

COURT OF QUEEN'S BENCH OF ALBERTA  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE AMENDED PROPOSAL OF  
COMMERX CORPORATION

PROPOSAL

COMMERX CORPORATION, the above-named debtor, hereby submits the following Proposal (the "**Proposal**") to its creditors pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**Act**").

**PART 1  
BACKGROUND**

1. COMMERX CORPORATION is a private company incorporated pursuant to the Laws of Alberta.
2. COMMERX CORPORATION is involved in the telecommunication project services, digital technology consulting and telecommunication staffing business in Calgary and elsewhere in the Province of Alberta.
3. COMMERX CORPORATION is presently insolvent and unable to pay its debts as they become due. On March 7, 2019, COMMERX CORPORATION filed a Notice of Intention to make a Proposal to its creditors under the Act.

**PART 2  
INTERPRETATION**

4. In this Proposal, capitalized terms shall have the following meanings:

"**Act**" means the *Bankruptcy and Insolvency Act*, as it may be amended from time to time;

"**Approval Order**" means an Order of the Court approving this Proposal to be granted pursuant to the provisions of the Act, the appeal period having expired and no appeal having been filed, or any appeal therefrom having been dismissed and such dismissal having become final;

"**Assets**" means the assets, undertakings and property of COMMERX CORPORATION;

"**Business Day**" means a day, other than Saturday or Sunday or a day observed as a holiday pursuant to the laws of the Province of Alberta or the federal laws of Canada, on which banks are generally open for business;

**"Claim"** means any indebtedness, liability, action, cause of action, suit, debt, due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of COMMERX CORPORATION to any Person whether liquidated, unliquidated, fixed, contingent, matured, legal, equitable, secured, unsecured, present, future, known or unknown, and whether by guarantee, surety or otherwise, incurred or arising or relating to the period prior to the Filing Date, or based in whole or in part on facts, contracts or arrangements which occurred or existed prior to the Filing Date, together with any other claims provable in bankruptcy on the Filing Date, including without limitation, claims arising from the repudiation, disclaimer or termination of any lease, license, contract, arrangement or contract of employment prior to the Filing Date, providing that all such claims shall be allowed without allowance for interest after the Filing Date and without allowance for penalties and net of any normal discounts. All Claims must be converted to Canadian Dollars at the Bank of Canada Daily Foreign Exchange Rate at the Filing Date;

**"Court"** means the Court of Queen's Bench of Alberta, In Bankruptcy and Insolvency;

**"CRA"** means the Canada Revenue Agency;

**"Creditor"** means any Person having a Claim, and may, if the context requires, mean a trustee, receiver, receiver-manager or other Person acting on behalf or in the name of such Person;

**"Creditors' Meeting"** means the meeting of Creditors called for the purpose of considering and voting upon the Proposal;

**"Effective Date"** means the date on which this Proposal is approved by the Court, after being approved by the requisite majority of COMMERX CORPORATION Creditors;

**"Filing Date"** means March 7, 2019;

**"Official Receiver"** shall have the meaning ascribed thereto by the Act;

**"Person"** means any individual, partnership, joint venture, trust, corporation, unincorporated organization, government or any agency or any other entity however designated or constituted;

**"Proposal"** means this Proposal made pursuant to the Act, as further amended or supplemented from time to time;

**"Proven Claim"** means the amount claimed by a Creditor and approved by the Proposal Trustee and COMMERX CORPORATION or as may otherwise be allowed by the Court;

**"Proposal Trustee"** means Hardie & Kelly Inc. or its duly appointed successor or successors;

**"Unaffected Claims"** means Claims that are not affected by this Proposal being the fees and disbursements of the Proposal Trustee, its counsel and secured creditors in relation to this Proposal;

**"Unaffected Creditors"** means the Proposal Trustee its legal counsel and secured creditors in relation to this Proposal.

**"Unsecured Creditor"** means any Creditor who has no security against any assets of COMMERX CORPORATION with respect to its Claim, including landlords and excluding the Unaffected Creditors.

## **Headings**

5. The divisions of this Proposal into parts, paragraphs and subparagraphs, and the insertion of headings herein is for convenience of reference only and is not to affect the construction or interpretation of this Proposal.

## **Numbers, etc.**

6. In this Proposal, where the context requires, a word importing the singular number will include the plural and vice versa and a word or words importing gender will include all genders.

## **Date for Action**

7. In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

## **Time**

8. All times expressed herein are in local time in Calgary, Alberta, Canada unless otherwise stipulated. Where the time for anything pursuant to the Proposal on a particular date is unspecified herein, the time shall be deemed to be 5:00 p.m. local time in Calgary, Alberta, Canada.

