

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Dumas Holdings Inc.

Petitioner

AND

Tercon Investments Ltd., Tercon A.C. Ltd., Tercon  
Equipment Ltd. Tercon Construction Ltd., Tercon Mining  
Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP  
Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment  
Alaska Partnership and Tercon Alaska Ltd.

Respondents

**NOTICE OF APPLICATION**

**Name of applicant:** FTI Consulting Canada Inc., in its capacity as the Court-appointed Receiver of the assets, undertaking and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd.

**To:** Respondents

**TAKE NOTICE** that an application will be made by the applicant, FTI Consulting Canada Inc., (the “**Receiver**”) to The Honourable Mr. Justice Sewell at the New Westminster Courthouse at 651 Carnarvon Street, New Westminster, Vancouver, British Columbia on Wednesday, March 13, 2013 at 9:00 a.m. a.m. for the Orders set out in Part 1 below.

**Part 1: ORDERS SOUGHT**

1. That the time for service of this Notice of Application and supporting materials is hereby abridged so that this Application is properly returnable today, and the need for further service of the Notice of Application and supporting materials is hereby dispensed with.

2. That the Receiver is seeking orders substantially in the form attached hereto as Appendix "I" and such further and other relief as this Honourable Court may consider appropriate.

## **Part 2: FACTUAL BASIS**

1. Pursuant to an Order pronounced by The Honourable Mr. Justice Sewell on December 14, 2012 (the "**December 14 Order**"), FTI Consulting Canada Inc. was appointed as Receiver of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd. (collectively referred to as the "**Debtors**").

2. On January 15, 2013, The Honourable Mr. Justice Sewell granted an Order (the "**January 15 Order**") approving the sale of certain assets of the Debtors to Ritchie Bros. Auctioneers (Canada) Inc. and Ritchie Bros. Auctioneers (America) Inc. (together, "**Ritchie Bros**") as contemplated by the Asset Purchase and Sale Agreement dated December 21, 2012 (the "**APA**").

3. On January 21, 2013, The Honourable Mr. Justice Sewell granted the following Orders:

- (a) an Order (the "**Distribution Order**") authorizing the Receiver to establish a reserve in respect of proceeds of property in the Receiver's possession and authorizing the Receiver to distribute certain proceeds to HSBC Bank Canada, as Lead Arranger, Bookrunner and Administrative Agent under the Senior Security Credit Agreement dated February 28, 2012 ("**HSBC**"); and
- (b) an Order (the "**Bankruptcy Co-ordination Order**") authorizing and directing the Receiver, unless otherwise agreed with HSBC and Dumas Holdings Inc. ("**DHI**") to file assignments in bankruptcy for and on behalf of the Tercon companies and providing for the co-ordination of the receivership proceedings and bankruptcy proceedings.

4. On February 28, 2013, The Honourable Mr. Justice Sewell granted an Order (the “**Tercon Bankruptcy Application Order**”) authorizing FTI Consulting Canada Inc., in its capacity as receiver of Tercon Construction Ltd., to file an application for a Bankruptcy Order against Tercon Equipment Ltd.

5. The Distribution Order provides for the establishment of various reserves (the “**Reserves**”) from proceeds of realization of assets and collections of accounts receivable in order to protect the rights of parties that may have a claim in priority to the secured claims of HSBC and DHI.

6. Certain creditors of the Debtors may have claims against the Trisura Bonds (as referenced in the Fifth Report of the Receiver), which, if paid by Trisura Guarantee Insurance Company (“**Trisura**”), could give rise to potential subrogated priority claims against the Reserves by Trisura.

7. The Receiver and Trisura have agreed that the procedure for adjudication of claims against the Debtors and against the Trisura Bonds should be co-ordinated in order to maximize efficiency and to minimize the effort required of potential claimants.

8. The Receiver has developed a proprietary database for the secure on-line filing of information, documents and certain communications relating to claims procedures (the “**FTI Claims Site**”). Based on its experience using this application in other insolvency and restructuring cases, the Receiver believes that it will make it easier for creditors to submit their claims and supporting documentation and will significantly streamline the administration of the claims procedure (the “**Claims Procedure**”).

9. The Receiver has developed a protocol for the Claims Procedure, the particulars of which are described in the Fifth Report of the Receiver.

### **Part 3: LEGAL BASIS**

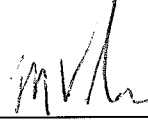
1. Rules 8-1, 10-2 and 13-5 of the *Rules of Court*; and
2. the inherent jurisdiction of this Honourable Court.

**Part 4: MATERIAL TO BE RELIED ON**

1. Fifth Report of the Receiver dated March 6, 2013;
2. the pleadings and proceedings had and taken herein; and
3. such further and other material as counsel may advise and the Court may permit.

The applicant estimates that the application will take 40 minutes.

Date: March 8, 2013



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Signature of Magnus C. Verbrugge  
 applicant  lawyer for applicant  
FTI Consulting Canada Inc.

