

Court File No. 31-2763610
Estate No. 31-2763610

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND*
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ARTEX SYSTEMS INC. OF THE
TOWN OF CONCORD IN THE PROVINCE OF ONTARIO

MOTION RECORD
(Extension of Time to File Proposal and Administration Charge)

September 28, 2021

WEISZ FELL KOUR LLP
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200 Bay Street
Suite 2305, P.O. Box 120
Toronto, ON M5J 2J3

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Lawyers for Artex Systems Inc.

Court File No. 31-2763610
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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *BANKRUPTCY AND*
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TAB 1

File No. 31-2763610
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ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY AND
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IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ARTEX SYSTEMS INC. OF THE
TOWN OF CONCORD IN THE PROVINCE OF ONTARIO

NOTICE OF MOTION
(Extension of Time to File Proposal and Administration Charge)

Artex Systems Inc. (the “**Artex**” or the “**Applicant**”) will make an application to a Judge presiding over the Commercial List on October 1, 2021, at 11:30 am, or as soon after that time as the motion can be heard by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as Schedule “A” hereto in order to attend the motion and advise if you intend to join the motion by emailing Christel Paul at: cpaul@wfkllaw.ca.

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

- ☐ in writing under subrule 37.12.1 (1);
- ☐ in writing as an opposed motion under subrule 37.12.1 (4);
- ☐ in person;
- ☐ By telephone conference;
- ☒ By video conference.

THE MOTION IS FOR:

1. An Order, substantially in the form attached at Tab 3 of the Motion Record that, among other things:
 - a) abridges the time for service of this motion, validates the manner of service, and declares that this motion is properly returnable before the Court;
 - b) approves an administration charge up to a maximum of \$50,000 over the assets, property and undertaking of Artex in favour of counsel to Artex, the Proposal Trustee and counsel to the Proposal Trustee (the “**Administration Charge**”); and
 - c) extends the time for the Applicant to file a proposal with the Official Receiver by 45 days, up to and including November 15, 2021.
2. Such further and other relief as this Honorable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

3. Artex is in the business of manufacturing architectural precast concrete wall panels for buildings, typically large-scale condominiums and public use buildings.
4. Between 2017 to 2019, Artex was engaged in four large-scale construction contracts. Resulting from scheduling delays, key milestones on these projects were required to be completed during the same period of time, resulting in liquidity issues for the Applicant.
5. During the summer of 2019, the Applicant arranged to pursue one critical project in an attempt to recoup prior losses and pay off current liabilities.

6. In March 2020, the construction industry drastically slowed. Due to the COVID-19 pandemic, the Applicant's ongoing projects were delayed and the productivity of the workers on the worksite decreased.
7. On September 1, 2021, in response to the liquidity issues, the Applicant filed a Notice of Intention to make a proposal (the "NOI") pursuant to s. 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA").

Extension of Time to File a Proposal

8. In this motion, the Applicant is seeking an extension of time to file a proposal as is necessary to restructure Artex's affairs.
9. An extension of time to file a proposal will provide Artex with the necessary "breathing room" to allow the Applicant to carry out an orderly winddown of operations while remaining projects are concluded.

Administration Charge

10. The Applicant is seeking an administration charge to a maximum of \$50,000 to secure the professional fees incurred in relation to the NOI proceeding, including those of counsel to Artex, the Proposal Trustee and counsel to the Proposal Trustee.
11. The Administration Charge is reasonably necessary to permit the Applicant to restructure his affairs and is supported by the cash flow projections prepared with the assistance of the Proposal Trustee.

12. It is just and appropriate under the circumstances to grant the proposed Administration Charge.

Further Grounds

13. Sections 50.4(9), 64.2 and 69 of the *BIA* and the inherent and equitable jurisdiction of this Court;
14. Rules 1.04, 2.03, 3.02 and 37 of the Rules of Civil Procedure, RSO 1990, Reg 194, as amended; and
15. 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:

16. Affidavit of Domenico D'Ascanio dated September 28, 2021; and,
17. Such further and other evidence as counsel may advise and this Honourable Court may permit.

September 28, 2021

WEISZ FELL KOUR LLP
Royal Bank Plaza, South Tower
200 Bay Street
Suite 2305, P.O. Box 120
Toronto, ON M5J 2J3

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Fax: 416.613.8290

Lawyers for Artex Systems Inc.

TO: **THE SERVICE LIST**

Schedule “A”
Conference Details to join Motion via Zoom

Topic: In the Matter of the Proposal of ARTEX SYSTEMS INC. of the Town of Concord, in the Province of Ontario (Court File No. 31-2763610)

Time: Oct 1, 2021 11:30 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/95282505510?pwd=U1Vtbi9WdTI3QUxiOWtiWUxEVlppZz09>

Meeting ID: 952 8250 5510

Passcode: 529213

One tap mobile

+12042727920,,95282505510#,,,*529213# Canada

+14388097799,,95282505510#,,,*529213# Canada

Dial by your location

+1 204 272 7920 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

Meeting ID: 952 8250 5510

Passcode: 529213

Find your local number: <https://zoom.us/j/95282505510?pwd=U1Vtbi9WdTI3QUxiOWtiWUxEVlppZz09>

**IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED**

Court File No. 31-2763610
Estate No. 31-2763610

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF ARTEX SYSTEMS INC. OF THE TOWN OF CONCORD IN
THE PROVINCE OF ONTARIO**

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

NOTICE OF MOTION

WEISZ FELL KOUR LLP

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Toronto, ON M5J 2J3

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Lawyers for Artex Systems Inc

TAB 2

Court File No. 31-2763610
Estate No. 31-2763610

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ARTEX SYSTEMS INC. OF THE
TOWN OF CONCORD IN THE PROVINCE OF ONTARIO

AFFIDAVIT OF DOMENICO D'ASCANIO

(Sworn September 28, 2021)

I, **Domenico D'Ascanio**, of the City of Concord, in the province of Ontario, **MAKE**
OATH AND SAY:

1. I am the director of the debtor, Artex Systems Inc. (“**Artex**” or the “**Company**”). Accordingly, I have personal knowledge of the matters set out below. Where I have relied on information from others, I state the source of such information and verily believe it to be true.
2. On September 1, 2021, Artex filed a Notice of Intention to Make a Proposal (“**NOI**”) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”). msi Spigel Inc. was appointed as Proposal Trustee under the NOI (the “**Proposal Trustee**”).
3. This affidavit is submitted in support of a motion for an order that, among other things, extends the time for the Company to make a proposal to its creditors pursuant to the *BIA* and grants an Administration Charge (as defined below).