## **Successors and Assigns**

9. This Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, personal representatives, successors and assigns of all persons named or referred to herein.

## **Currency**

10. All references to currency in this Proposal are to lawful money of Canada ("**Canadian Dollars**").

## **Accounting Principles**

11. Accounting terms not otherwise defined have the meanings assigned to them in accordance with Canadian generally-accepted accounting principles.

## **Director Claims**

12. Any Claims that arose before the Filing Date regardless of the date of crystallization of such Claim and that relate to the obligations of COMMERX CORPORATION, where the current or former directors of COMMERX CORPORATION are by law liable in their capacity as directors for payments of such obligations, shall be deemed to be fully satisfied and discharged by the terms of this Proposal and shall not be enforceable against any of such current or former directors of COMMERX CORPORATION at law or in equity.

## **Statutory References**

13. Except as otherwise provided herein, any reference in the Proposal to a statute including all regulations and amendments made under that statute or regulation(s) in force from time to time and any statute or regulation that supplements or supersedes such statute or regulation(s).

## **PART 3**

## OVERVIEW OF THE PROPOSAL

### Purpose of the Proposal

14. The purpose of this Proposal is to effect a compromise and arrangement of all Claims as against COMMEX CORPORATION, other than the Unaffected Claims, with a view to increasing the recovery for all stakeholders (excluding claims owing to the Unaffected Creditors) while reducing the uncertainties, risks, costs, delays and possible losses for all Creditors that will otherwise occur. COMMEX CORPORATION has concluded, and the Proposal Trustee agrees, that the general body of creditors will obtain a greater and/or sooner return on their Claims if this Proposal is approved than would result from a forced liquidation of its Assets.
15. Further, the Proposal will allow COMMEX CORPORATION to continue operations so as to avoid or minimize any adverse impact on current customers and to allow COMMEX CORPORATION the opportunity to retain and refer business to its established network of suppliers and contractors.
16. Creditors should review this Proposal before voting to accept or reject this Proposal. The transactions contemplated by this Proposal are to be implemented under the Act.

### Effect of the Proposal

17. This Proposal restructures the affairs of COMMEX CORPORATION and amends the terms of any and all agreements between COMMEX CORPORATION and the Creditors, excluding the Unaffected Creditors, existing as at the Effective Date and provides the essential terms on which all Claims will be fully and finally resolved and settled. All Creditors will be stayed, excluding Unaffected Creditors, from commencing or continuing any proceeding or remedy against COMMEX CORPORATION or any of its property or Assets in respect of a Claim including, without limitation, any proceeding or remedy to recover payment of any monies owing to Creditors, to recover to enforce any judgment against COMMEX CORPORATION in respect of a Claim or to commence any formal proceedings against it other than as provided for under this Proposal.
18. For greater certainty, any and all Claims by the Unaffected Creditors remain valid and outstanding and shall not be compromised as part of the Proposal or affected in any way.
19. This Proposal, if approved, will, as of the Effective Date, be binding on COMMEX CORPORATION and the Unsecured Creditors.

## PART 4 CLASSIFICATION AND TREATMENT OF CLAIMS

### Classes of Creditors

20. There will be one class of creditor voting on the Proposal:  
Class 1 – All Unsecured Creditors with Proven Claims.

## Amendments to Agreements

21. Notwithstanding the terms and conditions of all agreements or other arrangements with Creditors entered into before the Filing Date, all such agreements or other arrangements will be deemed to be amended to the extent necessary as of the Effective Date to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern. All Creditors will provide such acknowledgements, agreements, discharges or other documentation as may be necessary to give effect to the intent of this Proposal.

## Treatment of Claims

22. For the purposes of this Proposal, each Unsecured Creditor will receive the treatment provided for in this Proposal on account of such Claim. During the Proposal Period, and provided COMMEX CORPORATION is not in default hereunder, each Creditor will be stayed from commencing or continuing any proceeding or remedy against COMMEX CORPORATION or its property based upon a Claim existing on or before the Filing Date, including, without limitation, any proceeding or remedy to recover payment of such Claim, to realize against any security granted in respect of such Claim, to recover or enforce a judgment against COMMEX CORPORATION in respect of such Claim or to initiate any proceedings against it in respect of such Claim, other than an application or proceeding in connection with this Proposal.

