

Application \$50



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C120341

Dec 7, 2023  
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Form 7  
[Rule 3.8]

COURT FILE NUMBER      **2301-16260**

COURT                      **COURT OF KING'S BENCH OF ALBERTA**

JUDICIAL CENTRE        **CALGARY**

MATTER                    **IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, RSC 1985, C. C-36, AS AMENDED,  
AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF FREE REIN RESOURCES LTD.**

APPLICANT                **INVICO DIVERSIFIED INCOME LIMITED PARTNERSHIP by  
its general partner INVICO DIVERSIFIED INCOME MANAGING  
GP INC.**

RESPONDENT              **FREE REIN RESOURCES LTD.**

DOCUMENT                **APPLICATION (AMENDED AND RESTATED INITIAL ORDER  
(COMMERCIAL LIST)**

Clerk's Stamp

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT

**Fasken Martineau DuMoulin LLP**  
Barristers and Solicitors  
3400 First Canadian Centre  
350 – 7<sup>th</sup> Avenue SW  
Calgary, Alberta T2P 3N9

Lawyer: Robyn Gurofsky / Anthony Mersich  
Phone Number: (403) 261-9469 / (587) 233-4124  
File Number: 324505.00011

**NOTICE TO THE RESPONDENT(S) LISTED AT SCHEDULE "A" ATTACHED HERETO**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: December 7, 2023  
Time: 2:00 p.m. or so soon thereafter as counsel may be heard  
Where: Calgary Courts Centre, 601 5 St SW, Calgary, AB  
Before: The Honourable Justice J.T. Neilson

Go to the end of this document to see what you can do and when you must do it.

**Remedy sought:**

1. Invico Diversified Income Limited Partnership, by its general partner, Invico Diversified Income Managing GP Inc. (“Invico” or the “Applicant”) respectfully seeks an Order (the “Initial Order”) under the Companies’ Creditors Arrangement Act, RSC 1985, c. C-36, as amended (the “CCAA”), substantially in the form attached hereto as Schedule “B”:
  - (a) Abridging the time for service of this Application and the supporting materials and deeming service thereof to be good and sufficient;
  - (b) Declaring Free Rein to be a company to which the CCAA applies;
  - (c) Authorizing the continuation of the proposal proceedings (the “NOI Proceedings”) commenced under the Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended (the “BIA”), on June 12, 2023 pursuant to the Notice of Intention to Make a Proposal filed by the debtor, Free Rein Resources Ltd. (“Free Rein”), under the CCAA;
  - (d) Appointing FTI as Free Rein’s Monitor with enhanced powers, including the authorization to:
    - (i) take possession of Free Rein’s property, business and undertaking;
    - (ii) carry on Free Rein’s business, including the power to enter into agreements on behalf of Free Rein;
    - (iii) engage consultants, contractors, and other persons, from time to time, to assist with the exercise of the Monitor’s powers and duties;
    - (iv) receive and collect monies on behalf of Free Rein;
    - (v) execute, endorse and sign documents of whatever nature in respect of Free Rein’s property and business;
    - (vi) market, sell or convey Free Rein’s property or business;
    - (vii) exercise any power which may be properly exercised by an officer or the board of directors of Free Rein;
    - (viii) terminate the employment of Free Rein’s employees; and
    - (ix) to issue and/or cancel and/or redeem shares of Free Rein.
  - (e) Authorizing the Monitor to pay the reasonable expenses incurred by Free Rein;
  - (f) Staying all proceedings, rights and remedies against or in respect of Free Rein, or its business or property, or the Monitor and its counsel and professional advisors until December 17, 2023 (the “Stay Period”), except as set forth in the Initial Order;
  - (g) Approving and continuing the Administration Charge granted under the NOI Proceedings against Free Rein’s assets in the maximum amount of \$200,000.00, and authorizing Free Rein to pay the reasonable professional fees and disbursements of the Monitor and its legal counsel (including in its capacity as Proposal Trustee during the NOI Proceedings), with the payment of such reasonable fees and disbursements to be secured by the Administration

Charge, as well as the unpaid legal fees of Free Rein's counsel incurred during the NOI Proceedings; and

2. Such further and other relief as may be sought by the Applicant and this Honourable Court may deem appropriate.

**Basis for this claim:**

**Loan history and default**

3. Free Rein is an Alberta corporation engaged in the oil and gas exploration and production business, with a head office located in Calgary, Alberta. A significant proportion of Free Rein's gas production is sour, and all of Free Rein's production is processed at a nearby facility (the "**Tidewater Gas Plant**") owned by Tidewater Midstream and Infrastructure Ltd. ("**Tidewater**").
4. Invico is Free Rein's senior secured lender, holding a floating charge registered in first position over all of Free Rein's assets.
5. Pursuant to a loan agreement dated September 21, 2022 between Invico as lender and Free Rein as borrower (the "**Loan Agreement**"), Invico agreed to advance a loan (the "**Loan**") to Free Rein in the aggregate principal amount of \$10,500,000.
6. The Loan was to be advanced in three tranches, with the first tranche, Tranche A, in the amount of \$6,100,000 to be advanced on the closing date set out in the Loan Agreement.
7. Shortly after Invico advanced Tranche A of the Loan to Free Rein, Free Rein encountered operating challenges while conducting its drilling and completion program, which resulted in production levels much lower than had been projected.
8. Throughout late 2022 and early 2023, Free Rein's financial and operational circumstances continued to deteriorate.
9. On April 18, 2023, Invico and Free Rein entered into an amended and restated loan agreement (the "**AR Loan Agreement**") having an effective date of March 31, 2023. The AR Loan Agreement was designed to accommodate Free Rein's requested timelines to cure its defaults and to provide Free Rein with additional liquidity by deferring and capitalizing payments due under the AR Loan Agreement through to May 31, 2023. It was expected that these accommodations would allow Free Rein to strengthen its financial position.
10. Free Rein defaulted on its obligations under the AR Loan Agreement on May 31, 2023. As a result, on June 2, 2023, Invico demanded repayment of the Loan, and enclosed therein a notice of intention to enforce security pursuant to section 244 of the *BIA*.