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| <p><b><i>To be completed by the court only:</i></b></p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this notice of application</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>_____</p> <p>_____</p> <p>Date: _____</p> <p>Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p> |
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## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matters concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts



Schedule "A" hereto, and no one appearing for [REDACTED], although duly served; AND UPON READING the material filed, including the Fifth Report of the Receiver dated March 6, 2013 (the "**Fifth Report**")<sup>1</sup>;

**THIS COURT ORDERS AND DECLARES THAT:**

**A. *Definitions and Interpretation***

1. The following terms in this Order shall have the following meanings ascribed thereto:

- (a) "**Allowed Claim**" means the amount, status, categorization and/or validity of the Claim of a Claimant finally determined in accordance with the Claims Procedure;
- (b) "**Allowed Creditor**" means a Creditor with an Allowed Claim;
- (c) "**Bonded Project Funds**" has the meaning ascribed to it in paragraph [40] hereof;
- (d) "**Business Day**" means any day other than a Saturday, Sunday or a day on which banks in Vancouver, British Columbia are authorized or obligated by applicable law to close or otherwise are generally closed;
- (e) "**Claim**" means any right or claim of any Person that may be asserted or made in whole or in part against;
  - (i) the Debtors (or any of them), whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the Receivership Date, at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of contract or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the Debtors or any of their property or assets, and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety, warranty or otherwise, and whether or not any right or claim is executory or anticipatory in nature including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims not

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<sup>1</sup> All capitalized terms not defined herein shall have the meaning ascribed to them in the Fifth Report.

referred to above that are or would be claims provable in bankruptcy had the Debtors (or anyone of them) become bankrupt on the Receivership Date, but for further certainty shall not include an Excluded Claim; and

- (ii) the Trisura Bonds;
- (f) "**Claim Support Documents**" shall have the meaning ascribed to it in the Distribution Order;
- (g) "**Claimant**" means a Person asserting a Claim pursuant to the Claims Procedure;
- (h) "**Claims Bar Date**" means April 19, 2013, 2013 at 5:00 p.m. (Vancouver time), or such other date as may be ordered by the Court;
- (i) "**Claims Officer**" means any individual appointed in accordance with paragraph [25] hereof to determine the amount, status, categorization and/or validity of a Disputed Claim for purposes of the Claims Procedure;
- (j) "**Claims Package**" means the document package that includes a copy of: (i) this Order; (ii) the Notice to Creditors; and (iii) such other materials as the Receiver considers necessary or appropriate;
- (k) "**Claims Procedure**" means the procedures outlined in this Order regarding the call for Claims, review of Claims and adjudication of Claims to be administered by the Receiver, pursuant to the terms of this Order;
- (l) "**Court**" means the Supreme Court of British Columbia;
- (m) "**Creditor**" means any Person with a Claim and includes, without limitation, the transferee or assignee of a transferred Claim that is recognized as a Creditor in accordance with paragraph [32] hereof, or a trustee, liquidator, receiver, manager, or other Person acting on behalf of such Person;
- (n) "**DHI**" means Dumas Holdings Inc.;
- (o) "**Disputed Claim**" means any Claim in respect of which a Claimant disputes the Receiver's adjudication of the Claim;
- (p) "**Disputed Claim Package**" means, in respect of a Disputed Claim, a copy of all information submitted via the FTI Claims Site or otherwise provided to the Receiver, or delivered by the Receiver to the Claimant, relating to the Disputed Claim;
- (q) "**Distribution Order**" means the Distribution Order made by Justice Sewell in the Receivership Proceedings, dated January 21, 2013;
- (r) "**Electronic Submission Process**" has the meaning ascribed in paragraph [14] hereof;



- (s) **"Excluded Claim"** means:
- (i) any right or claim of any Person that might be made in whole or in part against the Debtors for charges incurred by the Receiver on behalf of the Debtors, or any of them, for the supply of goods, services or utilities from and after the Receivership Date;
  - (ii) any Claim of a Debtor against another Debtor;
  - (iii) any Claim of HSBC or the Lenders against the Debtors;
  - (iv) any Claim of DHI against the Debtors; and
  - (v) any Claim secured by any of the Charges (as that term is defined in the Receivership Order) or any subsequent charges ordered or approved by this Court.
- (t) **"FTI Claims Site"** means the website established by the Receiver in connection with the Claims Procedure at <https://cmsi.ftitools.com/tercon>;
- (u) **"HSBC"** means HSBC Bank Canada, as Lead Arranger, Bookrunner and Administrative Agent under the Senior Secured Credit Agreement dated February 28, 2012, as amended;
- (v) **"Information Submission Form"** means the form substantially in accordance with the form attached hereto as Schedule "C";
- (w) **"Improvement"** has the meaning give to it, as applicable, by the *Builders Lien Act*, R.S.B.C 1997 c.45 or the *Builders' Lien Act*, R.S.A. 2000 c.B-7;
- (x) **"Known Creditor"** means a Person: (i) who the Receiver has received actual notice may have a Claim against any of the Debtors; or (ii) that the books and records of the Debtors show as owed an amount arising on or before the Receivership Date;
- (y) **"Lenders"** means the lenders under the Senior Secured Credit Agreement dated February 28, 2012, amended
- (z) **"Lien Claim"** means a right given to any Person to assert a lien upon the interest of an owner of land that is party to a contract with a Debtor for an Improvement or for the contract price for any labor or materials, etc. referred to in *Alaska Statute* § 34.35.050;
- (aa) **"MOT"** means Her Majesty the Queen in Right of British Columbia as represented by the Ministry of Transportation and Infrastructure;
- (bb) **"Notice to Creditors"** means the notice to creditors of the Claims Procedure and the Claims Bar Date, substantially in the form attached hereto as Schedule "B";