I. OVERVIEW OF THE APPLICANT

A. Business of Artex Systems Inc.

(a) Background of the Company

4. Artex is in the business of manufacturing architectural precast concrete wall panels for buildings, typically large-scale condominiums and public use buildings.

5. Artex maintains its registered head office at 523 Bowes Road, Concord, Ontario. Artex was incorporated pursuant to an Amalgamation on December 29, 1982, pursuant to the *Ontario Business Corporations Act*, RSO 1990, c B.16. A corporation profile report is attached hereto as **Exhibit “A”**.

6. Artex’s operations began in the early 1960’s in the greater Toronto area through the joint ownership of three business partners. Business was successful and the Company soon expanded and began to take on projects elsewhere in Ontario, Quebec and Halifax.

7. Having ambitious sights, Artex transitioned into the United States and beyond: successfully completing projects in New York, Chicago, Boston, Virginia and across the pond in London and Glasgow.

8. From the mid-1980’s onward, Artex predominantly focused its operations in the borough of Manhattan in New York City.

(b) Liquidity Issues

9. Between 2017 to 2019, Artex entered into three projects with Gilbane Building Company and one project with Urban Atlier Group. Resulting from schedule delays, key milestones on these projects were required to be completed at the same period of time. The convergence of these

obligations under these large-scale projects largely depleted the Company's cash reserves. Due to a domino effect of delays and backlogs, back-charges imposed by owners and general contractors added to the Company's financial difficulties.

(c) Current Status of the Company

10. During the summer of 2019, the Company chose to pursue one critical project in an attempt to recoup prior losses and pay off current liabilities (the "**East Side Project**"). Artex was awarded the East Side Project on August 2019. The East Side Project has an estimated completion date of Spring 2021. Initially, the East Side Project was progressing smoothly pursuant to the agreed timelines and to the satisfaction of the client. The Company's liabilities were being paid down and liquidity issues began to resolve.

11. In March 2020, the construction industry drastically slowed. Due to the COVID-19 pandemic, the East Side Project's deadlines were delayed and the productivity of the workers on the worksite decreased.

12. Artex currently has only one construction project left to complete- the East Side Project, which pursuant to initial estimates is currently 77% complete. The East Side Project is projected to be completed by Spring 2022.

(d) Employees

13. Artex has twenty-one unionized Canadian employees in the shop and nine non-union employees who work in the office. In the United States, Artex currently employs ten unionized employees who install the panels produced by the Company at project sites.

14. Artex is reliant on the availability of skilled tradespersons in order to fulfill its large-scale mandates. During the past few years, the availability of skilled carpenters and other trades has diminished, leaving Artex struggling to hire and retain quality candidates to offset industry turnover.

(e) Secured Obligations

15. Artex holds a Revolving Demand Facility, Spot Foreign Exchange Facility and TD Visa Business Card Facility (the “**Credit Facilities**”) with their secured lender, the Toronto-Dominion Bank (“**TD**”). To secure the amounts owing on the Credit Facilities, the Company entered into a General Security Agreement with TD on June 17, 2005.

16. The Company defaulted on certain of its obligations under the Credit Facilities, including running a shortfall of approximately \$188,000 in the Company’s borrowing base for the month ending May 31, 2021. The Bank issued a demand for payment and a Notice of Intention to Enforce Security on July 23, 2021.

17. On September 3, 2021, in response to demands made by TD, the Company entered into an Accommodation Agreement with TD forbearing from the enforcement of their security under the Credit Facilities (the “**Forbearance Agreement**”). Attached hereto as **Exhibit “B”** is a copy of the Forbearance Agreement.

18. As of August 9, 2021, the Company is indebted to TD in the amount of \$415,390.39 plus accrued interest under the Credit Facilities.

19. TD is not stayed as a result of the commencement of these proceedings and the Proposal, when filed, will not include TD as an affected creditor.

(f) Source Deductions

20. The Borrower is in arrears with Canada Revenue Agency for employee deductions at source in the sum of \$185,892.46.

II. RELIEF REQUESTED

A. The Stay Extension

21. The initial 30-day stay of proceedings under the NOI will expire on October 1, 2021.

22. Without the order sought being granted, Artex will not be in a position to put forward a meaningful proposal to its creditors and will, in all likelihood, be deemed bankrupt as a result.

23. The Company has continued its business during these NOI proceedings.

24. If Artex is deemed bankrupt, it is my belief based on my discussions with the Proposal Trustee that recovery from the liquidation of the Company's assets for the benefit of TD and its stakeholders will be significantly less than under a proposal.

25. The Company has at all times continued its operations and there is going-concern value to be realized from Artex's continued operation while it pursues an orderly winddown and liquidation.

26. The Company requires additional time to: (i) complete the East Side Project; (ii) continue to negotiate with its creditors; and (iii) continue developing its winddown plans. Accordingly, Artex is requesting a 45-day extension of time pursuant to Section 50.4(9) of the BIA, up to and including November 15, 2021, to develop and make a proposal.

27. The Company has acted in good faith and with due diligence to develop a viable going-concern proposal to its creditors.

28. I am not aware of any creditors who will be materially prejudiced by the extension of time.

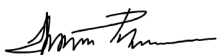
B. Administration Charge

29. Artex seeks a priority Administration Charge ranking ahead of all other charges and encumbrances in favour of its counsel, the Proposal Trustee, and the Proposal Trustee's counsel to secure the payment of fees and expenses incurred in connection with this proceeding. Artex seeks an Administration Charge up to the maximum amount of \$50,000.