**The NOI Proceeding**

11. On June 12, 2023, Free Rein filed a Notice of Intention to Make a Proposal ("**NOI**") pursuant to section 50.4(1) of the *BIA* with the Office of the Superintendent of Bankruptcy. FTI is the proposal trustee of Free Rein in the NOI Proceedings (in such capacity, the "**Proposal Trustee**").
12. On August 25, 2023, Free Rein commenced a court-supervised sale and investment solicitation process ("**SISP**") with respect to Free Rein's property and business. The SISP was administered and supervised by the Proposal Trustee.

13. Under the SISP, Invico provided a stalking horse term sheet (the “**Stalking Horse Term Sheet**”) that contemplated a credit bid in the amount of all of the secured indebtedness owing by Free to Invico. The Stalking Horse Term Sheet provided that Invico could advance its bid either in the form of an asset purchase, or in the form of a share transaction.
14. Twenty-three parties executed non-disclosure agreements in the SISP and were granted access to Free Rein’s virtual data room. Nine parties submitted non-binding LOIs by the Phase 1 Bid Deadline (including the stalking horse bid submitted by Invico).
15. Of the parties that submitted non-binding LOIs, six were determined by the Proposal Trustee and Free Rein to be qualified bidders that would be permitted to conduct further due diligence, with a view of submitting a binding formal offer before the Phase 2 Bid Deadline.
16. The SISP resulted in two formal offers (in addition to the Stalking Horse Term Sheet), on or before the Phase 2 Bid Deadline of November 6, 2023, including one offer advanced by Mr. McCallum, Free Rein’s Chairman and CEO.

### **The Gas Plant Shut-Down**

17. On November 15, 2023, Tidewater notified Free Rein that Tidewater anticipated that the inlet gas volumes at the Tidewater Gas Plant would not be sufficient for the Tidewater Gas Plant to be safely run. As a result, Tidewater would be issuing a force majeure notice (the “**Force Majeure Notice**”) and would be shutting down the Tidewater Gas Plant as of November 30, 2023. Tidewater further advised that, as a result, it would be unable to accept Free Rein’s oil and gas production at the Tidewater Gas Plant after November 30, 2023.
18. As a result of the Tidewater Gas Plant’s shut down, Free Rein was forced to shut in all of its wells. The end result of the Tidewater Gas Plant’s shut down is that Free Rein is not able to produce oil or gas or otherwise generate any revenue until a longer term strategy is developed with capital expenditures to support such strategies.
19. On or about November 18, 2023, the Proposal Trustee advised all parties that had submitted offers by the Phase 2 Bid Deadlines of the Gas Plant’s impending shut-down. The parties (other than Invico) that had submitted offers withdrew their respective offers upon being advised that the Tidewater Gas Plant would be shut down indefinitely.

### **Continuation into the CCAA Proceedings**

20. The NOI Proceedings have been underway for nearly six months and has failed to generate a viable or any proposal.
21. Invico has proposed advancing its stalking horse bid on modified terms, in view of the material adverse change to Free Rein’s operations, through a structure that will allow Free Rein to continue as a going concern.
22. However, Free Rein will be deemed bankrupt after December 12, 2023, being six months after Free Rein filed the NOI.
23. The timing of the Force Majeure Notice, at the end of Free Rein’s SISP and just before the expiry of the NOI Proceedings (at which time there will be an automatic bankruptcy) has caused a significant amount of urgency in these proceedings.

24. Invico remains the only party willing to transact with Free Rein, and is doing so as a protective measure so that one day it may recoup the amounts it advanced from Free Rein's assets. However, Invico is concerned that the structure of the transaction that it believes is necessary to protect its position (i.e. the Transaction) cannot be properly effected through a bankruptcy proceeding.
25. Free Rein is a company to which the CCAA applies. It has more than \$5,000,000.00 in outstanding creditor claims.
26. Free Rein has not filed a proposal in the NOI Proceedings.
27. Invico is Free Rein's first-ranking secured lender. The indebtedness owing by Free Rein to Invico exceeds \$6.1 million as at December 4, 2023. Free Rein's indebtedness owing to Invico is secured against all of Free Rein's real and personal property.
28. Invico seeks to continue the NOI Proceedings under the CCAA (the "**CCAA Proceedings**"), as the CCAA provides the most appropriate forum to advance the proposed Transaction and conclude Free Rein's insolvency proceedings. Converting from the NOI Proceedings to the CCAA Proceedings presents the best chance for preserving any remaining value of Free Rein's assets and business in the circumstances.

#### **Enhanced Powers of the Monitor**

29. FTI has consented to act as the Monitor of Free Rein.
30. Invico is seeking enhanced powers for the proposed Monitor in order to allow the Monitor to carry out many of the functions, duties and powers that would normally be carried out by the directors and officers of Free Rein, to ensure a smooth transition to the CCAA Proceedings and advance the proposed Transaction.