- (cc) **"Other Insolvency Proceedings"** means any bankruptcy or insolvency proceedings commenced against any of the Debtors, but for greater certainty does not include the Receivership Proceedings;
- (dd) **"Owner"** has the meaning ascribed in paragraph [35] hereof;
- (ee) **"Performance Bonds"** means, collectively:
  - (i) Performance Bond No. VCS 1089004 issued in favour of the MOT on behalf of Tercon Construction Ltd., by Trisura in respect of the Wall Project;
  - (ii) Performance Bond No. VCS 0700004 issued in favour of the MOT on behalf of Tercon Construction Ltd., by Trisura in respect of the Water Line Project;
  - (iii) Performance Bond No. VCC 0700006 issued in favour of the MOT on behalf of Tercon Construction Ltd., by Trisura in respect of the Creek Bridge Bearing Project; and
  - (iv) Performance Bond No. VMS 0700001 issued in favour of Red Chris Development Company Ltd. on behalf of Tahltan – Tercon Limited Partnership, by Trisura in respect of the Red Chris Project.
- (ff) **"Person"** means any individual, firm, partnership, joint venture, venture capital fund, association, trust, trustee, executor, administrator, legal personal representative, estate, group, body corporate (including a limited liability company and an unlimited liability company), corporation, unincorporated association or organization, governmental authority, syndicate or other entity, whether or not having legal status;
- (gg) **"Potential Property Interest Claimant"** shall have the meaning ascribed to it in the Distribution Order;
- (hh) **"Receiver's Website"** means the website for the Receivership Proceedings located at <http://cfcanada.fticonsulting.com/tercon>;
- (ii) **"Receivership Date"** means December 14, 2012;
- (jj) **"Receivership Proceedings"** means these receivership proceedings commenced by DHI against the Debtors in the Court, being Vancouver Registry No. S128887, on the Receivership Date pursuant to the Receivership Order;
- (kk) **"Receiver-Trisura Protocol"** means the protocol for the coordinated review of Claims on Trisura Bonded Projects summarized as Appendix C to the Fifth Report;

- (ll) **“Released Claims”** shall have the meaning ascribed in paragraph [16(a)] of this Order;
- (mm) **“Reserve Bar Date”** shall have the meaning ascribed to it in the Distribution Order;
- (nn) **“Service List”** means the service list in the Receivership Proceedings updated from time to time and posted on the Receiver’s Website;
- (oo) **“Service Requirements”** has the meaning ascribed in paragraph [12] hereof;
- (pp) **“Supporting Documentation Submission Form”** means the form substantially in accordance with the form attached hereto as Schedule **“D”**;
- (qq) **“Trisura”** means Trisura Guarantee Insurance Company;
- (rr) **“Trisura Bonded Projects”** means the following projects, as more particularly described in the Fifth Report:

| <b>Tercon Company</b> | Tercon Construction Ltd.  | Tercon Construction Ltd.  | Tercon Construction Ltd.  | Tahltan-Tercon Limited Partnership  | Tercon Construction Ltd.   |
|-----------------------|---|---|---|---|--|
| <b>Project</b>        | Project # 21754 - 0002:<br>Joint Use Vehicle Inspection Station Public Water System<br><br>(the <b>“Water Line Project”</b> ) | Project # 22594 - 0002:<br>Mount Hunter Creek Bridge, Bearing Replacement and Roof Slab Epoxy Injection<br><br>(the <b>“Creek Bridge Bearing Project”</b> ) | Project # 22592 - 0008:<br>4 Kilometre Wall and Approaches, Grading, Retaining Wall, Paving and Drainage Construction<br><br>(the <b>“Wall Project”</b> ) | Contract # RC101:<br>Excavation and Earthworks<br><br>(the <b>“Red Chris Project”</b> ) | Leased storage yard clean-up<br><br>(the <b>“Clean-up Project”</b> ) |

- (ss) **“Trisura Bonds”** means:
- (i) Environmental Bond No. VOS109004 (formerly Bond No. VMS 1089004) issued in favour of Teck Coal on behalf of Tercon Construction Ltd., by Trisura in respect of the Clean-up Project;
- (ii) Performance Bond No. VCS 1089004 issued in favour of the MOT on behalf of Tercon Construction Ltd., by Trisura in respect of the Wall Project;
- (iii) Labour and Material Payment Bond No. VCS 1089004 issued in favour of the MOT on behalf of Tercon Construction Ltd. by Trisura in respect of the Wall Project;

- (iv) Performance Bond No. VCS 0700004 issued in favour of the MOT on behalf of Tercon Construction Ltd., by Trisura in respect of the Water Line Project;
- (v) Labour and Material Payment Bond No. VCS 0700004 issued in favour of the MOT on behalf of Tercon Construction Ltd. by Trisura in respect of the Water Line Project;
- (vi) Performance Bond No. VCC 0700006 issued in favour of the MOT on behalf of Tercon Construction Ltd., by Trisura in respect of the Creek Bridge Bearing Project;
- (vii) Labour and Material Payment Bond No. VCS 0700006 issued in favour of the MOT on behalf of Tercon Construction Ltd. by Trisura in respect of the Creek Bridge Bearing Project;
- (viii) Performance Bond No. VMS 0700005 issued in favour of Red Chris Development Company Ltd. on behalf of Tahltan – Tercon Limited Partnership, by Trisura in respect of the Red Chris Project; and
- (ix) Labour and Material Payment Bond No. VMS 0700005 issued in favour of Red Chris Development Company Ltd. on behalf of Tahltan – Tercon Limited Partnership, by Trisura in respect of the Red Chris Project.