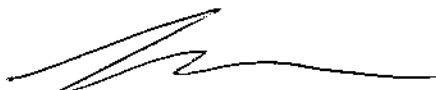
30. The NOI proceeding is necessary to maximize value available to creditors and stakeholders. No creditor will be materially prejudiced by the granting of the charge given minimal size of the charge relative to the equity available. The Proposal Trustee is supportive of the proposed Administration Charge.

31. I swear this affidavit in support of Artex's motion for the relief requested, and for no other or improper purpose.

SWORN before me *by video conference* from the City of Toronto in the Province of Ontario to the City of Concord in the Province of Ontario this 28th day of September, 2021:



A Commissioner for Taking Affidavits
Name:



DOMENICO D'ASCANIO

THIS IS **EXHIBIT “A”** REFERRED TO IN THE
AFFIDAVIT OF DOMENICO D’ASCANIO SWORN
BEFORE ME, THIS 28TH DAY OF SEPTEMBER, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

Request ID: 026756287
Transaction ID: 80705180
Category ID: UN/E

Province of Ontario
Ministry of Government Services

016

Date Report Produced: 2021/09/28
Time Report Produced: 10:34:59
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CORPORATION PROFILE REPORT

Ontario Corp Number		Corporation Name	Amalgamation Date
534528		ARTEX SYSTEMS INC.	1982/12/29
			Jurisdiction
			ONTARIO
Corporation Type	Corporation Status		Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE		NOT APPLICABLE
Registered Office Address		Date Amalgamated	Amalgamation Ind.
523 BOWES ROAD		NOT APPLICABLE	A
		New Amal. Number	Notice Date
CONCORD ONTARIO CANADA L4K 1B2		NOT APPLICABLE	NOT APPLICABLE
			Letter Date
Mailing Address			NOT APPLICABLE
523 BOWES ROAD		Revival Date	Continuation Date
		NOT APPLICABLE	NOT APPLICABLE
CONCORD ONTARIO CANADA L4K 1B2		Transferred Out Date	Cancel/Inactive Date
		NOT APPLICABLE	NOT APPLICABLE
		EP Licence Eff.Date	EP Licence Term.Date
		NOT APPLICABLE	NOT APPLICABLE
		Number of Directors Minimum Maximum	Date Ceased in Ontario
		UNKNOWNUNKNOWN	
Activity Classification		Date Commenced in Ontario	Date Ceased in Ontario
NOT AVAILABLE		NOT APPLICABLE	NOT APPLICABLE

Request ID: 026756287
Transaction ID: 80705180
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/28
Time Report Produced: 10:34:59
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CORPORATION PROFILE REPORT

Ontario Corp Number

534528

Corporation Name

ARTEX SYSTEMS INC.

Corporate Name History

ARTEX SYSTEMS INC.

Effective Date

2002/11/19

ARTEX PRECAST LIMITED

1982/12/29

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

YES - SEARCH REQUIRED FOR DETAILS

Amalgamating Corporations

Corporation Name

ARTEX CONCRETE LIMITED

ARTEX PRECAST LIMITED

Corporate Number

123463

145730

Request ID: 026756287
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Category ID: UN/E

Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

534528

Corporation Name

ARTEX SYSTEMS INC.

Administrator:**Name (Individual / Corporation)**

DOMENICO

D'ASCANIO

Address

37 NORGLEN ROAD

WOODBIDGE
ONTARIO
CANADA L4L 7W8**Date Began**

2006/06/01

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Administrator:**Name (Individual / Corporation)**

DOMENICO

D'ASCANIO

Address

37 NORGLEN ROAD

WOODBIDGE
ONTARIO
CANADA L4L 7W8**Date Began**

2010/07/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

VICE-PRESIDENT

Resident Canadian

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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

534528

Corporation Name

ARTEX SYSTEMS INC.

Administrator:**Name (Individual / Corporation)**

DOMENICO

D'ASCANIO

Address

37 NORGLEN ROAD

WOODBIDGE
ONTARIO
CANADA L4L 7W8**Date Began**

2019/03/29

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian**Administrator:****Name (Individual / Corporation)**

ANNA

DIGIOVANNI

Address

141 WOODBRIDGE AVENUE

Suite # 501
WOODBIDGE
ONTARIO
CANADA L4L 9G6**Date Began**

2010/07/01

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Request ID: 026756287
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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

534528

Corporation Name

ARTEX SYSTEMS INC.

Administrator:**Name (Individual / Corporation)**

ANNA
DIGIOVANNI

Address

141 WOODBRIDGE AVENUE

Suite # 501
WOODBIDGE
ONTARIO
CANADA L4L 9G6

Date Began

2010/07/01

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

Y

Administrator:**Name (Individual / Corporation)**

ANNA
DIGIOVANNI

Address

141 WOODBRIDGE AVENUE

Suite # 501
WOODBIDGE
ONTARIO
CANADA L4L 9G6

Date Began

2019/03/29

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Request ID: 026756287
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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

534528

Corporation Name

ARTEX SYSTEMS INC.

Administrator:**Name (Individual / Corporation)**

JAMES
FARWELL

Address

1654 JULIAS CREEK ROAD, WEST

DOURO DUMMER
ONTARIO
CANADA K0L 2H0

Date Began

2019/03/29

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Administrator:**Name (Individual / Corporation)**

MICHAEL
KAI NAM
NGAI

Address

111 FITZGERALD AVENUE

UNIONVILLE
ONTARIO
CANADA L3R 1R5

Date Began

2019/03/29

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type**Resident Canadian**

Y

Request ID: 026756287
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Province of Ontario
Ministry of Government Services

Date Report Produced: 2021/09/28
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CORPORATION PROFILE REPORT

Ontario Corp Number

534528

Corporation Name

ARTEX SYSTEMS INC.