## Claims Bar Date

23. The Proposal Trustee shall consider any Claims lodged by a Creditor up to the date and time of the Creditors' Meeting ("**Claims Bar Date**") to consider the Proposal after which no further Claims shall be allowed in the Proposal. In the event a Claim is not filed with the Proposal Trustee prior to the Claims Bar Date, the Claim shall be forever barred and shall not be considered for acceptance as a Proven Claim forming part of this Proposal, or at all, subject to any order of the Court allowing such Claim.
24. For greater certainty, only Claims filed with the Proposal Trustee of COMMEX CORPORATION prior to the commencement of the Creditors' Meeting shall be considered as Claims by COMMEX CORPORATION and the Proposal Trustee.

## Valuation and Treatment of Claims

25. COMMEX CORPORATION and the Proposal Trustee reserve the right to seek the assistance of the Court in valuing the Claim of any Creditor, if required, to ascertain the result of any vote on the Proposal or the amount payable or to be distributed to such Creditor under the Proposal, as the case may be.
26. CRA claims for employee source deductions (but not GST or income tax payable claims generally) which are proven, will be paid in full without including interest or and penalties calculated through to the Filing Date within 6 months of Court approval of the Proposal as required by S. 60(1.1) of the Act. Notwithstanding the foregoing, COMMEX CORPORATION will make regular monthly payments in satisfaction thereof over the six month period following Court approval. COMMEX CORPORATION further agrees to comply with prescribed filing and remittance requirements over the term of the Proposal.

27. Upon the Approval Order being made, all amounts owing by COMMERC CORPORATION to Unsecured Creditors shall be settled and extinguished as per the following payment schedule:
- (a) Unsecured Creditors with Proven Claims will receive 100% of their Proven Claim, paid as follows:
    - (i) By December 1, 2019, all Unsecured Creditors with Proven Claims will receive an initial payment equal to the lesser of: 100% of their Proven Claims or \$2,000.00; and
    - (ii) Quarterly prorated payments starting March 1, 2020 over a two year period in respect of the balance of Unsecured Creditors' Proven Claims not satisfied from the initial payment above. Payoff could be sooner if positive cash flow allows. There will be no costs or interest accruing after the Filing Date payable to Unsecured Creditors.

#### **Effect of Payment**

28. The Unsecured Creditors will accept payment provided for in this Proposal in complete satisfaction of all their claims, certificates of pending litigation, execution or any similar charges or actions or proceedings in respect of such Claims will have no effect in law or equity against the property, Assets and undertakings of COMMERC CORPORATION. Upon the making of all payments provided for in the Proposal, any and all such certificates of pending litigation, executions or other similar charges or actions will be discharged, dismissed or vacated without costs to COMMERC CORPORATION.

#### **Superintendent's Levy**

29. The Superintendent's levy of 5% will be paid as required pursuant to s. 147 and 60(4) of the Act on all distributions to Unsecured Creditors under this Proposal.

#### **Payment of Fees**

30. All proper fees and expenses of the Proposal Trustee and reasonable legal and other professional fees on and incidental to the proceedings arising out of this Proposal and in connection with the preparation of this Proposal and in the administration of this Proposal, including advice to COMMERC CORPORATION in connection therewith, will be paid in priority to all claims of Unsecured Creditors.

### **PART 5 PROPOSAL TRUSTEE**

#### **Confirmation of Appointment**

31. The Proposal Trustee is acting in its capacity as Proposal Trustee and not in its personal capacity and no officer, director, employee or agent of the Proposal Trustee shall incur any obligations or liabilities in connection with this Proposal or in connection with the business or liabilities of COMMERC CORPORATION.

### **Meeting of Creditors**

32. The Creditors' Meeting will be held at 11:00 a.m. on Friday, September 6, 2019 at the office of Bennett Jones LLP located at 4500 Bankers Hall East, 855 – 2nd Street SW, Calgary, Alberta unless adjourned by the Proposal Trustee. The Proposal Trustee shall preside as the chair of the Creditors' Meeting and will decide all matters relating to the conduct of the Creditors' Meeting. The only persons entitled to attend the Creditors' Meeting are those persons, including the holders of proxies, entitled to vote at the Creditors' Meeting. Any other person may be admitted on invitation of the Proposal Trustee or with the consent of the Creditors.

### **Proofs of Claim**

33. All Creditors will be required to submit a proof of claim to the Proposal Trustee and the face amount thereof will govern for the purpose of voting at the Meeting of Creditors to be held to consider this Proposal, unless otherwise disputed or disallowed by the chair of the meeting. After the Creditors' Meeting, the Proposal Trustee will examine all proofs of claim and may require further evidence and support of the Claim or the security therefore. The provisions of s.135 of the Act will apply to all proofs of claim submitted by Creditors.