#### **Preservation of the Administration Charge**

31. The Administration Charge granted in the NOI Proceedings secured the legal fees of Free Rein's legal counsel, and the professional fees of the Proposal Trustee and its legal counsel, up to a maximum amount of \$200,000 (the "**Administration Charge**").
32. Invico seeks to continue the Administration Charge in the CCAA Proceedings, and to extend the Administration Charge to secure the professional fees of FTI in its capacity as Monitor, along with the legal fees of the Monitor's legal counsel. In addition, the Administration Charge would be continued to cover the unpaid fees and disbursements of the Proposal Trustee, the Proposal Trustee's counsel and Free Rein's legal counsel incurred during the NOI Proceedings.
33. The work performed by the professionals covered by the Administration Charge in the NOI Proceedings was integral to progressing the NOI Proceedings, and continues to be integral to successfully restructuring Free Rein. In order to ensure the continued participation of the Monitor and its legal counsel in the CCAA Proceedings, the Administration Charge is required to protect and secure their fees and disbursements.
34. The Administration Charge is reasonable and appropriate in the circumstances and is critical to the success of Free Rein's insolvency proceedings. The proposed Administration Charge is sought in the same quantum as in the NOI Proceedings.

**Consecutive granting of the Initial Order and ARIO**

- 35. Free Rein has been engaged in the NOI Proceedings for nearly six months. During that time, it has identified what it and the Monitor believes are all of Free Rein's creditors and those creditors were notified of the NOI Proceedings.
- 36. A service list was created in the NOI Proceedings from the creditors who sought to be added to the list, after receiving notification of the NOI and those parties were given notice of this application.
- 37. Free Rein's creditors will not be prejudiced if the ARIO is granted immediately following the Initial Order.

**Affidavit or other evidence to be used in support of this application:**

- 38. The Affidavit of Chris Wutzke, sworn December 4, 2023;
- 39. Pre-filing report of the Monitor; and
- 40. Such further and other materials as counsel may advise and that this Honourable Court may permit.

**Applicable Acts and regulations:**

- 41. The *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, including, but not limited to sections 4, 5, 10(2), 11, 11.02, 11.2, 11.5, 11.52, 11.6, 11.7.
- 42. The *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended; and
- 43. Such further and other Acts and Regulations as counsel may advise and that this Honourable Court may permit.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

# Schedule “A”

**Schedule "A"**

COURT FILE NUMBER 2301-  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
MATTER 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 FREE REIN RESOURCES LTD.  
APPLICANT INVICO DIVERSIFIED INCOME LIMITED PARTNERSHIP  
RESPONDENT FREE REIN RESOURCES LTD.  
DOCUMENT **SERVICE LIST**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
**Fasken Martineau DuMoulin LLP**  
Barristers and Solicitors  
Suite 3400, 350 7 Avenue SW  
Calgary, Alberta T2P 4K9  
**Lawyer: Robyn Gurofsky / Anthony Mersich**  
Phone Number: (403) 261-9469 / (587) 233-4124  
Email: [rgurofsky@fasken.com](mailto:rgurofsky@fasken.com) / [amersich@fasken.com](mailto:amersich@fasken.com)  
File No. 324505.00011

**SERVICE LIST**

**Updated: December 4, 2023**

<p><b>Burnet, Duckworth &amp; Palmer LLP</b> 2400, 525 – 8 Avenue SW Calgary, AB T2P 1G1</p> <p><b>Attention: David LeGeyt Ryan Algar</b> Email: <a href="mailto:dlegeyt@bdplaw.com">dlegeyt@bdplaw.com</a> <a href="mailto:ralgar@bdplaw.com">ralgar@bdplaw.com</a></p> <p><i>Counsel for Free Rein Resources Ltd.</i></p>	<p><b>Fasken Martineau DuMoulin LLP</b> Suite 3400, 350 – 7 Avenue SW Calgary, AB T2P 3N9</p> <p><b>Attention: Robyn Gurofsky Anthony Mersich</b> Email: <a href="mailto:rgurofsky@fasken.com">rgurofsky@fasken.com</a> <a href="mailto:amersich@fasken.com">amersich@fasken.com</a></p> <p><i>Counsel for Invico Diversified Income Limited Partnership</i></p>
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<p><b>Free Rein Resources Ltd.</b> Suite 3900, 350 – 7 Avenue SW Calgary, AB T2P 3N9</p> <p><b>Attention: Terry McCallum</b> Email: <a href="mailto:terry@freereinres.com">terry@freereinres.com</a></p>	<p><b>FTI Consulting Canada Inc.</b> Suite 1610 520 5 Ave SW Calgary, AB T2P 3R7</p> <p><b>Attention: Deryck Helkaa Dustin Olver Brett Wilson</b></p> <p>Email: <a href="mailto:deryck.helkaa@fticonsulting.com">deryck.helkaa@fticonsulting.com</a> <a href="mailto:dustin.olver@fticonsulting.com">dustin.olver@fticonsulting.com</a> <a href="mailto:brett.wilson@fticonsulting.com">brett.wilson@fticonsulting.com</a></p> <p><i>Proposal Trustee</i></p>
<p><b>Tartan Energy Technology (Shanghai) Ltd.</b> Room 1807, Building 1 No. 497, Zhengli Road, Yangpu District Shanghai, PRC 200433</p> <p><b>Tartan Energy Group Inc.</b> Suite 1520, 101 – 6 Ave SW Calgary, AB T2P 3P4</p> <p>Email: <a href="mailto:tlau@tartansh.com">tlau@tartansh.com</a></p> <p><b>PPR Registration No.:</b> 21081210023 21081210096</p>	<p><b>ATB Financial – Collateral Management</b> 3699 – 63<sup>rd</sup> Ave NE Calgary, AB T3J 0G7 Phone #: 403 974 3565 Fax #: 403 974 5288</p> <p>Email: <a href="mailto:pnrnotices@atb.com">pnrnotices@atb.com</a></p> <p><b>PPR Registration No.:</b> 19051327522</p>
<p><b>Invico Diversified Income Limited Partnership</b> 600, 209 – 8 Ave SW Calgary, AB T2P 1B8</p> <p><b>Attention: Allison Taylor</b> Email: <a href="mailto:amtaylor@invicocapital.com">amtaylor@invicocapital.com</a></p> <p><b>PPR Registration No:</b> 22092001258 22092001277</p>	<p><b>Invico Diversified Income Managing GP Inc.</b> 600, 209 – 8 Ave SW Calgary, AB T2P 1B8</p> <p><b>Attention: Allison Taylor</b> Email: <a href="mailto:amtaylor@invicocapital.com">amtaylor@invicocapital.com</a></p> <p><b>PPR Registration No:</b> 22092001258 22092001277</p>