Last Document Recorded

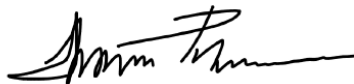
Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2021/03/29 (ELECTRONIC FILING)

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 “B”** REFERRED TO IN THE
AFFIDAVIT OF DOMENICO D’ASCANIO SWORN
BEFORE ME, THIS 28TH DAY OF SEPTEMBER, 2021



A COMMISSIONER FOR TAKING AFFIDAVITS

THIS AGREEMENT made as of the 20th day of August, 2021

BETWEEN:

THE TORONTO-DOMINION BANK
3140 Dufferin Street,
Toronto, ON M6A 2T1

(hereinafter called the "Bank")

OF THE FIRST PART

-and-

ARTEX SYSTEMS INC.
523 Bowes Rd
PO Box 149 Stn Main
Concord, ON L4K 1B2

(hereinafter called the "Borrower")

OF THE SECOND PART

RECITALS

- A. The Bank has made certain Credit Facilities available to the Borrower as more particularly described in this Agreement;
- B. The Borrower operates as a construction company in both Canada and the United States of America, and maintains both USD and CAD Accounts with the Bank;
- C. The Borrower is in default of the Credit Facilities as follows:
 - a. Shortfall of approximately \$188,000 in the Borrower's Borrowing Base for the month ending May 31, 2021;
 - b. Confirmation of its insolvency through its intention to file the Proposal (as defined below) under the *Bankruptcy and Insolvency Act* ("**BIA**");
 - c. TNW default Dec 31, 2020 in the actual sum of \$170,000 (required \$2,700,000).

(collectively, the "**Defaults**")

- D. As a result of the Defaults, the Bank did issue a demand for payment and a Notice of Intention to Enforce Security pursuant to section 244(1) of the BIA, each dated July 23, 2021, to the Borrower (collectively, the “**Demand**”);
- E. The Borrower intends, subject to the terms of this Agreement, to file a Notice of Intention to Make a Proposal under the BIA and shall proceed to submit a proposal to its unsecured creditors, with msi Spergel inc. (“**Spergel**”) to be named as proposal trustee (collectively, the “**Proposal**”);
- F. The Borrower has advised the Bank of its intent to file its Notice of Intention to Make a Proposal;
- G. During the term of this Agreement and in addition to its role as Proposal Trustee, Spergel shall be retained by the Bank as Financial Advisor (in such capacities, the “**Advisor**”), on terms acceptable to the Bank, and on the consent of the Borrower, in order to monitor the finances and operations of the borrower and report on same to the Bank;
- H. The Proposal, when filed, will not include the Bank as an affected creditor, and the Bank shall be outside of the Proposal, subject to the terms of this Agreement;
- I. On August 5, 2021, the Borrower received payment into its USD Account for work undertaken on one of the Projects (as defined below) in the total sum of USD\$294,995.42, of which the sum of USD\$100,000 was deposited in the Borrower’s CAD Account with the Bank (the “**August 5 Payment**”). Spergel, in its capacity as Advisor, has confirmed to the Bank that these monies are clear of any Priority Claims (as defined below);
- J. Following application of the August 5 Payment the Indebtedness under the Credit Line is \$ 410,390.39 as at August 9, 2021 (plus the \$5,000 letter of credit), and the Bank has capped the credit limit of the Credit Line at \$450,000 (including the letter of credit in the sum of \$5,000.00) effective immediately, to be further reduced subject to the terms of this Agreement;
- K. The Borrower has provided to the Bank a cash flow statement current to July 29, 2021 (the “**Cash Flow**”). Pursuant to the Cash Flow, the Borrower expects total receipts of approximately \$8,508,685.00 between July 28, 2021 and July 31, 2022, of which the

Borrower expects to receive the following sums by August 31, 2021, not including the funds used in relation to the August 5 Payment:

- a. By August 31, 2021, the approximate sum of \$1,233,380.00;
- L. Pursuant to the Cash Flow, the main source of the Borrower's income relates to Accounts Receivable from certain construction projects in both Canada and the United States of America (collectively, the "**Projects**"), which primarily includes a large project located at 1087 -200 East 83rd Street, New York, New York, USA (the "**East Side Project**");
- M. The Borrower's employees in relation to the East Side Project are members of Derrickman Local 197 (the "**Union**"), and the Borrower is responsible for remittances of pension payments to the Union;
- N. The Borrower is in arrears with Canada Revenue Agency ("**CRA**") for employee deductions at source (RP) in the sum of \$185,892.46 (the "**CRA Source Arrears**");
- O. The Proposal, when filed, shall require the approval of the Borrower's included creditors, as well as the approval of the Ontario Superior Court of Justice (the "**Court**");
- P. The Borrower has requested that the Bank forbear from taking action on the Security (as defined in Schedule "B" to this Agreement) and the Bank and the Borrower have agreed to enter into this Agreement for the purposes of allowing the Borrower time to file the Proposal, and pay the Indebtedness (as defined below) in full by the Termination Date.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RECITALS

The parties agree and acknowledge that the recitals contained herein are true.

2. DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

- a) **“Agreement”** or **“this Agreement”** means this Agreement;
- b) **“Credit Facilities”** means the Credit Facilities advanced to the Borrower by the Bank, as more particularly described in Schedule “A”;
- c) **“Priority Claims”** means deemed trusts and other claims ranking in priority to the Bank’s Security including, without limitation, charges under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, realty taxes, GST, HST¹, PST, employee remittances, and payments owing to the Union;
- d) **“Security”** or **“Bank’s Security”** means all security currently held by the Bank, together with such additional security, as may be granted by the Borrower, in support of the repayment of the Indebtedness as more particularly set out in Schedule “B”;
- e) **“Termination Date”** is December 31, 2021;
- f) **“Without Consent”** means without the prior written consent of the Bank.

3. INDEBTEDNESS

- a) As of August 9, 2021, the Indebtedness owing to the Bank by the Borrower pursuant to the Credit Facilities was **\$415,390.39** plus accrued interest and all costs as more particularly described in Schedule “C”.
- b) The above amount at 3 (a), plus accrued interest thereon, all of the Bank’s reasonable legal fees on a solicitor and own client basis and other professional costs, and all other amounts properly payable pursuant to the Credit Facilities, the Security and this Agreement including all banking fees, are in total referred to as the **“Indebtedness”**.