2. All references herein as to time shall mean local time in Vancouver, British Columbia, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein and any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.

3. All references in this Order to the word “including” will mean “including without limitation”.

4. All references in this Order to the singular include the plural, to the plural include the singular, and to any gender include the other gender.

5. Any Claims denominated in a currency other than Canadian Dollars shall be converted to Canadian Dollars at the Bank of Canada noon spot rate in effect on the Receivership Date.

***B. Approval of Claims Procedure***

6. The Claims Procedure, including the Claims Bar Date, is hereby approved. The Receiver is hereby authorized and directed to conduct the Claims Procedure. The Claims Procedure shall be conducted through the FTI Claims Site, except as provided for in this Order. All Persons who intend to assert a Lien Claim, Claims against any of the Debtors, Claims against any of the Trisura Bonds or Claims against any funds held by the Receiver are directed to comply with the terms of the Claims Procedure.

**C. Notice to Creditors**

7. Not later than seven (7) Business Days following the date of this Order, the Receiver shall cause a Claims Package to be sent to each Known Creditor in accordance with paragraph [36] hereof to the address of such Known Creditor set out in the applicable Debtor's records.

8. Not later than seven (7) Business Days following the date of this Order, the Receiver shall cause the Notice to Creditors to be published for one (1) Business Day in the Globe and Mail National Edition, the Kamloops Daily News, the Journal of Commerce and the Anchorage Daily News.

9. Not later than two (2) Business Days following the date of this Order the Receiver shall post on the Receiver's Website a copy of this Order and the Notice to Creditors.

10. To the extent that any Creditor requests documents relating to the Claims Procedure prior to the Claims Bar Date, the Receiver shall direct the Creditor to the documents posted on the Receiver's Website and, if requested by the Creditor, cause a Claims Package to be sent to the Creditor in accordance with paragraph [36] hereof and otherwise respond to the request relating to the Claims Procedure as may be appropriate in the circumstances.

11. The forms of Notice to Creditors, Information Submission Form and Supporting Documentation Submission Form substantially in the forms attached to this Order as Schedules "B", "C" and "D", respectively, are hereby approved. The Receiver may, from time to time, make minor changes to such forms as the Receiver considers necessary or desirable.

12. Publication of the Notice to Creditors, the sending to the Creditors of a Claims Package in accordance with this Order, and completion of the other requirements of this Order, shall constitute good and sufficient service and delivery of notice of this Order and the Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim (the "**Service Requirements**"), and no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

**D. Submission of Claims**

13. Except as provided for in paragraph [15] of this Order, all Claims of Creditors must be asserted in, and are subject to, the Claims Procedure, including, without limitation,

- (a) Claims against the Debtors;
- (b) Lien Claims;
- (c) Claims in respect of any of the Trisura Bonds; and
- (d) Claims in respect of the Trisura Bonded Projects, including Claims that involve lien rights, trust rights or other claims to proceeds that would otherwise be payable to the Debtors or from an Owner to any Person in respect of any of the Trisura Bonded Projects.

14. Any Person other than a Potential Property Interest Claimant that intends to assert a Claim must submit proof of such Claim, together with all supporting documents in respect of such Claim, by electronically submitting all required information, and uploading all relevant documents in support of the Claim, to the FTI Claims Site or as otherwise permitted by this Order, by no later than the Claims Bar Date (the “**Electronic Submission Process**”).

15. Any Potential Property Interest Claimant that has provided the Receiver with its Claim Support Documents prior to the Reserve Bar Date is not required to resubmit proof of such Claim and shall be deemed to have asserted its Claim in accordance with this Claims Procedure. Subject only to the foregoing, the Claims Bar Date and the provisions of this Claims Procedure Order apply to Potential Property Interest Claimants.

16. Any Creditor that does not file proof of its Claim in accordance with this Order such that the Claim is received, or deemed to be received, by the Receiver on or before the Claims Bar Date or such later date as the Court may otherwise direct, shall:

- (a) be and is hereby forever barred, estopped and enjoined from making, asserting or enforcing any such Claim against any of the Debtors, the Receiver, the Trisura Bonds or Trisura and all such Claims shall be forever extinguished as against all such parties (“**Released Claims**”);
- (b) not be permitted to participate in any distribution from the proceeds of any of the Debtors’ assets, funds held by the Receiver, from the Trisura Bonds or otherwise on account of such Claim(s);
- (c) not be entitled to participate as a Creditor in the Receivership Proceedings; and
- (d) not be entitled to receive further notice in respect of the Claims Procedure.