<p><b>Cassels Brock &amp; Blackwell LLP</b> Suite 3810, Bankers Hall West 888 3rd Street SW Calgary, AB T2P 5C5</p> <p><b>Attention: Jeffrey Oliver Kara Davis Danielle Marechal</b></p> <p>Email: <a href="mailto:joliver@cassels.com">joliver@cassels.com</a> <a href="mailto:kdavis@cassels.com">kdavis@cassels.com</a> <a href="mailto:dmarechal@cassels.com">dmarechal@cassels.com</a></p> <p><i>Counsel to FTI Consulting Canada Inc.</i></p>	<p><b>Bishop &amp; McKenzie LLP</b> 2200, 555 – 4 Ave SW Calgary, AB T2P 3E7</p> <p><b>Attention: Anthony Dekens</b> Email: <a href="mailto:adekens@bmlp.ca">adekens@bmlp.ca</a></p> <p><i>Counsel to Legacy Disposal Facility Ltd., in relation to its Joint Venture Agreement with Free Rein Resources Ltd.</i></p>
<p><b>Dunphy Best Blocksom LLP</b> 800, 517 10th Avenue SW Calgary AB T2R 0A8</p> <p><b>Attention: Christopher Dormer</b> Email: <a href="mailto:dormer@dbblaw.com">dormer@dbblaw.com</a></p> <p><i>Counsel to Jeanelle George and Anne-Marie Melby, Plaintiffs in Action no. ABKB 2301-10103</i></p>	<p><b>Miles Davison LLP</b> 900, 517 – 10th Avenue S.W. Calgary, Alberta T2R 0A8</p> <p><b>Attention: Ward Mather</b> Email: <a href="mailto:wmather@milesdavison.com">wmather@milesdavison.com</a></p> <p><i>Counsel to Capital Now Ventures Inc.</i></p>
<p><b>Skyline Legal Group LLP</b> Suite 601, 1701 Centre Street NW Calgary, AB T2E 7Y2</p> <p><b>Attention: George Huang</b> Email: <a href="mailto:ghuang@skylinelegal.ca">ghuang@skylinelegal.ca</a></p> <p><i>Counsel to Tartan Energy Technology (Shanghai) Ltd. and Tartan Energy Group Inc.</i></p>	<p><b>CWC Energy Services Corp.</b> c/o Burron Law 20 Windhorse Bay Calgary, AB T3Z0B4</p> <p><i>Potential Creditor</i></p>
<p><b>Step Energy Services Ltd.</b> c/o Field LLP 400, 444 7 AVE SW Calgary AB T2P 0X8</p> <p><b>Attention: Matthew Vernon</b></p> <p>Email: <a href="mailto:mvernon@fieldlaw.com">mvernon@fieldlaw.com</a></p> <p><i>Potential Creditor</i></p>	<p><b>Codeco-Vanoco Engineering Inc.</b> c/o Field LLP 444 7 Ave SW Suite 400 Calgary, AB T2P 0X8</p> <p><i>Potential Creditor</i></p>

<p><b>Gowling WLG (Canada) LLP</b> Suite 1600, 421 7th Avenue SW Calgary AB T2P 4K9</p> <p><b>Attention: Stephen Kroeger Tom Cumming Adriana Da Silva Bellini</b></p> <p>Email: <a href="mailto:stephen.kroeger@gowlingwlg.com">stephen.kroeger@gowlingwlg.com</a> <a href="mailto:Tom.Cumming@gowlingwlg.com">Tom.Cumming@gowlingwlg.com</a> <a href="mailto:Adriana.DaSilvaBellini@gowlingwlg.com">Adriana.DaSilvaBellini@gowlingwlg.com</a></p> <p><i>Counsel to MAGA Energy Ltd.</i></p>	<p><b>Canadian Natural Resources Limited</b> 2100, 855 – 2 Street S.W. Calgary, AB T2P 4J8</p> <p><b>Attention: Jelena Molnar</b> Email: <a href="mailto:Jelena.Molnar@cnrl.com">Jelena.Molnar@cnrl.com</a></p>
<p><b>PrairieSky Royalty Ltd.</b> 1700, 350 – 7 Avenue SW Calgary, AB T2P 3N9</p> <p><b>Attention: James Nixon</b> Email: <a href="mailto:james.nixon@prairiesky.com">james.nixon@prairiesky.com</a> <a href="mailto:landcomplianceinquiries@prairiesky.com">landcomplianceinquiries@prairiesky.com</a></p>	<p><b>Dunphy Best Blocksom LLP</b> 800, 517 10th Avenue SW Calgary AB T2R 0A8</p> <p><b>Attention: Beth P. Younggren</b> Email: <a href="mailto:byounggren@dbblaw.com">byounggren@dbblaw.com</a></p> <p><i>Counsel to Puravida Exploration Inc. and 1591195 Alberta Ltd.</i></p>
<p><b>Blake, Cassels &amp; Graydon LLP</b> 855 – 2 Street SW, Suite 3500 Calgary AB T2P 4J8</p> <p><b>Attention: Kelly J. Bourassa Jessica MacKinnon</b> Email: <a href="mailto:kelly.bourassa@blakes.com">kelly.bourassa@blakes.com</a> <a href="mailto:jessica.mackinnon@blakes.com">jessica.mackinnon@blakes.com</a></p> <p><i>Counsel to China Construction Bank Toronto Branch</i></p>	<p><b>OptiMax Drilling Solutions Inc.</b> Suite 1900, 407 – 2nd Street SW Calgary, AB T2P 2Y3</p> <p><b>Attention: Peggy Sullivan</b> Email: <a href="mailto:psullivan@optimaxdrilling.com">psullivan@optimaxdrilling.com</a></p>
<p><b>CARON &amp; PARTNERS LLP</b> Fifth Avenue Place – West Tower 2120, 237 – 4th Avenue, S.W. Calgary, Alberta T2P 4K3</p> <p><b>Attention: Dean Hutchison</b> Email: <a href="mailto:dhutchison@caronpartners.com">dhutchison@caronpartners.com</a></p> <p><i>Counsel to GWL Realty Advisors Inc</i></p>	<p><b>Canada Revenue Agency</b> Surrey National Verification and Collections Centre 9755 King George Boulevard Surrey BC V3T 5E1</p> <p><b>Fax (toll-free): 1-833-697-2390</b></p>