4. TERM OF AGREEMENT

- a) Subject to the terms of this Agreement, the Bank shall grant the Borrower the period of forbearance, to allow the Borrower to pay the Indebtedness in full by the Termination Date.

¹ GST and HST limited to all post-Proposal filing sums.

5. ACKNOWLEDGEMENTS

The Borrower hereby acknowledges and agrees:

- a) That the Indebtedness as detailed herein is owing to the Bank by the Borrower, and is not disputed, and the Borrower makes no claim of set-off in any way against the Indebtedness;
- b) That the Letter Agreement (as defined in Schedule “A” hereto), is valid and binding on the Borrower;
- c) That the Credit Facilities and the Security (as defined in Schedules “A” and “B” to this Agreement), are valid and binding and shall continue to be enforceable in accordance with the terms thereof;
- d) That the Borrower, its assigns, employees and any party able to claim through the same, each agree that they have no claim for set-off, counterclaim or damages to the present time on any basis whatsoever against the Bank, its officers, directors, employees, solicitors and agents (the “**Releasees**”) in respect of this Agreement or in any prior dealings with the Borrower including, without limitation, any action taken by the Bank in dealing with the Credit Facilities, or with the administration of any accounts held with the Bank by the Borrower, the Security and if there are any existing claims known or unknown, they are hereby expressly released and discharged by this Agreement;
- e) The Defaults are valid and the Bank was in a position to issue the Demand, and the time provided therein was reasonable. The Bank does not, by this Agreement, waive its rights, and the Indebtedness remains owing in full;
- f) The Bank may enforce its Security and pursue all remedies with respect to the Indebtedness as it may deem appropriate, and by the entering into of this Agreement, the Bank is not estopped from taking any steps it deems necessary in its sole and absolute discretion to enforce the Security and to terminate this Agreement;
- g) That to the date hereof, the Bank has acted in a commercially reasonable manner, and the Borrower is estopped from disputing same;

- h) Except as provided in this Agreement, the Bank (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action, that would constitute a waiver of its rights to enforce the Security and pursue its remedies in respect of the Indebtedness without notice; and,
- i) To the extent that the Bank accepts any payments or makes any advances of funds or credit available to the Borrower during the term of this Agreement, such payments accepted or advances of funds shall not constitute a waiver of any pre-existing default, maturity of loans, or any additional defaults of the Borrower or of the Bank's rights following the expiry of the Demand.
- j) The Bank's rights as secured creditor of the Borrower shall not be affected by any Proposal, when filed.

6. FORBEARANCE FEE

A forbearance fee of \$5,000 shall be due and payable upon the execution of this Agreement, either by way of bank draft payable to the Bank, or, subject to the agreement of the Borrower, by debit directly from the Borrower's account with the Bank.

7. NON-MANAGERIAL RESPONSIBILITY

The Borrower acknowledges that the Bank shall not have control over any of the operations or affairs of the Borrower and shall not take part in the management of the Borrower's affairs, including the approval of any transactions except as hereinafter qualified. Without limiting the generality of the foregoing, neither the Bank nor its agents shall be entitled to approve or execute agreements, sign cheques, or otherwise sign on bank accounts or interfere with the efficient and proper day-to-day conduct of the business and affairs of the Borrower.

8. NO PROTECTION WITHOUT CONSENT

The Borrower covenants and agrees that it will not, Without Consent, and with the sole exception of the Proposal, when filed, make any filing or seek any protection (including a stay of proceedings) or seek any stay pursuant to the BIA, the *Companies Creditors' Arrangement Act* (Canada) (the "**CCAA**"), or otherwise at law or in equity (a "**Filing**"), and

that any Filing, including but not limited to the Proposal, made in respect of the Borrower will contain the following provisions, which are acknowledged and agreed to by the Borrower:

- i) the terms of this Agreement will continue to bind the parties to this Agreement;
- ii) the Bank will not be affected by any stay or other order in such proceedings;
- iii) the Bank will be an unaffected creditor in any plan or proposal unless the Bank consents to be treated otherwise;
- iv) the Borrower irrevocably consents to the variation of any stay or order in such proceedings which would purport to affect the Bank, including the stay of proceedings under the current Proposal; and
- v) the Borrower will not Without Consent make or support any application which would have the effect of:
 - (1) creating any charge ranking in priority to the Security or in priority to any other rights of the Bank; or
 - (2) altering or varying the rights of the Bank under the terms of the Credit Facilities, the Security or this Agreement.

9. CONFLICT WITH THE CREDIT FACILITIES

In the event of a conflict between this Agreement and the Credit Facilities, this Agreement shall prevail, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of the Bank under the Credit Facilities or this Agreement other than as may be specifically contemplated herein.

10. COVENANTS OF THE BORROWER

The Borrower agrees and covenants that it shall, to the satisfaction of the Bank in its sole discretion:

- a) Maintain all the assets and equipment of the Borrower in a good state of repair;
- b) Keep all Priority Claims current, save and except for the CRA Source Arrears, and provide to the Bank evidence that all such accounts are current, as requested by the Bank;
- c) Not declare or pay any payment to any person who does not deal with the Borrower at arm's length (as such term is defined in the *Income Tax Act* (Canada)) except for salaries, contracts, and repayment of loans presently in place;

- d) The Borrower shall maintain all fire, liability, and property insurance with respect to the assets forming the Bank's Security on terms and amounts satisfactory to the Bank naming the Bank as Loss Payee and provide evidence of same as requested by the Bank;
- e) The Borrower consents to Spergel acting as Advisor, and shall fully cooperate with Spergel in such capacity, and shall provide Spergel with access to all required documents, information, and locations required by Spergel, in its discretion, to carry out its duties as Advisor;
- f) The Borrower shall file its Notice of Intention to make a Proposal following the execution of this Agreement;
- g) The credit limit of the Credit Line has been capped at \$450,000, as set out above, following application of the August 5 Payment. In conjunction with the reducing Credit Limit as detailed at article 11 (Amendments to Credit Facility) below, the Borrower shall permanently reduce the Indebtedness owing under the Credit Line pursuant to the following minimum payments²:
 - i) By September 30, 2021 – the sum of \$75,000 (credit limit of \$375,000);
 - ii) By October 31, 2021 – the sum of \$150,000 (credit limit of \$225,000);
 - iii) By November 30, 2021 – the sum of \$150,000 (credit limit of \$75,000);
 - iv) All remaining Indebtedness of the Borrower to be paid in full by the Termination Date.

