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)
Tel: (416) 593-3927
egolden@blaney.com

Chad Kopach (LSO #48084G)
Tel: (416) 593-2985
ckopach@blaney.com

Lawyers for The Toronto-Dominion Bank

TO: MANIS LAW
Barristers & Solicitors
2300 Yonge Street, Suite 1600
Toronto, ON M4P 1E4

Howard Manis (LSO #34366V)
Tel: (416) 417-7257
Email: hmanis@manislaw.ca

Lawyers for Neptune Security Services Inc.

SCHEDULE "A"

Court File No. 32-2941547

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

THE HONOURABLE)	THURSDAY, THE 18 th
)	
JUSTICE)	DAY OF MAY, 2023

B E T W E E N:

**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

**ORDER
(Appointing Receiver)**

THIS MOTION made by The Toronto-Dominion Bank (“**TD**”) for, among other things, an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing msi Spergel Inc. (“**Spergel**”) as receiver (in such capacity, the “**Receiver**”), without security, of all of the current and future assets, undertakings and property of Neptune Security Services Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by them, was heard this day at Toronto, Ontario by Zoom videoconference due to the Covid-19 pandemic.

ON READING the Amended Notice of Motion dated May 17, 2023, the Affidavit of Kathryn Furfaro sworn May 12, 2023, and the Exhibits thereto (the “**First Furfaro Affidavit**”), and the Supplementary Affidavit of Kathryn Furfaro sworn May 17, 2023 and the Exhibit thereto

(the “**Supplementary Furfaro Affidavit**”) on hearing submissions from counsel for TD and counsel for the Debtor, and on reading the consent of Spergel to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any contracts or agreements in connection therewith (including any amendments and modifications thereto), repudiate or disclaim any contracts or agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify, and/or terminate any contracts or agreements to which the Debtor is a party;
- (d) to engage appraisers, agents, experts, auditors, liquidators, accountants, managers, including a property manager, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to dispose of, at its discretion, inventory in the form of raw materials and/or finished goods relating to the business of the Debtor;
- (g) to process any claims for insurance under the Debtor's insurance policies and receive and collect all monies that may become payable under such policies, subject to the interest of TD as a first loss payee;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (i) to settle, extend or compromise any indebtedness owing to the Debtor;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$150,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;

- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to undertake worker's health and safety assessments of the operations of the Debtor;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor, and to execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to make payments, as required, under any contract in relation to the Property, without assuming any liability or obligations thereunder;

- (u) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the

landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property or any assets located on premises belonging to the Debtor shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property or any assets located on premises belonging to the Debtor are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *BIA*, and further provided that

nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or

such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

13. **THIS COURT ORDERS** that in the event that an account for the supply of goods and/or services transferred from the Debtor to the Receiver, or otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related

liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated,

might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian *Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless

otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver's Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

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

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

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the

Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “A” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice->

commercial) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <https://www.spergelcorporate.ca/engagements>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. **THIS COURT ORDERS** that TD shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of TD's security or, if not so provided by TD's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without the need for entry or filing.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that msi Spergel Inc., the receiver (the "**Receiver**") of all of the current and future assets, undertakings and property of Neptune Security Services Inc. (the "**Debtor**"), including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (In Bankruptcy) (the "**Court**") dated the ___ day of May, 2023 (the "**Order**") made in a proceeding having Court file number 32-2941547, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

msi Spergel Inc., solely in its capacity
as receiver of the Debtor, and not in its personal
capacity

Per: _____

Name:

Title:

IN THE MATTER OF THE PROPOSAL OF NEPTUNE SECURITY SERVICES INC.**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

Proceeding commenced at Toronto

**ORDER
(Appointing Receiver)****BLANEY McMURTRY LLP**
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5**Eric Golden** (LSO #38239M)
(416) 593-3927 (Tel)
Email: egolden@blaney.com**Chad Kopach** (LSO #48084G)
(416) 593-2985 (Tel)
Email: ckopach@blaney.com

Lawyers for The Toronto-Dominion Bank

IN THE MATTER OF THE PROPOSAL OF NEPTUNE SECURITY SERVICES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
[BANKRUPTCY]**

Proceeding commenced at Toronto

AMENDED NOTICE OF MOTION

BLANEY McMURTRY LLP

Barristers & Solicitors

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5

Eric Golden (LSO #38239M)

Tel: (416) 593-3927

egolden@blaney.com

Chad Kopach (LSO #48084G)

Tel: (416) 593-2985

ckopach@blaney.com

Lawyers for The Toronto-Dominion Bank

TAB B

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

B E T W E E N:

**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

SUPPLEMENTARY AFFIDAVIT OF KATHRYN FURFARO

I, **KATHRYN FURFARO**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. This affidavit is supplementary to my affidavit sworn May 12, 2023 (the “**First Furfaro Affidavit**”). Capitalized terms not defined herein have the same definition as in the First Furfaro Affidavit.
2. Spergel has consented to act as receiver over Neptune. Attached hereto and marked as **Exhibit “1”** to this supplementary affidavit is a copy of the consent to act as Receiver executed by Spergel.
3. As set out in TD’s Amended Notice of Motion filed with this Supplementary Affidavit, TD is requesting that the Court substitute Spergel as the bankruptcy trustee, in addition to being the Court-appointed Receiver of Neptune. Currently, Harris & Partners is Proposal Trustee, and upon the bankruptcy of Neptune would become Neptune’s trustee in bankruptcy. TD does not see it as

desirable or cost-effective to have two different licensed trustees act as Receiver and trustee in bankruptcy in these circumstances.

4. This supplementary affidavit is sworn in support of TD’s application for, among other things, an Order to substitute Spergel as the bankruptcy trustee of Neptune, and to appoint Spergel as Receiver over Neptune, and for no improper purpose.

SWORN by Kathryn Furfaro at the City of)
Toronto, in the Province of Ontario, before me)
on May 17, 2023 in accordance with)
O. Reg. 431/20, Administering Oath or)
Declaration Remotely.)
)
)
)



Commissioner for Taking Affidavits
Chad Kopach (LSO #48084G)



KATHRYN FURFARO

This is Exhibit "1" referred to in the Affidavit of Kathryn Furfaro sworn by Kathryn Furfaro before me on May 17, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH (LSO #48084G)

Court File No. 32-2941547

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

B E T W E E N:

**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

CONSENT TO ACT AS RECEIVER

The undersigned, **msi Spergel Inc.** (“**Spergel**”) hereby consents to the appointment of Spergel as receiver without security of all of the assets, undertakings and properties of Neptune Security Services Inc. pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and terms of an Order substantially in the form filed in the above proceedings.

DATED the 17th day of May, 2023.

msi Spergel Inc.

Per:



Mukul Manchanda, CPA, CIRP, LIT
Managing Partner

I have authority to bind the Corporation

IN THE MATTER OF THE PROPOSAL OF NEPTUNE SECURITY SERVICES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

Proceeding commenced at Toronto

**SUPPLEMENTARY AFFIDAVIT OF
KATHRYN FURFARO**

BLANEY McMURTRY LLP

Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)

Tel: (416) 593-3927
egolden@blaney.com

Chad Kopach (LSO #48084G)

Tel: (416) 593-2985
ckopach@blaney.com

Lawyers for The Toronto-Dominion Bank

TAB C

Revised: January 21, 2014
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. ~~_____~~ 32-2941547

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

COMMERCIAL LIST

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

PLAINTIFF[†]

Plaintiff

~~-and-~~

DEFENDANT

Defendant

THE HONOURABLE) THURSDAY, THE 18th
JUSTICE) DAY OF MAY, 2023

B E T W E E N:

**IN THE MATTER OF THE PROPOSAL OF
NEPTUNE SECURITY SERVICES INC.**

**ORDER
(~~appointing~~Appointing Receiver)**

~~†-The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an~~

THIS MOTION made by ~~the Plaintiff² for~~ The Toronto-Dominion Bank (“TD”) for, among other things, an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing ~~[RECEIVER'S NAME]~~ msi Spergel Inc. (“Spergel”) as receiver ~~and manager~~ (in such ~~capacities~~ capacity, the “Receiver”), without security, of all of the current and future assets, undertakings and ~~properties~~ property of ~~[DEBTOR'S NAME]~~ Neptune Security Services Inc. (the “Debtor”) acquired for, or used in relation to a business carried on by ~~the Debtor~~ them, was heard this day at ~~330 University Avenue,~~ Toronto, Ontario by Zoom videoconference due to the Covid-19 pandemic.

ON READING the ~~affidavit of [NAME]~~ Amended Notice of Motion dated May 17, 2023, the Affidavit of Kathryn Furfaro sworn ~~[DATE]~~ May 12, 2023, and the Exhibits thereto ~~and~~ (the “First Furfaro Affidavit”), and the Supplementary Affidavit of Kathryn Furfaro sworn May 17, 2023 and the Exhibit thereto (the “Supplementary Furfaro Affidavit”) on hearing ~~the~~ submissions ~~of~~ from counsel for ~~[NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~ TD and counsel for the Debtor, and on reading the consent of ~~[RECEIVER'S NAME]~~ Spergel to act as the Receiver,

SERVICE

~~application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.~~

²~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

1. **THIS COURT ORDERS** that the time for service of the Amended Notice of Motion and the Motion Record is hereby abridged and validated³ so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, ~~[RECEIVER'S NAME]~~ Spergel is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