**Email:**

[dlegeyt@bdplaw.com](mailto:dlegeyt@bdplaw.com); [ralgar@bdplaw.com](mailto:ralgar@bdplaw.com); [rgurofsky@fasken.com](mailto:rgurofsky@fasken.com); [amersich@fasken.com](mailto:amersich@fasken.com);  
[terry@freereinres.com](mailto:terry@freereinres.com); [Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com); [dustin.olver@fticonsulting.com](mailto:dustin.olver@fticonsulting.com);  
[brett.wilson@fticonsulting.com](mailto:brett.wilson@fticonsulting.com); [tlau@tartansh.com](mailto:tlau@tartansh.com); [pprnotices@atb.com](mailto:pprnotices@atb.com); [amtaylor@invicocapital.com](mailto:amtaylor@invicocapital.com);  
[joliver@cassels.com](mailto:joliver@cassels.com); [kdavis@cassels.com](mailto:kdavis@cassels.com); [dmarechal@cassels.com](mailto:dmarechal@cassels.com); [adekens@bmlp.ca](mailto:adekens@bmlp.ca);  
[dormer@dbblaw.com](mailto:dormer@dbblaw.com); [wmather@milesdavison.com](mailto:wmather@milesdavison.com); [ghuang@skylinelegal.ca](mailto:ghuang@skylinelegal.ca); [mvernon@fieldlaw.com](mailto:mvernon@fieldlaw.com);  
[stephen.kroeger@gowlingwlg.com](mailto:stephen.kroeger@gowlingwlg.com); [Tom.Cumming@gowlingwlg.com](mailto:Tom.Cumming@gowlingwlg.com);  
[Adriana.DaSilvaBellini@gowlingwlg.com](mailto:Adriana.DaSilvaBellini@gowlingwlg.com); [Jelena.Molnar@cnrl.com](mailto:Jelena.Molnar@cnrl.com); [james.nixon@prairiesky.com](mailto:james.nixon@prairiesky.com);  
[landcomplianceinquiries@prairiesky.com](mailto:landcomplianceinquiries@prairiesky.com); [byounggren@dbblaw.com](mailto:byounggren@dbblaw.com); [kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com);  
[jessica.mackinnon@blakes.com](mailto:jessica.mackinnon@blakes.com); [psullivan@optimaxdrilling.com](mailto:psullivan@optimaxdrilling.com); [dhutchison@caronpartners.com](mailto:dhutchison@caronpartners.com);

**Fax:**

**CRA:** 1-833-697-2390

**Courier:****CWC Energy Services Corp.**

c/o Burron Law  
20 Windhorse Bay  
Calgary, AB T3Z0B4

**Codeco-Vanoco Engineering Inc.**

c/o Field LLP  
444 7 Ave SW, Suite 400  
Calgary, AB T2P 0X8

# Schedule “B”

Clerk's Stamp:



COURT FILE NUMBER  
COURT  
JUDICIAL CENTRE OF

2301-  
COURT OF KING'S BENCH OF ALBERTA  
CALGARY  
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 FREE REIN  
RESOURCES LTD.

APPLICANT:

INVICO DIVERSIFIED INCOME LIMITED  
PARTNERSHIP, by its general partner INVICO  
DIVERSIFIED INCOME MANAGING GP INC.

RESPONDENT(S):

FREE REIN RESOURCES LTD.

DOCUMENT

**AMENDED AND RESTATED INITIAL ORDER**

CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT:

**FASKEN MARTINEAU DUMOULIN LLP**  
#3400 – 350 7th Ave SW  
Calgary, AB T2P 3N9

Solicitor: Robyn Gurofsky / Anthony Mersich  
Telephone: (403) 261 9469 / (587) 233 4124  
Email: rgurofsky@fasken.com / amersich@fasken.com  
File Number : 324505.00011

**DATE ON WHICH ORDER WAS  
PRONOUNCED:**

December 7, 2023

**NAME OF JUDGE WHO MADE  
THIS ORDER:**

The Honourable Justice J.T. Neilson

**LOCATION OF HEARING:**

Calgary Courts Centre, Calgary, Alberta

**UPON** the application of Invico Diversified Income Limited Partnership, secured creditor (the "**Applicant**") pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (the "**CCAA**"); **AND UPON** having read the Application, the Affidavit of Chris Wutzke; and the Affidavit of Service of Kim Picard, filed; **AND UPON** noting that the secured creditor affected by the charges created herein, is the Applicant; **AND UPON** being advised that Free Rein Resources Ltd. ("**Free Rein**") had previously commenced proceedings (the "**NOI Proceedings**") under Part