17. The Claims Bar Date shall apply in respect of any Claims against the Trisura Bonds. No Claims may be made against the Trisura Bonds after the Claims Bar Date and all further or other Claims against the Trisura Bonds or against Trisura in respect of the Trisura Bonded Projects shall be forever barred and extinguished.

18. The Receiver shall review all Claims submitted in accordance with this Order that are received on or before the Claims Bar Date. In the event that a Claim is received by the Receiver in respect of a Claim on a Trisura Bond, the Receiver and Trisura shall deal with the Claim pursuant to the Receiver-Trisura Protocol. The Receiver-Trisura Protocol is hereby approved.

19. The Receiver is authorized and directed to use reasonable discretion as to adequacy of compliance with respect to the manner in which the fields of the FTI Claims Site or any paper form, as the case may be, are completed and executed and may, where it is satisfied that a Claim has been adequately filed or proven, waive strict compliance with the requirements of this Order (provided, for greater certainty, that the Receiver may not amend the Claims Bar Date). The Receiver may request further documentation from a Claimant that the Receiver may require in order to enable the Receiver to adjudicate a Claim and any Claimant that asserts a Claim that is

subject to the Claims Procedure shall provide the Receiver with all such documentation forthwith upon request.

*E. Adjudication of Claims*

20. The Receiver may allow or disallow any Claim asserted in the Claims Procedure, in whole or in part.

21. If the Receiver agrees with a Claim that has been filed in accordance with the Claims Procedure, it shall so notify the Allowed Creditor via the FTI Claims Site or otherwise as provided by this Order.

22. If the Receiver revises or disallows the Claim of a Claimant, in whole or in part, the Receiver shall notify the Claimant via the FTI Claims Site or otherwise as provided by this Order.

23. Any Claimant that wishes to dispute a revision or disallowance of its Claim shall provide notice of such dispute via the FTI Claims Site, or as otherwise provided by this Order, by 5:00 p.m. (Vancouver time) on the date that is fourteen (14) days after the date of notification of such revision or disallowance, or such later date as may be approved by the Court by an order made pursuant to a motion by the Claimant served within such fourteen (14) day period. Any Claimant that fails to dispute a revision or disallowance in accordance with the terms of this paragraph:

- (a) shall be deemed to have accepted the amount and categorization of its Claim as set out in the revision or disallowance, which shall thereafter be such Claimant's Allowed Claim; and
- (b) the Receiver's revision or disallowance in respect of such Claimant's Claim shall be final and binding on all Persons and there shall be no further right to appeal, review or seek recourse to this Court, or any other Court or tribunal, in respect of the Receiver's revision or disallowance;

24. If a Claimant disputes a revision or disallowance of its Claim pursuant to paragraph [23] hereof, the Receiver may:

- (a) attempt to consensually resolve the classification and the amount of the Claim with the Claimant;
- (b) deliver a Disputed Claim Package to the Claims Officer, if one has been appointed; and/or
- (c) schedule an appointment with the Court for the purpose of scheduling a motion to have the classification and amount of the Claim determined by the Court, and at such motion the Receiver shall be deemed to be the applicant and the Claimant shall be deemed to be the respondent.

***F. Appointment of Claims Officer(s)***

25. The Receiver is authorized to appoint one or more individuals that the Receiver considers to be appropriately qualified to act as a Claims Officer. The Receiver shall provide notification of the appointment of a Claims Officer to the Service List. Any Person that objects to the appointment of the Claims Officer shall advise the Receiver within seven (7) Business Days of such notice. If the Receiver is unable to resolve the objection, the Receiver shall seek direction from the Court as to the appointment of the Claims Officer.

26. Any Claims Officer appointed pursuant to the terms hereof shall have authority to hear and determine the validity of every disputed aspect of a Disputed Claim referred to the Claims Officer by the Receiver in accordance with the Claims Procedure.

27. The Claims Officer is empowered to determine the manner in which evidence may be brought before the Claims Officer, in addition to determining any procedural matter which may arise in respect of the determination of the validity of a Disputed Claim.

28. Upon receipt of notice from the Receiver that a Disputed Claim is to be referred to the Claims Officer, the Claims Officer shall schedule and conduct a hearing to determine the validity of the Disputed Claim as soon as practicable pursuant to a summary hearing scheduled according to a timetable approved by counsel to the Receiver and the Claimant, or as established by Order of the Court. The Claims Officer shall deliver written reasons in connection with the determination of the validity of any Disputed Claim upon which a hearing is conducted.

29. The Receiver shall pay the reasonable fees, expenses and disbursements of each Claims Officer appointed on presentation and acceptance by the Receiver of invoices from the Claims Officer from time to time. The Claims Officer shall be entitled to a reasonable retainer against its fees and disbursements which shall be paid by the Receiver upon request.

***G. Binding Effect of Claims Procedure***

30. The calling for Claims and the Claims Procedure contemplated by this Order, as it may be amended or supplemented by this Court from time to time, including but not limited to the determination by the Receiver or this Court, as the case may be, with respect to any Claim:

- (a) shall be binding on the Debtors, Trisura, the Receiver and all Creditors; and
- (b) shall be binding and effective in any and all Other Insolvency Proceedings.