³~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any contracts or agreements in connection therewith (including any amendments and modifications thereto), repudiate or disclaim any contracts or agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify, and/or terminate any contracts ~~or~~ for agreements to which the Debtor is a party;
- (d) to engage ~~consultants,~~ appraisers, agents, experts, auditors, liquidators, accountants, managers, including a property manager, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to dispose of, at its discretion, inventory in the form of raw materials and/or finished goods relating to the business of the Debtor;
- (g) to process any claims for insurance under the Debtor's insurance policies and receive and collect all monies that may become payable under such policies, subject to the interest of TD as a first loss payee;
- (h) (⊕) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (i) ~~(g)~~ to settle, extend or compromise any indebtedness owing to the Debtor;
- (j) ~~(h)~~ to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (k) ~~(i)~~ to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) ~~(j)~~ to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (m) ~~(k)~~ to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (i) without the approval of this Court in respect of any transaction not exceeding \$~~_____~~150,000.00, provided that the aggregate consideration for all such transactions does not exceed \$~~_____~~500,000.00; and

⁴~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~[or section 31 of the Ontario *Mortgages Act*, as the case may be,]⁵ shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply;~~~~

- (n) ~~(n)~~ to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (o) to undertake worker's health and safety assessments of the operations of the Debtor;

- (p) ~~(m)~~ to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (q) ~~(n)~~ to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (r) ~~(o)~~ to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on

⁵ ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

behalf of and, if thought desirable by the Receiver, in the name of the Debtor, and to execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);

(s) ~~(p)~~ to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(t) to make payments, as required, under any contract in relation to the Property, without assuming any liability or obligations thereunder;

(u) ~~(q)~~ to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; ~~and~~

(v) ~~(r)~~ to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

foregoing, collectively, being "Persons") and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property or any assets located on premises belonging to the Debtor shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property or any assets located on premises belonging to the Debtor are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the *BIA*, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement,

licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

13. **THIS COURT ORDERS** that in the event that an account for the supply of goods and/or services transferred from the Debtor to the Receiver, or otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

15. ~~14.~~ **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the *BIA*, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*.

PIPEDA

16. ~~15.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal

information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. ~~16.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall

exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. ~~17.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the *BIA* or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the *BIA* or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7),

⁶ Note that subsection 243(6) of the *BIA* provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an

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

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

FUNDING OF THE RECEIVERSHIP

22. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~_____~~250,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances,

~~that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~

statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

23. ~~22.~~ **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

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

Rules of Civil Procedure and paragraph ~~24~~13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~https://www.spergelcorporate.ca/engagements~~.

27. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

30. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of

this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

32. ~~31.~~ **THIS COURT ORDERS** that ~~the Plaintiff~~TD shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of ~~the Plaintiff~~TD's security or, if not so provided by ~~the Plaintiff~~TD's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

33. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without the need for entry or filing.

SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that ~~[RECEIVER'S NAME]~~ msi Spergel Inc., the receiver (the "Receiver") of all of the current and future assets, undertakings and ~~properties [DEBTOR'S NAME] acquired for, or used in relation to a business carried on by~~ property of Neptune Security Services Inc. (the "Debtor"), including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (~~Commercial List~~ In Bankruptcy) (the "Court") dated the ___ day of May, 20 2023 (the "Order") made in ~~an action a~~ proceeding having Court file number ~~CL~~ 32-2941547, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily] [monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to

the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~[RECEIVER'S NAME]~~ msi Spergel Inc., solely
in its capacity
as ~~Receiver~~receiver of the ~~Property~~Debtor,
and not in its personal capacity

Per: _____

Name:

Title:

Court File No. 32-2941547IN THE MATTER OF THE PROPOSAL OF NEPTUNE SECURITY SERVICES INC.ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]Proceeding commenced at TorontoORDER
(Appointing Receiver)BLANEY McMURTRY LLPBarristers & Solicitors2 Queen Street East, Suite 1500Toronto, ON M5C 3G5Eric Golden (LSO #38239M)(416) 593-3927 (Tel)Email: egolden@blaney.comChad Kopach (LSO #48084G)(416) 593-2985 (Tel)Email: ckopach@blaney.comLawyers for The Toronto-Dominion Bank

IN THE MATTER OF THE PROPOSAL OF NEPTUNE SECURITY SERVICES INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
[IN BANKRUPTCY]**

Proceeding commenced at Toronto

**SUPPLEMENTARY MOTION RECORD OF
THE TORONTO-DOMINION BANK**

BLANEY McMURTRY LLP

Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSO #38239M)

Tel: (416) 593-3927
egolden@blaney.com

Chad Kopach (LSO #48084G)

Tel: (416) 593-2985
ckopach@blaney.com

Lawyers for The Toronto-Dominion Bank