### **Conditions Precedent**

34. As provided for in the Act, the payments and arrangements set out in this Proposal will not take effect unless the conditions set forth below are substantially satisfied on or before the Effective Date:
- a. All approvals and consents to the Proposal that may be required have been obtained;
  - b. The Approval Order has been issued; and
  - c. No order or decree restraining or enjoining the consummation of the transactions contemplated by this Proposal will have been issued.

### **Application for Approval Order**

35. The Proposal Trustee will apply forthwith to the Court for the Approval Order upon approval by the Unsecured Creditors of this Proposal.

### **Discharge of Proposal Trustee**

36. For greater certainty, the Proposal Trustee will not be responsible or liable for funding any payments contemplated herein nor for any obligations of COMMEX CORPORATION and will be exempt from any personal liability in fulfilling any duties or exercising any powers conferred upon it by this Proposal unless such acts have been carried out in bad faith and constitute a wilful or wrongful act or default. The Proposal Trustee will monitor and report upon the various payments to creditors required herein and shall be entitled to its discharge upon COMMEX CORPORATION making its final payment required herein.

**PART 6  
RELEASE**

37. On the Effective Date, COMMERX CORPORATION including the officers and directors shall be released and discharged from any and all demands, claims, actions, causes of action, counterclaims, suits, debts, sums of money, accounts, covenants, damages, judgments, expenses, executions, and other recoveries on account of any liability, obligation, demand or cause of action owing to or held by any of the Creditors or any Claims by the Creditors.

**PART 7  
SUPPORT AGREEMENTS**

38. COMMERX CORPORATION has reviewed the terms of this Proposal with numerous of its Unsecured Creditors and has obtained numerous binding Support Agreements to vote in favour of the terms of this Proposal.

**PART 8  
MISCELLANEOUS**

**Modification**

39. COMMERX CORPORATION may propose amendments to the Proposal at any time prior to the conclusion of the Creditors' Meeting provided that any such amendment, in the opinion of COMMERX CORPORATION, does not reduce the rights and benefits given to Creditors pursuant to the Proposal before such amendment and that any and all amendments shall be deemed to be a part of and incorporated into the Proposal.

**Further Actions**

40. COMMERX CORPORATION and the Creditors will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Proposal and to give effect to the transactions contemplated hereby.

**Performance**

41. All obligations of COMMERX CORPORATION under this Proposal will commence as of the Effective Date. All terms of this Proposal will take effect as of the Effective Date.

**Binding Effect**

42. The provisions of this Proposal will be binding on the Creditors and COMMERX CORPORATION and their respective heirs, executors, administrators, successors and assigns, upon issuance of the Approval Order after all appeal periods have expired.

**Compromise Effective for all Purposes**

43. The payment, compromise or other satisfaction of any Claim under this Proposal shall be binding upon such Creditor, its heirs, executors, administrators, successors and assigns, for all purposes and shall also be effective to relieve any third party directly or indirectly liable for such indebtedness, whether as guarantor, indemnitor, tenant, director, joint covenantor, principal or otherwise.

**Fraudulent Conveyance**

44. Section 91 through and including s. 101 of the BIA do not apply to this Proposal.



**Governing Law**

- 45. This Proposal will be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.
- 46. Any notice, certificate, consent, determination or other communication required or permitted to be given or made under this Proposal shall be in writing and shall be effectively given and made if (i) delivered personally; (ii) sent by prepaid courier service; or (iii) sent by email transmission, in each case to the applicable address set out below:

(a) if to COMMERX CORPORATION:

robert.kulhawy@commerx.com and restructure@commerx.com

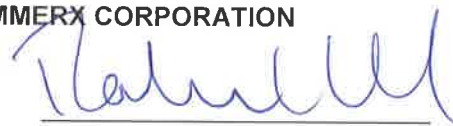
(b) if to the Proposal Trustee:

Hardie & Kelly Inc.  
110, 5800 – 2<sup>nd</sup> Street SW  
Calgary, AB, T2H 0H2  
mkelly@insolvency.net  
Attention: Marc Kelly

**DATED** at Calgary, in the Province of Alberta, this 16<sup>th</sup>-6th day of ~~August~~September, 2019.

**COMMERX CORPORATION**

Per:



**Robert Kulhawy  
President & CEO**

"I have the authority to bind the corporation"