31. Nothing in this Order shall be interpreted as substantially consolidating any Claims against any of the Debtors or against any of their respective assets or property.

***H. Transferees***

32. If, after the Receivership Date, the holder of a Claim transfers or assigns the whole of such Claim to another Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and



the Receiver shall not be obligated to acknowledge or recognize such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim. The Receiver shall not be obligated to give notice or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual written notice of such transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Receiver in writing and thereafter such transferee or assignee shall for the purposes hereof constitute the "Creditor" in respect of such Claim. For further certainty, the Person last holding a Claim in whole as the Creditor in respect of such Claim may by notice in writing to the Receiver direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and, in such event, such Creditor, such transferee or assignee of the Claim and the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim by or with respect to such Person in accordance with this Order. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with the Claims Procedure prior to receipt and acknowledgement by the Receiver of satisfactory evidence of such transfer or assignment, and a direction to the Receiver that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person. A transferee or assignee of a Claim takes the Claim subject to any rights of set-off to which the Debtors may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such person to any of the Debtors. Reference to a transfer in this Order includes a transfer or assignment whether absolute or intended as security.

#### ***I. Stay of proceedings against Trisura***

33. Subject to further Order of the Court, no proceedings or enforcement process in any Court or tribunal may be commenced or continued against Trisura relating to any Claims on Trisura Bonded Projects until further order of the Court. For greater certainty, no proceedings shall be commenced or continued against Trisura or in respect of the Trisura Bonds in respect of any Released Claims.

34. Any payment made by the Receiver with respect to Allowed Claims of Creditors relating to Trisura Bonded Projects (which, for greater certainty, shall be made only on further order of the Court) shall be deemed to be made from funds derived from the Trisura Bonded Project and shall reduce the penal sum of the applicable Trisura Bond on the Trisura Bonded Project.

#### ***J. Warranty Claims***

35. Every owner/obligee of a Trisura Bonded Project ("**Owner**") shall provide notice to the Receiver and to Trisura whether it intends to assert any Claims against the warranty on the Trisura Bonded Projects and shall provide the Receiver and Trisura with the particulars of all known warranty claims it is aware of as of the date hereof, such that the foregoing information is received prior to the Claims Bar Date.

**K. Service and Notices**

36. Any notice or communication required to be delivered by the Receiver pursuant to this Order may be delivered via the FTI Claims Site or may be delivered by facsimile, email or electronic transmission, personal delivery, courier or prepaid mail to the address or number contained in the books and records of the Debtors or as included in the information submitted by a Claimant in respect of its Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Canada, and on the seventh Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered via FTI's Claims Site, other electronic transmission or facsimile by 5:00 p.m. on a Business Day, on such Business Day, and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

37. Any notice or communication required to be provided or delivered to the Receiver by a Creditor or Claimant under this Claims Procedure Order shall be delivered via the FTI Claims Site unless otherwise provided for in this Order. Any paper copy of any document, notice or communication to be delivered to the Receiver pursuant to this Order will be sufficiently given only if delivered by prepaid registered mail, courier, personal delivery, facsimile transmission or email addressed to:

FTI Consulting Canada Inc.  
TD Waterhouse Tower  
79 Wellington Street West, Suite 2010  
P. O. Box 104  
Toronto, ON M5K 1G8

Attn: Jeff Rosenberg  
Fax: (416) 649-8181

Email: [tercon@fticonsulting.com](mailto:tercon@fticonsulting.com)

Any such notice or communication delivered by a Creditor shall be deemed to be received upon actual receipt thereof by the Receiver before 5:00 p.m. (Vancouver time) on a Business Day or, if delivered after 5:00 p.m. (Vancouver time), on the next Business Day.

38. If, during any period which notice or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notice or other communications sent by ordinary mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

39. In the event this Order is later amended by further Order of the Court, the Receiver shall post such further Order on the Receiver's Website and serve such further Order on the Service

List, and such posting and service shall constitute adequate notice to all Persons of such amended Claims Procedure.

***L. Protection of Claims against Funds received by Receiver***

40. Subject to further Order of the Court, any funds paid to the Receiver that relate to Trisura Bonded Projects (the “**Bonded Project Funds**”) shall be deemed to be segregated funds and;

- (a) be impressed with all trust rights arising pursuant to applicable legislation applicable to construction projects in the location of the Trisura Bonded Project;
- (b) be held by the Receiver as if the funds were in the possession of the owner/obligee on the Trisura Bonded Projects;
- (c) remain subject to any rights of set-off that could be asserted in the Claims Procedure by the owner/obligee of the Trisura Bonded Projects.

41. For greater certainty, rights of set-off applicable to the Bonded Project Funds shall not be restricted to a project-by-project accounting or determination.

42. Subject to further order of the Court, the Bonded Project Funds shall be held by the Receiver pending the occurrence of the earlier of: (i) the surrender to Trisura of the Performance Bonds by the MOT; (ii) a release of all claims against the Performance Bonds by the MOT; or (iii) the expiration of the period for claims against the Performance Bonds, with no claims having been asserted against the Performance Bonds during such period. Notwithstanding the foregoing, the Receiver is authorized to pay the reasonable legal fees and disbursements of Trisura in connection with the Receivership Proceedings from any Bonded Project Funds in the Receiver’s possession.