III of the *Bankruptcy and Insolvency Act* (the “**BIA**”) having Court File Number 25-2954304 and Estate Number B201954304, with such proceedings scheduled to expire on December 12, 2023; **AND UPON** hearing counsel for the Applicant, counsel for the Proposal Trustee/proposed Monitor and counsel for Free Rein; **AND UPON** reading the Pre-Filing Report of the Monitor, dated [DATE];

**AND UPON HAVING GRANTED** the Initial Order commencing the within CCAA proceedings;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

**APPLICATION**

2. Free Rein is a company to which the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36 (the “**CCAA**”) applies.
3. The NOI Proceedings are hereby taken up and continued under the CCAA and the provisions of Part III of the BIA shall have no further application to Free Rein. The NOI Proceedings shall have no further force and effect, and are hereby terminated, save that any and all acts, steps, agreements and procedures validly taken, done or entered into by Free Rein during the NOI Proceedings shall remain valid, binding and actionable within these proceedings. For certainty, approval of the Monitor’s and its counsel’s fees and disbursements and approval of the Monitor’s activities in this proceeding shall be deemed approval of the fees and disbursements and activities of FTI, in its capacity as proposal trustee of Free Rein (in such capacity, the “**Proposal Trustee**”) and the fees and disbursements of the Proposal Trustee’s counsel in the NOI Proceeding. The Applicant is hereby directed and authorized to file a copy of this Order in the NOI Proceedings.

## APPOINTMENT OF MONITOR AND ENHANCED POWERS

4. FTI Consulting Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor:

(a) the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) of Free Rein; and

(b) Free Rein’s business (the “**Business**”) and financial affairs,

with the powers and obligations set out in the CCAA and the additional powers as set forth herein. Free Rein and its shareholders, officers, directors, employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) shall advise the Monitor of all material steps taken by Free Rein pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor’s functions.

5. The Monitor is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and Business and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized to do any of the following where the Monitor 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, which shall include the Monitor’s ability to abandon, dispose of, or otherwise release any interest in any of the Debtor’s real or personal property, or any right in any immovable;

(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, including the powers to enter into any 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 any contracts of Free Rein;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, 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 Monitor's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease machinery, equipment, inventories, supplies, premises or other assets to continue the business of Free Rein or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to Free Rein and to exercise all remedies of Free Rein in collecting such monies, including, without limitation, to enforce any security held by Free Rein;
- (g) to settle, extend or compromise any indebtedness owing to or by Free Rein;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property or the Business, whether in the Monitor's name or in the name and on behalf of Free Rein, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of Free Rein;
- (j) 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 Free Rein, the Property or the Monitor, 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, and provided further that nothing in this Order shall authorize the Monitor to defend or settle the action in which this Order is made unless otherwise directed by this Court;

- (k) to sell, convey, transfer, lease or assign the Property or the Business or any part or parts thereof out of the ordinary course of business with approval of this Court, and in each such case notice under subsection 60(8) of the *Personal Property Security Act*, RSA 2000, c. P-7 or any other similar legislation in any other province or territory shall not be required;
- (l) to apply for any vesting order or other orders (including, without limitation, confidentiality or sealing orders) necessary to convey the Property or Business or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property or the Business;
- (m) to report, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate all matters relating to the Property, the Business and these CCAA proceedings, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;
- (n) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property, and when submitted by the Monitor for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, or the provisions of any other similar legislation in any other province or territory, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles shall accept all Affidavits of Corporate Signing Authority submitted by the Monitor in its capacity as Monitor of Free Rein and not in its personal capacity;

- (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 behalf of and, if thought desirable by the Monitor, in the name of Free Rein;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of Free Rein, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by Free Rein;
- (q) to exercise any shareholder, partnership, joint venture or other rights which Free Rein may have;
- (r) to exercise any power which may be properly exercised by an officer or the board of directors of Free Rein;
- (s) to issue and/or cancel share certificates in Free Rein;
- (t) monitor Free Rein's receipts and disbursements, Business and dealings with the Property;
- (u) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein and immediately report to the Court if in the opinion of the Monitor there is a material adverse change in the financial circumstances of Free Rein;
- (v) report to the Applicant and its counsel as requested with financial and other information as agreed to between the Monitor and the Applicant which may be used in these proceedings, including reporting on a basis as reasonably required by the Applicant;
- (w) prepare Free Rein's cash flow statements and reporting as reasonably required by the Applicant, on a periodic basis, as agreed to by the Applicant;
- (x) have full and complete access to the Property, including taking possession of the leased premises, books, records, data, including data in electronic form and other financial documents of Free Rein to the extent that is necessary to adequately

assess the Property, Business, and financial affairs of Free Rein or to perform its duties arising under this Order;

- (y) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (z) hold funds in trust or in escrow, to the extent required, to facilitate settlements between Free Rein and any other Person; and
- (aa) perform such other duties as are required by this Order or by this Court from time to time and take any steps reasonably incidental to the exercise of these powers or performance of any statutory obligations;

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

6. Notwithstanding anything contained in this Order, the Monitor is not and shall not be deemed:
  - (a) a principal, director, officer, or employee of Free Rein;
  - (b) an employer, successor employer, or related employer of the employees of Free Rein or any employee caused to be hired by Free Rein by the Monitor within the meaning of any relevant legislation, regulation, common law, or rule of law or equity governing employment, pensions, or labour standards for any purpose whatsoever or expose the Monitor to any liability to any individual arising from or relating to their employment or previous employment Free Rein; and
  - (c) the receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of Free Rein within the meaning of any relevant legislation, regulation, common law, or rule of law or equity.