(i-v, the “**Monthly Payments**”)
- h) The Borrower has advised that receipts may be collected on an advanced timeline from the Projects ahead of the timeline as is provided for in the Cash Flow. Should payments be made in advance of the Monthly Payments, the Credit Limit under the Credit Line will be reduced accordingly.

² The credit limit of the Credit Line shall be reduced match the Indebtedness owing thereunder at any time, and from time to time, with no excess borrowings allowed thereunder. All credit limits cited include the \$5,000 letter of credit issued.

- i) In addition to all reporting due under the Credit Facilities, the Borrower shall provide the following reporting to the Bank, within five (5) days of each Monthly Payment, and as vetted by Spergel as Advisor:
 - i) The source of the funds used to make each Monthly Payment, including but not limited to the name of the Project from which the funds have been sourced, and the following additional evidence:
 - a. That all subtrades in relation to the Project from which the relevant Monthly Payment has been sourced have been paid in full (less any statutory holdbacks), unless otherwise disputed (with notice and detail of such dispute provided to the Bank) from the proceeds of that Project;
 - b. That the Borrower is current on all filings of HST and employee deductions at source to the Canada Revenue Agency, save and except for the CRA Source Arrears; and,
 - c. That the Borrower is current on all accounts owing to the Union, save and except for arrears reflected in the cash flow.

(the “**Payment Reporting**”)

- j) In addition to all reporting due under the Credit Facilities, the Borrower shall provide on a monthly basis, due the tenth (10th) day past month end, a variance analysis comparing actual results to the Cash Flow;
- k) The Borrower shall meet all terms of the Proposal, when filed and if approved by its creditors and the Court, and shall not default under same;
- l) The Borrower shall pay the CRA Source Arrears and all amounts due to the Union on or before the Termination Date;
- m) The Borrower will reimburse the Bank for all expenses that the Bank has incurred or will incur arising out of its dealings with the Borrower and with the preparation of this Agreement and in the protection, preservation and enforcement of the Security, including all legal fees of the Bank on a solicitor and own client basis, and all other fees in relation to the Borrower in general and this Agreement. The Borrower specifically waives any

and all rights it may have to assess any of the legal or agents' fees previously paid or paid in the future by the Bank, or any agent, whether such right arises pursuant the *Solicitor's Act* (Ontario) or any law or statute. In this regard, the Borrower acknowledges and agrees that it fully indemnifies the Bank for all expenses detailed herein;

- n) The Borrower shall ensure that the Indebtedness owing under the Credit Line does not exceed the credit limit of same at any time;
- o) To pay the Indebtedness in full by the Termination Date.

11. AMENDMENTS TO THE CREDIT FACILITIES

The Credit Facilities are hereby immediately amended as follows:

- a) The Spot FX Facility and the Visa are terminated
- b) The Credit Line is immediately capped at the sum of \$450,000, with no excess borrowings permitted by the Bank.

Subject to article 10 (g) above, the Bank shall further reduce the credit limit of the Credit Line following receipt of each Monthly Payment to match the Indebtedness owing under the Credit Line at that time as follows:

- i) September 30, 2021 – credit limit of \$375,000;
- ii) October 31, 2021 – credit limit of \$225,000;
- iii) November 30, 2021 – credit limit of \$75,000;
- iv) December 31, 2021 – no credit available.

The Borrower shall ensure that the Indebtedness owing under the Credit Line does not exceed the credit limit of same at any time

- c) The Borrower shall continue to have access to its accounts with the Bank during the term of this agreement. Following an Event of Default or the Termination Date, whichever comes first, the Bank shall terminate all accounts of the Borrower with the Bank.

- d) The above Payment Reporting shall be in addition to, and not in replacement of, any other reporting now or hereafter required by the Bank, including all reporting required pursuant to the Letter Agreement.

12. BANK'S RIGHTS

It is understood and agreed that nothing contained in this Agreement and no negotiations, correspondence, or discussions among the parties hereto, shall prejudice, affect or waive any of the Bank's rights under the terms of the Credit Facilities or the Security, except as those rights may have been modified by this Agreement.

13. EVENTS OF DEFAULT

The Borrower shall be in default of this Agreement upon the happening of any of the following Events of Default:

- a) The Borrower fails to make any payment due to the Bank under the Credit Facilities and/or this Agreement in a timely manner, or borrows in excess of the credit limit of the Credit Facilities;
- b) The Borrower is in breach of any terms of this Agreement, or any further breach of the Credit Facilities or any other agreement with the Bank, including, without limitation, the Security;
- c) The Borrower fails to provide the Payment Reporting to the Bank as required by this Agreement;
- d) The Borrower fails, in the sole discretion of the Bank, to fully cooperate with Spergel in its capacity as Advisor;
- e) If, for any reason whatsoever, a creditor of the Borrower holding security in priority or subordinate to the Security commences to enforce its security, or if any creditor of the Borrower should obtain a judgment and/or a lien as against the Borrower or its property;
- f) There is, in the opinion of the Bank, acting reasonably, a material deterioration in the Security or the ability of the Bank to maximize the recovery of the Indebtedness;

- g) The Proposal, when filed, is not approved by the creditors of the Borrower, or by the Court;
- h) Any default by the Borrower under the terms of the Proposal, should same be filed and approved by the creditors of the Borrower, or by the Court;
- i) Should the Borrower fail to make the Monthly Payments as same become due;
- j) The Borrower makes a Filing under the CCAA and/or the BIA, with the sole exception of the Proposal;
- k) The Borrower is in breach of any of its material obligations to a third party, including the default of payment to such parties; and,
- l) The Borrower fails to pay the Indebtedness by the Termination Date.