***M. Submission of Information and Supporting Documentation by Paper Copy***

43. Any Claimant, Creditor, or any subsequent holder of a Claim who has been acknowledged by the Receiver as the holder of the Claim, that is unwilling or unable to submit information via the FTI Claims Site, may instead submit such information by paper copy to the Receiver using the Information Submission Form.

44. Any Claimant, Creditor, or any subsequent holder of a Claim who has been acknowledged by the Receiver as the holder of the Claim, that is unwilling or unable to submit supporting documentation for a Claim via the FTI Claims Site may instead submit such supporting documentation by paper copy to the Receiver using the Supporting Documentation Submission Form.

45. The Receiver is authorized to input to the FTI Claims Site:

- (a) the information submitted using the Information Submission Form;
- (b) the supporting documentation submitted using the Supporting Documentation Submission Form; and

- (c) the Claim Support Documents submitted by any Potential Property Interest Claimant;

and the Receiver shall have no liability for the information or documentation input, other than as a result of gross negligence or wilful misconduct.

**N. General**

46. Notwithstanding any other provisions of this Order, the solicitation of Claims by the Receiver, and the filing by any Claimant of any Claim shall not, for that reason only, grant any Person standing in the Receivership Proceedings.

47. The Receiver, in carrying out the terms of this Order: (i) shall have all of the protections given to it by the *Personal Property Security Act* (British Columbia), the *Bankruptcy and Insolvency Act*, the Receivership Order and as an officer of this Court, including the stay of proceedings in its favour; (ii) shall incur no liability or obligation as a result of the carrying out of its obligations under this Order; (iii) shall be entitled to rely on the books and records of the Debtors, and any information provided by the Debtors, all without independent investigations, and (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

48. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, including the conduct of the Claims Procedure and the form of the schedules to this Order, or for such further Order or Orders as the Receiver may consider necessary or desirable to amend, supplement or replace this Order, including any schedule to this Order.

49. This Order shall have full force and effect in all Provinces and Territories in Canada, outside Canada and against all Persons against whom it may be enforceable.

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

51. The Receiver shall be at liberty, and is hereby authorized and empowered, to make such further applications, motions or proceedings to or before such other courts and judicial, regulatory and administrative bodies, and take such other steps, in Canada or the United States of America, as may be necessary or advisable to give effect to this Order.

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

THE APPROVAL OF COUNSEL SET OUT IN SCHEDULE "A" OF THIS ORDER, OTHER THAN COUNSEL FOR FTI CONSULTING CANADA INC., IS HEREBY DISPENSED WITH:

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Signature of Magnus Verbrugge

Party  Lawyer for

FTI Consulting Canada Inc., in its capacity as receiver of the assets, undertakings and properties of Tercon Investments Ltd., Tercon A.C. Ltd., Tercon Equipment Ltd., Tercon Construction Ltd., Tercon Mining Ltd., Tercon Enterprises Ltd., Tercon MRC Limited, FNP Ventures Inc., Tercon Mining PV Ltd., Tercon Equipment Alaska Partnership and Tercon Alaska Ltd.

BY THE COURT

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REGISTRAR

**SCHEDULE "A"**  
**LIST OF COUNSEL**

**SCHEDULE "B"****NOTICE TO CREDITORS**

**IN THE MATTER OF THE RECEIVERSHIP OF  
TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT LTD.,  
TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON ENTERPRISES  
LTD., TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,  
TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.**

**(COLLECTIVELY THE "DEBTORS")**

TAKE NOTICE that on December 14, 2012 the Debtors were placed into receivership (the "Receivership Proceedings") by Order of the Supreme Court of British Columbia (the "Court"). As part of the Receivership Proceedings, on •, 2013 the Court issued an Order approving a procedure (the "Claims Procedure") to determine the claims of creditors as against the Debtors. A copy of the Claims Procedure Order may be obtained from the Receiver's website located at <http://cfcanda.fticonsulting.com/tercon>

The purpose of the Claims Procedure is to, *inter alia*:

- Provide creditors that have claims against the Debtors with an opportunity to file proof of their claims and related evidence to support a claim on or before the Claims Bar Date; and
- Resolve or adjudicate any disputes with respect to the amounts and/or nature of claims submitted.

Any person who believes that they have a claim against the Debtors must file proof of such Claim by the Claims Bar Date in accordance with the provisions of the Claims Procedure Order. The Claims Procedure Order outlines the process for submitting a Claim electronically or by paper copy.

The Claims Bar Date is: 5:00 PM (Vancouver Time) on • 2013.