7. Free Rein and its officers, directors and Assistants shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order and shall provide such assistance as the Monitor may reasonably request from time to time to enable the Monitor to carry out its duties and powers as set out in this Order, any other order of this Court under the CCAA or applicable law generally.
8. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of Free Rein with respect to such matters.
9. (a) Notwithstanding anything in any federal or provincial law, the Monitor is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
  - (i) before the Monitor's appointment; or
  - (ii) after the Monitor's appointment unless it is established that the condition arose or the damage occurred as a result of the Monitor's gross negligence or wilful misconduct.
- (b) Nothing in subparagraph 9(a) exempts the Monitor from any duty to report or make disclosure imposed by a law referred to in that paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to this order, where an order is made which has the effect of requiring the Monitor to remedy any environmental condition or environmental damage affecting the Property, the Monitor is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
  - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is

appointed, or during the Stay Period, the Monitor

- (A) complies with the order; or
- (B) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(ii) during the Stay Period, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Monitor, if the order is in effect when the Monitor is appointed by,

- (A) the court or body having jurisdiction under the law pursuant to which the order was made to enable the Monitor to contest the order; or
- (B) the court having jurisdiction in these proceedings for the purposes of assessing the economic viability of complying with the order or,

(iii) if the Monitor had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

10. The Monitor shall provide the Applicant and any creditor of Free Rein with information provided by Free Rein in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by Free Rein is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor may determine.

11. In addition to the rights and protections afforded the Monitor under the CCAA or as an Officer of this Court, and the protections afforded to the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.
12. Nothing in this Order shall derogate from the protections from liability provided under the BIA or under any Orders issued by this Court regarding FTI in its capacity as Proposal Trustee in the NOI Proceedings.
13. To the extent permitted by law, the Monitor shall be entitled but not required to make the following advances or payments, on Free Rein's behalf and from Free Rein's accounts, of the following expenses, incurred prior to or after this Order:
  - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
  - (b) the reasonable fees and disbursements of any Assistants retained or employed by Free Rein in respect of these proceedings, at their standard rates and charges, including for periods prior to the date of this Order.
14. Except as otherwise provided to the contrary herein, the Monitor shall be entitled but not required to pay, on Free Rein's behalf and from Free Rein's accounts, all reasonable expenses incurred by Free Rein in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
  - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

- (b) payment for goods or services actually supplied to Free Rein following the date of this Order.
- 15. The Monitor shall remit on Free Rein's behalf and from Free Rein's accounts, in accordance with legal requirements, or pay:
  - (a) any statutory deemed trust amounts in favour of the Crown in Right of Canada or of any Province thereof or any other taxation authority that are required to be deducted from employees' wages, including, without limitation, amounts in respect of:
    - (i) employment insurance,
    - (ii) Canada Pension Plan, and
    - (iv) income taxes,but only where such statutory deemed trust amounts arise after the date of this Order, or are not required to be remitted until after the date of this Order, unless otherwise ordered by the Court;
  - (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by Free Rein in connection with the sale of goods and services by Free Rein, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
  - (c) any amount payable to the Crown in Right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and that are attributable to or in respect of the carrying on of the Business by Free Rein.
- 16. Until such time as a real property lease is disclaimed or resiliated in accordance with the CCAA, the Monitor may pay, on Free Rein's behalf and from Free Rein's accounts, all



amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease) based on the terms of existing lease arrangements or as otherwise may be negotiated by the Monitor from time to time for the period commencing from and including the date of this Order (“**Rent**”), but shall not pay any rent in arrears.

17. Except as specifically permitted in this Order, the Monitor is hereby directed, until further order of this Court:
  - (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by Free Rein to any of its creditors as of the date of this Order;
  - (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
  - (c) not to grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

18. The Monitor shall, subject to such requirements as are imposed by the CCAA, have the right to:
  - (a) permanently or temporarily cease, downsize or shut down any portion of the Business or operations and to dispose of redundant or non-material assets not exceeding \$25,000 in any one transaction or \$100,000 in the aggregate, provided that any sale that is either (i) in excess of the above thresholds, or (ii) in favour of a person related to Free Rein (within the meaning of section 36(5) of the CCAA), shall require authorization by this Court in accordance with section 36 of the CCAA;
  - (b) terminate the employment of such of Free Rein’s employees or temporarily lay off such of its employees as it deems appropriate whether by agreement or otherwise;
  - (c) disclaim or resiliate, in whole or in part, Free Rein’s arrangements or agreements of any nature whatsoever with whomsoever, whether oral or written, as the Monitor deems appropriate, in accordance with section 32 of the CCAA; and

(d) pursue all avenues of refinancing or restructuring of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or restructuring,

all of the foregoing to permit Free Rein to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

19. The Monitor shall provide each of the relevant landlords with notice of its 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. If the landlord disputes the Monitor’s or Free Rein’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 Monitor, or by further order of this Court upon application by the Monitor on at least two (2) days' notice to such landlord and any such secured creditors. If the Monitor disclaims or resiliates the lease governing such leased premises in accordance with section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute other than Rent payable for the notice period provided for in section 32(5) of the CCAA, and the disclaimer or resiliation of the lease shall be without prejudice to Free Rein’s claim to the fixtures in dispute.
20. If a notice of disclaimer or resiliation is delivered pursuant to section 32 of the CCAA, then:
  - (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Free Rein and the Monitor 24 hours' prior written notice; and
  - (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against Free Rein in respect of such lease or leased premises and such landlord shall be entitled to notify Free Rein and the Monitor of the basis on which it is taking possession and to gain

possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST FREE REIN OR THE PROPERTY**

21. Until and including **January 31, 2023**, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court (each, a “**Proceeding**”) shall be commenced or continued against or in respect of Free Rein or the Monitor, or affecting the Business or the Property, except with leave of this Court, and any and all Proceedings currently under way against or in respect of Free Rein or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

22. During the Stay Period, all rights and remedies 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**”), whether judicial or extra-judicial, statutory or non-statutory against or in respect of Free Rein or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court, provided that nothing in this Order shall:
- (a) empower Free Rein to carry on any business that Free Rein is not lawfully entitled to carry on;
  - (b) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA;
  - (c) prevent the filing of any registration to preserve or perfect a security interest;
  - (d) prevent the registration of a claim for lien; or
  - (e) exempt Free Rein from compliance with statutory or regulatory provisions relating to health, safety or the environment.