14. ENFORCEMENT

The Bank may proceed to enforce its Security and to pursue the Borrower for payment of the entire Indebtedness at any time.

15. EXTENSION OF AGREEMENT OR PAYMENT IN FULL

The Bank, in its sole discretion, may extend the period of forbearance on terms acceptable to it.

16. PREVIOUS AGREEMENTS

This Agreement replaces all previous agreements between the Borrower and the Bank, save and except the Credit Facilities.

17. NON-WAIVER

No delay on the part of the Bank in exercising any remedy or any waiver of the rights given to it hereunder or any of the Bank's Security shall operate as a waiver thereof except if such waiver is specifically given in writing by the Bank, and no forbearance on the part of the Bank with respect to any event of default shall be deemed to be of any waiver by the Bank of that event of default or any other subsequent or similar event of default.

18. TIME OF THE ESSENCE

Time is of the essence in this Agreement, but a forbearance by the Bank in the strict application of this provision shall not operate as a continuing or subsequent forbearance.

19. CONFLICT

Except as explicitly amended by this Agreement, the terms and provisions of the Credit Facilities, and the Bank's Security shall remain in full force and effect and no statement, representation, warranty, undertaking or agreement is enforceable unless in writing signed by the party against who it is asserted or his or her authorized agent. In the event of a conflict between the terms and provisions of same and this Agreement, the terms and provisions of this Agreement shall govern.

20. FURTHER ASSURANCES

The Borrower shall from time to time and at all times hereafter, at every reasonable request of the Bank, make, do, execute and deliver, or cause to be made, done, executed and delivered, at the sole cost and expense of the Borrower, all such further acts, deeds and assurances and things as may be necessary or desirable in the opinion of the Bank for more effectually implementing the true intent and meaning of this Agreement.

21. NOTICE

Any notice, demand, approval, consent, waiver or other communication ("**Notice**") to be given by one party to another under this Agreement, shall be in writing and shall be sufficiently given if delivered personally, forwarded by registered mail or transmitted by facsimile transmission to such party as follows:

In the case of the Borrower:

To the addresses as provided in this Agreement, and to

Thompson, MacColl & Stacy LLP
Barristers and Solicitors
5-1020 Matheson Blvd. East
Mississauga, Ontario
L4W 4J9
www.tmslaw.com
Telephone: 905-625-5591x232
email: jstacy@tmslaw.com

Phil D'Ascanio phild@artexsystems.ca
Anna Di Giovanni annad@artexsystems.ca

In the case of the Bank to:

The Toronto-Dominion Bank
3140 Dufferin Street,
Toronto, ON M6A 2T1
Attention: Amanda Bezner
Via E-Mail: amanda.bezner@td.com

With a copy to:

Harrison Pensa ^{LLP}
Barristers and Solicitors
450 Talbot Street, P.O. Box 3237,
London, Ontario N6A 4K3
Attention: Tim Hogan
Via E-mail: thogan@harrisonpensa.com

or to such other address or fax number as may be designated by Notice given as aforesaid to the other party by the party to whom Notice is to be given. Any Notice delivered and received as aforesaid shall be deemed to have been given and received on the first business day following the date of personal delivery, the forwarding by registered mail, or facsimile transmission, as the case may be.

22. SUCCESSORS AND ASSIGNS

The Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, administrators, executors or permitted assigns.

23. UNENFORCEABILITY

The invalidity, illegality or unenforceability, for any reason, of any term or provision of this Agreement, shall not in any manner invalidate any other term or provision hereof; the same shall be deemed to have been severed herefrom so that the validity, legality and enforceability of the remaining terms and provisions hereof shall not be affected, prejudiced or impaired thereby.

24. GOOD FAITH

It is acknowledged by the Borrower that this Agreement was prepared following good faith negotiations, by the Bank and the Borrower.

25. PIPEDA

The Borrower hereby consents to the Bank's release of personal information in relation to the Credit Facilities, without notice to the Borrower and at the Bank's absolute discretion, to any entity having an interest or potential interest in the collateral for its enforcement or collection purposes. The Borrower further agrees and acknowledges that such release of personal information by the Bank is lawful and is permitted despite other avenues that may be available to any third party to obtain such personal information and that such release is not a violation of the provisions of the *Personal Information and Electronic Documents Act*, S.C. 2000, c.5, s.7 and is made with the knowledge and consent of the Borrower as is required under this legislation.

26. COUNTERPARTS and FACSIMILE COPIES

This Agreement or any amendment thereto may be executed in counterparts, and if so executed all counterparts when taken together shall comprise one and the same instrument, and facsimile copies or portable document format (PDF) of signatures shall be treated as originals for all purposes.

27. LIMITATION PERIOD

The Obligations of the Borrower to the Bank are hereby acknowledged and shall be continued to be acknowledged through the term of this Agreement. Any limitation period in relation to the demands to the Borrower, the Indebtedness, the Credit Facilities and the

Security (in accordance with the *Limitations Act, 2002* (Ontario)) is hereby expressly extended to a period of six (6) years from the date of this Agreement.

28. ACKNOWLEDGEMENT BY THE BORROWER

The Borrower hereby confirms and acknowledge that it has no adverse claims whatsoever against the Bank, its agents or professional advisors including, without limitation, their agents, employees consultants and solicitors (including claims for set-off, counterclaim or damages) with respect to its dealings with the Borrower.

29. ACCEPTANCE

This Agreement is open for acceptance until 5:00 pm on August 20, 2021. Should the Borrower not accept this offer by the time indicated, the same shall become null and void and no longer binding on the Bank.

