

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

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THURSDAY, THE 2ND

JUSTICE HAINEY

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DAY OF JULY, 2020

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IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF PERASO TECHNOLOGIES INC.

(the "Applicant")

ORDER

(Approval of DIP Agreement & Extension of the Stay of Proceedings)

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), proceeded on this day by way of videoconference due to the COVID-19 crisis.

ON READING the affidavits of Ronald Glibbery affirmed June 25, 2020 (the "**Third Glibbery Affidavit**") and July 2, 2020 (the "**Fourth Glibbery Affidavit**") and the Exhibits thereto, the Second Report of Ernst & Young Inc., in its capacity as monitor (the "**Monitor**") to the Applicant, dated June 29, 2020 (the "**Second Report**"), and the affidavit of Todd Cramer sworn June 30, 2020, and on hearing the submissions of counsel for the Applicant and counsel for the Monitor and those other parties listed on the counsel slip and on being advised that those parties listed in the affidavit of service filed were given notice of this motion;

AND UPON BEING SATISFIED that the Applicant has acted, and is continuing to act in good faith in accordance with the CCAA;

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 STAY PERIOD

2. **THIS COURT ORDERS** that the stay period referred to in the Amended and Restated Initial Order of the Honourable Justice Hainey dated June 12, 2020 (the "**Amended and Restated Initial Order**") is extended until and including August 14, 2020 in respect of the Applicant.

DIP FINANCING

3. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from Roadmap Capital General Partner Ltd., Roadmap Peraso LP III (U.S. and Offshore) and XCOM Labs, Inc. (collectively, the "**DIP Lenders**") in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, all as specifically provided for in the DIP Agreement (as defined in paragraph 4 hereof).

4. **THIS COURT ORDERS THAT** such credit facility shall be on the terms and subject to the conditions set forth in the Debtor-in-Possession Credit Agreement between the Applicant and the DIP Lenders dated as of June 25, 2020 and revised on July 2, 2020 (the "**DIP Agreement**"), filed.

5. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lenders pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Agreement and the Definitive Documents as

and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lenders shall be entitled to the benefit of and are hereby granted a charge (the **"DIP Lenders' Charge"**), which DIP Lenders' Charge shall not secure an obligation that exists before this Order is made. The DIP Lenders' Charge shall have the priority set out in paragraphs 9 and 11 hereof.

7. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Lenders' Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement, on no less than two business days' notice to the Applicant and the Monitor, the DIP Lenders may apply to the Court to exercise any and all of their rights and remedies against the Applicant or the Property (as that term is defined in the Amended and Restated Initial Order) under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lenders' Charge; and
- (c) the foregoing rights and remedies of the DIP Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

8. **THIS COURT ORDERS AND DECLARES** that the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act of Canada* (the **"BIA"**), with respect to any advances made under the DIP Agreement.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

9. **THIS COURT ORDERS** that the priorities of the Administration Charge and the Directors' Charge (as each of those terms is defined in the Amended and Restated Initial Order) and the DIP Lenders' Charge, as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$725,000);

Second - Directors' Charge (to the maximum amount of \$650,000); and

Third - DIP Lenders' Charge.

10. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the Directors' Charge, or the DIP Lenders' Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

11. **THIS COURT ORDERS** that each of the Administration Charge, the Directors' Charge, and the DIP Lenders' Charge shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**").

12. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the Directors' Charge, or the DIP Lenders' Charge, unless the Applicant also obtains the prior written consent of the Monitor and the beneficiaries of the Administration Charge, the Directors' Charge, and the DIP Lenders' Charge, or further Order of this Court.

13. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Agreement, the Definitive Documents and the DIP Lenders' Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lenders thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of

any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

14. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant's interest in such real property leases.

SEALING

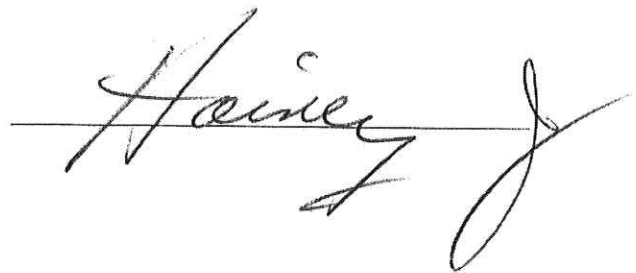
15. **THIS COURT ORDERS** that the unredacted Third Glibbery Affidavit, the Applicant's cash flow forecasts appended as an exhibit to the Third Glibbery Affidavit, the unredacted Fourth Glibbery Affidavit, the unredacted DIP Agreement and the unredacted Second Report are hereby sealed and shall not form part of the public record until further order of the Court.

GENERAL

16. **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 Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that each of the Applicant and the Monitor 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 Monitor 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.

18. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and filing.

A handwritten signature in black ink, appearing to read "Hainey J.", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 07 2020

PER / PAR:

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PERASO TECHNOLOGIES INC.

Court File No.: CV-20-00642010-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

ORDER
(Approval of DIP Agreement & Extension of
the Stay of Proceedings)

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