23. Nothing in this Order shall prevent any party from taking an action against Free Rein where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Monitor at the first available opportunity.

#### **NO INTERFERENCE WITH RIGHTS**

24. During the Stay Period, no person shall accelerate, suspend, 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 Free Rein, except with the written consent of Free Rein and the Monitor, or leave of this Court.

#### **CONTINUATION OF SERVICES**

25. During the Stay Period, all persons having:
- (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with Free Rein, 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 Business or Free Rein

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by Free Rein or exercising any other remedy provided under such agreements or arrangements. Free Rein shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the usual prices or charges for all such goods or services received after the date of this Order are paid by Free Rein in accordance with the payment practices of Free Rein, or such other practices as may be agreed upon by the supplier or service provider and each of Free Rein and the Monitor, or as may be ordered by this Court.

## **NON-DEROGATION OF RIGHTS**

26. Nothing in this Order has the effect of prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to Free Rein.

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

27. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA and paragraph 24 of this Order, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of Free Rein with respect to any claim against the directors or officers that arose before the date of this Order and that relates to any obligations of Free Rein whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of Free Rein, if one is filed, is sanctioned by this Court or is refused by the creditors of Free Rein or this Court.

## **PROFESSIONAL FEES**

28. The Monitor and counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements (including any pre-filing fees and disbursements related to these CCAA proceedings), in each case at their standard rates and charges, by Free Rein as part of the costs of these proceedings. Free Rein's counsel, the Proposal Trustee and counsel to the Proposal Trustee and the Applicant, shall be paid its reasonable fees and disbursements incurred during the NOI Proceeding, to the extent they have not been paid. Free Rein is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicant and any outstanding accounts of Free Rein's counsel as of the date of this Order.
29. The Monitor and its legal counsel shall pass their accounts from time to time.

30. The Monitor, counsel to the Monitor, counsel to the Applicant and counsel to Free Rein, as security for the professional fees and disbursements incurred both before and after the granting of this Order, shall be entitled to the benefits of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge is a continuation of the Administration Charge granted in the NOI Proceedings, and shall not exceed an aggregate amount of \$200,000, as security for their professional fees and disbursements incurred at the normal rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings and in respect of the NOI Proceedings.
31. The filing, registration or perfection of the Administration Charge shall not be required, and the Administration Charge shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Administration Charge coming into existence, notwithstanding any such failure to file, register, record or perfect.
32. The Administration Charge shall constitute a charge on the Property and subject always to section 34(11) of the CCAA such Administration Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person.
33. The Administration Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge (the “**Chargees**”) shall not otherwise be limited or impaired in any way by:
  - (a) the pendency of these proceedings and the declarations of insolvency made in this Order;
  - (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**”) that binds Free Rein, and notwithstanding any provision to the contrary in any Agreement:
  - (i) neither the creation of the Administration Charge nor the execution, delivery, perfection, registration or performance of any documents in respect thereof shall create or be deemed to constitute a new breach by Free Rein of any Agreement to which it is a party;
  - (ii) 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 creation of the Administration Charge; and
  - (iii) the payments made by Free Rein pursuant to this Order and the granting of the Administration Charge, does not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

## **ALLOCATION**

- 34. Any interested Person may apply to this Court on notice to any other party likely to be affected for an order to allocate the Administration Charge amongst the various assets comprising the Property.

## **SERVICE AND NOTICE**

- 35. The Monitor shall (i) without delay, publish in the *BOE Report* a notice containing the information prescribed under the CCAA; (ii) within five (5) days after the date of this Order (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against Free Rein of more than \$1,000 and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the

prescribed manner, all in accordance with section 23(1)(a) of the CCAA and the regulations made thereunder.

36. The Monitor shall establish or continue a case website in respect of the within proceedings at <http://cfcanda.fticonsulting.com/freerein/> (the "**Monitor's Website**")
37. The Applicant and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, recorded mail, courier, personal delivery or electronic transmission to Free Rein's creditors or other interested parties at their respective addresses as last shown on the records of Free Rein and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail or recorded mail, on the seventh day after mailing. Any person that wishes to be served with any application and other materials in these proceedings must deliver to the Applicant or the Monitor by way of ordinary mail, courier, or electronic transmission, a request to be added to the service list (the "**Service List**") to be maintained by the Monitor.
38. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsel's email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor's website.
39. The Applicant, Free Rein, and, where applicable, the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by sending true copies thereof by prepaid ordinary mail, recorded mail, courier, personal delivery or electronic transmission to Free Rein's creditors or other interested parties at their respective addresses last shown on the records of Free Rein, or as otherwise updated on the Service List.

## **GENERAL**

40. The Monitor and the Applicant may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.



41. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Monitor will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Monitor's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
42. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager or a trustee in bankruptcy of Free Rein, the Business or the Property.
43. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Applicant, Free Rein and 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, Free Rein 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, Free Rein and the Monitor and their respective agents in carrying out the terms of this Order.
44. Each of the Applicant, Free Rein 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 proceeding for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
45. Any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

46. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

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Justice of the Court of Queen's Bench of Alberta