The Borrower covenants and agrees with the Bank that this Agreement is subject to the following conditions, which are for the exclusive benefit of the Bank and may be waived only by the Bank in writing. Each of the following conditions is to be completely fulfilled or performed prior to this Agreement being a binding Agreement on the Bank, unless the Bank waives any of the conditions, and this Agreement shall then be at an end:

- The Bank's receipt of a duly authorized and executed copy of this Agreement, and of the Forbearance Fee; and,
- Executed Consent to Appointment, and Consent to Judgment.

In witness whereof the parties hereto have executed this Agreement as of the day and year first above written.

THE TORONTO-DOMINION BANK

Per: Amanda Bezner
 Amanda Bezner
 I have the authority to bind the Bank

ARTEX SYSTEMS INC.Per: _____

I have the authority to bind the Corporation

DIMENICO (PHIL) D'ASLANO

Schedule "A" - Credit Facilities
Schedule "B" - Security
Schedule "C" - Indebtedness

SCHEDULE "A"
CREDIT FACILITIES

The following Facilities were provided to the Borrower by the Bank, as evidenced by the Demand Operating Facility Agreement dated April 27, 2015 and amended by the Demand Operating Facility Agreement Amendments dated August 17, 2016, December 11, 2017, and July 16, 2019 (collectively, the "**Letter Agreement**").

1. Facility # 1 – Revolving Demand Facility: with a current credit limit of \$450,000, to be reduced further pursuant to the terms of this Agreement (the "**Credit Line**");
2. Spot Foreign Exchange Facility: to allow the Borrower to enter into USD \$2,000,000 for settlement on a spot basis (the "**Spot F/X Facility**") - terminated; and,
3. TD Visa Business Card Facility: with a credit limit of \$30,000.

SCHEDULE "B"
SECURITY

As security for the Credit Facilities and for any monies advanced or to be advanced in the future by the Bank to the Borrower, and for all other present and future indebtedness, fees, expenses and other liabilities, direct or indirect, absolute or contingent due by the Borrower to the Bank, including all of the Bank's solicitor and own client legal fees in relation to the enforcement of the Security, and the preparation of this Agreement, the Borrower has granted to the Bank security over their assets consisting of the following:

1. General Security Agreement from the Borrower dated June 17, 2005.

SCHEDULE "C"
INDEBTEDNESS

INDEBTEDNESS OF THE BORROWER AS AT AUGUST 9, 2021³

	TOTAL DUE
Credit Line	\$410,390.39
Letter of Credit	\$5,000.00
TOTAL	\$415,390.39

³ Plus accruing interest, billed and unbilled legal fees and the forbearance fee.

**IN THE MATTER OF THE BANKRUPTCY AND
INSOLVENCY ACT, RSC 1985, c B-3, AS AMENDED**

044
Court File No. 31-2763610
Estate No. 31-2763610

**AND IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF ARTEX SYSTEMS INC. OF
THE TOWN OF CONCORD IN THE PROVINCE OF
ONTARIO**

ONTARIO
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

AFFIDAVIT OF DOMENICO D'ASCANIO

WEISZ FELL KOUR LLP

Royal Bank Plaza, South Tower
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Caitlin Fell (LSO No. 60091H)

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Fax: 416.613.8290

Lawyers for Artex Systems Inc.

TAB 3

Court File No. 31-2763610
Estate No. 31-2763610

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

THE HONOURABLE MADAM)	THURSDAY, THE 1 ST
)	
JUSTICE GILMORE)	DAY OF OCTOBER, 2021

IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED

IN THE MATTER OF THE NOTICE OF INTENTION TO
MAKE A PROPOSAL OF ARTEX SYSTEMS INC. OF THE
TOWN OF CONCORD IN THE PROVINCE OF ONTARIO

ORDER
(Extension of Time to File Proposal and Administration Charge)

THIS MOTION, made by Artex Systems Inc. (the “**Company**”), for an Order extending the period of time for filing a proposal pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”), was heard this day by video conference due to the COVID-19 crisis.

ON READING the Affidavit of Domenico D’Ascanio affirmed September 28, 2021, and on reading the First Report of msi Spigel Inc. dated September 1, 2021 in its capacity as proposal trustee of the Company (the “**Proposal Trustee**”), and on hearing the submissions of counsel for the Company, as well as all persons present as stated in the counsel slip, no one appearing for any other

person on the service list, although properly served as appears from the affidavit of service of Levi Rivers sworn September 1, 2021, filed:

SERVICE

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

EXTENSION OF TIME TO FILE A PROPOSAL

2. **THIS COURT ORDERS** that pursuant to Section 50.4(9) of the BIA, the time for the Company to file a proposal with the Official Receiver be and is hereby extended to November 15, 2021.

ADMINISTRATION CHARGE

3. **THIS COURT ORDERS** that the Proposal Trustee and the Company's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Company's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, which charge shall not exceed an aggregate amount of \$50,000 as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings.

4. **THIS COURT ORDERS** that the Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the costs of these proceedings. The Company is hereby authorized and directed

to pay the accounts of the Proposal Trustee and counsel for the Company. The Proposal Trustee shall be authorized to immediately apply any such payments made by the Company to their fees and disbursements and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

ORDER EFFECTIVE IMMEDIATELY

5. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without any need for entry and filing.

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

049
Court File No. 31-2763610
Estate No. 31-2763610

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF ARTEX SYSTEMS INC. OF THE TOWN OF CONCORD IN
THE PROVINCE OF ONTARIO**

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

Proceedings commenced at Toronto

ORDER

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Lawyers for Artex Systems Inc.

**IN THE MATTER OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, RSC 1985, c B-3, AS AMENDED**

Court File No. 31-2763610
Estate No. 31-2763610

**AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A
PROPOSAL OF ARTEX SYSTEMS INC. OF THE TOWN OF CONCORD IN
THE PROVINCE OF ONTARIO**

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

Proceedings commenced at Toronto

**MOTION RECORD
(Extension of Time to File Proposal and
Administration Charge)**

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Lawyers for Artex Systems Inc.