**ALL CLAIMS MUST BE FILED BY THE DEADLINE STATED ABOVE. ANY CLAIM NOT FILED BY THE DEADLINE STATED ABOVE WILL BE FOREVER BARRED AND EXTINGUISHED AND NO FURTHER CLAIM, RIGHT OR ENTITLEMENT AGAINST THE DEBTORS OR THEIR ASSETS, INCLUDING ANY BONDS ISSUED BY TRISURA GUARANTEE INSURANCE COMPANY ON CERTAIN BONDED PROJECTS OF THE DEBTORS MAY BE ADVANCED.**

Any person that may have questions regarding the submission of claims in the Claims Procedure should view the Receiver's website or contact the Receiver at the following address:

FTI Consulting Canada Inc.  
TD Waterhouse Tower  
79 Wellington Street West, Suite 2010  
P. O. Box 104  
Toronto, ON M5K 1G8

Attn: Jeff Rosenberg  
Fax: (416) 649-8181

Email: [tercon@fticonsulting.com](mailto:tercon@fticonsulting.com)

**SCHEDULE "C"**

**IN THE MATTER OF THE RECEIVERSHIP OF  
 TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT LTD.,  
 TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON ENTERPRISES  
 LTD., TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,  
 TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.**

**INFORMATION SUBMISSION FORM****Add Contact**

Name \_\_\_\_\_  
 Attention \_\_\_\_\_  
 Address 1 \_\_\_\_\_  
 Address 2 \_\_\_\_\_  
 City \_\_\_\_\_  
 State/Province \_\_\_\_\_  
 ZIP/Postal Code \_\_\_\_\_  
 Country \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_  
 Type  Claimant  Assignee  Lawyer  CC only  
 None  Notice only  Primary contact

**Add Contact**

Name \_\_\_\_\_  
 Attention \_\_\_\_\_  
 Address 1 \_\_\_\_\_  
 Address 2 \_\_\_\_\_  
 City \_\_\_\_\_  
 State/Province \_\_\_\_\_  
 ZIP/Postal Code \_\_\_\_\_  
 Country \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_  
 Type  Claimant  Assignee  Lawyer  CC only  
 None  Notice only  Primary contact

**Add Claim**

Claim Amount \_\_\_\_\_  
 Currency \_\_\_\_\_  
 Debtor Name \_\_\_\_\_  
 Claim Type  Pre-Filing  Subsequent  
 Classification  Secured  Unsecured  
 Unsecured Category  Employee  Former Employee  Guarantee  
 Deficiency  Trade  Landlord



Security Claimed  Security Agreement  Statutory Lien  Statutory Trust

**Comments - Please add any comments that may assist us in reviewing your claim.**

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**Add Claim**

Claim Amount \_\_\_\_\_

Currency \_\_\_\_\_

Debtor Name \_\_\_\_\_

Classification  Secured  Unsecured

Unsecured Category  Employee  Former Employee  Guarantee

Deficiency  Trade  Landlord

Security Claimed  Security Agreement  Statutory Lien  Statutory Trust

**Comments - Please add any comments that may assist us in reviewing your claim.**

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**Future correspondence**

All future correspondence will be directed to the email designated in the contact details unless you specifically request that hardcopies be provided.

Hardcopy of correspondence required

**Acknowledgment**

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Notice of Dispute**

Original Claim Amount \_\_\_\_\_

Revised Claim per Receiver \_\_\_\_\_

Revised Claim per Claimant \_\_\_\_\_

Currency \_\_\_\_\_

Debtor Name \_\_\_\_\_

Classification  Secured  Unsecured

Unsecured Category  Employee  Former Employee  Guarantee

Deficiency  Trade  Landlord

Security Claimed  Security Agreement  Statutory Lien  Statutory Trust

**Reason for Dispute - Please add any comments that may assist us in reviewing your claim.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Notice of Dispute**

Original Claim Amount \_\_\_\_\_

Revised Claim per Receiver \_\_\_\_\_

Revised Claim per Claimant \_\_\_\_\_

Currency \_\_\_\_\_

Debtor Company Name \_\_\_\_\_

Classification  Secured  Unsecured

Unsecured Category  Employee  Former Employee  Guarantee

Deficiency  Trade  Landlord

Security Claimed  Security Agreement  Statutory Lien  Statutory Trust

**Reason for Dispute - Please add any comments that may assist us in reviewing your claim.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Acknowledgment**

Signature \_\_\_\_\_

Date \_\_\_\_\_

## SCHEDULE "D"

IN THE MATTER OF THE RECEIVERSHIP OF  
**TERCON INVESTMENTS LTD., TERCON A.C. LTD., TERCON EQUIPMENT LTD.,  
 TERCON CONSTRUCTION LTD., TERCON MINING LTD., TERCON ENTERPRISES  
 LTD., TERCON MRC LIMITED, FNP VENTURES INC., TERCON MINING PV LTD.,  
 TERCON EQUIPMENT ALASKA PARTNERSHIP AND TERCON ALASKA LTD.**

### SUPPORTING DOCUMENTATION SUBMISSION FORM

#### Contact Details

Name \_\_\_\_\_  
 Attention \_\_\_\_\_  
 Address 1 \_\_\_\_\_  
 Address 2 \_\_\_\_\_  
 City \_\_\_\_\_  
 State/Province \_\_\_\_\_  
 ZIP/Postal Code \_\_\_\_\_  
 Country \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Fax \_\_\_\_\_  
 Email \_\_\_\_\_

#### Supporting Documentation

Please attach hard copies of your supporting documentation to this form.

#### Comments

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

#### Future correspondence

All future correspondence will be directed to the email designated in the contact details unless you specifically request that hardcopies be provided.

Hardcopy of correspondence required

#### Acknowledgment

Signature \_\_\_\_\_  
 Date \_\_\_\_\_

**TOR01: 5109450: V9**

