

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ISABELLE ROBERTS**

Applicant

- and -

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as  
SHAWN YUAN)**

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985,  
c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**MOTION RECORD  
(Returnable June 18<sup>th</sup>, 2020)**

Date: June 9, 2020

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**D. Robb English (LSUC # 19862F)**  
Tel: (416) 865-4748  
Fax: (416) 863-1515  
Email: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**  
Tel: (416) 865-3414  
Fax: (416) 863-1515  
Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

*Lawyers for Link & Associates Inc., in its  
capacity as the Court-appointed receiver of  
Besnovo Inc.*

**TO: ATTACHED SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ISABELLE ROBERTS**

Applicant

- and -

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as  
SHAWN YUAN)**

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985,  
c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**INDEX**

**TAB        DOCUMENT**

1.        Notice of Motion returnable June 18<sup>th</sup>, 2020
2.        First Report of the Receiver dated June 9, 2020
- A    Appendix A - Appointment Order dated March 12, 2020
- B    245/246 Notice
- C    Receiver's Borrowing Certificates Issued
- D    Business Re-Opening Plan
- E    Stalking Horse Offer

<b>TAB</b>	<b>DOCUMENT</b>
------------	-----------------

	F	Terms and Conditions
	G	Independent Legal Opinion
	H	Receiver's Interim Statement of Receipts and Disbursements to June 3, 2020
	I	Receiver's Fee Affidavit
	J	Fee Affidavit of Counsel to Receiver
3.		Draft Order
4.		Service List

# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ISABELLE ROBERTS**

Applicant

- and -

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as  
SHAWN YUAN)**

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985,  
c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**NOTICE OF MOTION  
(Returnable June 18, 2020)**

Link & Associates Inc. (“**Link**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Besnovo Inc. (the “**Debtor**”), will make a motion to a judge presiding over the Commercial List on June 18, 2020 at 12:00 p.m., or as soon after that time as the motion can be heard, via judicial videoconference at Toronto, Ontario. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by emailing Miranda Spence at [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR** an Order, including, among other things:

- (a) if necessary, abridging the time for service and filing of this notice of motion and the motion record or, in the alternative, dispensing with same;
- (b) approving the First Report of the Receiver dated June 9, 2020, and the appendices thereto (collectively, the “**First Report**”) and approving the actions of the Receiver described therein;
- (c) authorizing and directing the Receiver to enter into an agreement to sell the right, title and interest of the Receiver in and to the Debtor’s Property to PengYuan Holding Limited (“**PengYuan**”), substantially in accordance with the Agreement of Purchase and Sale attached as **Appendix “E”** to the First Report (the “**Stalking Horse Offer**”), subject to, *inter alia*, the Receiver receiving one or more Qualified Bid(s) (as defined in the First Report);
- (d) authorizing and approving the Sale Procedure (as defined in the First Report);
- (e) approving the Receiver’s Interim Statement of Receipts and Disbursements for the period from March 12, 2020 to June 3, 2020 (the “**Receiver’s Interim R&D**”), attached as **Appendix H** to the First Report;
- (f) approving the interim professional fees and disbursements of the Receiver and those of its legal counsel as set forward in the fee affidavits filed and attached as **Appendix I** and **J** to the First Report;
- (g) approving an increase to the borrowing limit for the Receiver’s borrowings subject to the Receiver’s Borrowing Charge, from \$1,000,000 to \$1,500,000, and
- (h) such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) pursuant to an Order of this Court dated March 12, 2020 (the “**Receivership Order**”), Link was appointed as receiver and manager, without security, of the Property of the Debtor;

- (b) pursuant to the Receivership Order, the Receiver was authorized to market any or all of the Property, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver, in its discretion, deems appropriate (the “**Marketing and Negotiation Powers**”);
- (c) the Receiver’s use of the Marketing and Negotiation Powers has culminated in the Stalking Horse Offer by PengYuan. The Receiver seeks the direction of this Court with respect to accepting the Stalking Horse Offer;
- (d) the Stalking Horse Bid sets a “floor price” for the Property and provides stability for the ongoing operations of the Property by giving assurance that there will be continuing operations regardless of the outcome of the Sale Procedure;
- (e) the Sale Procedure (as defined in the First Report) conducted by the Receiver will provide for a fair and transparent marketing process that will allow the Receiver to maximize realizations from the Property by seeking superior offers for the Property and will force those with an interest in the Debtor’s Property to come forward with their best offers within a prescribed time period;
- (f) a condition of the Stalking Horse Offer and the Sale Procedure is that the Receiver shall return to this Court to obtain a sale approval and vesting order in favour of the Successful Bidder (as defined in the First Report);
- (g) the Receiver has filed with the Court its First Report outlining, amongst others things: (i) the background to the Debtor’s business, operations and financial position; (ii) the actions of the Receiver since its appointment pursuant to the Receivership Order; and (iii) the Stalking Horse Offer and the Sale Procedure, including the proposed auction and bidding procedures;
- (h) in light of the COVID-19 pandemic and the corresponding delay in commencing any marketing of the Property, as detailed in the First Report, the timeline of the anticipated completion of the receivership has necessarily been extended. Accordingly, the Receiver seeks an increase in the borrowing limit for its



borrowings subject to the Receiver's Borrowing Charge from \$1,000,000 to \$1,500,000. PengYuan, acting as the lender, has consented to this proposed increase;

- (i) the other grounds set out in the First Report;
- (j) the Receiver's Interim R&D;
- (k) the fee affidavit of Robert G. Link sworn June 9, 2020 (the "**Link Affidavit**");
- (l) the fee affidavit of D. Robb English sworn June 9, 2020 (the "**English Affidavit**");
- (m) the inherent and equitable jurisdiction of this Court;
- (n) section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (o) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (p) rules 1.04, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (q) such further and other grounds as counsel may advise and this Court may permit.

2. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the First Report;
- (b) the Link Affidavit;
- (c) the English Affidavit; and
- (d) such further and other material as counsel may submit and this Court may permit.

Date: June 9, 2020

**AIRD & BERLIS LLP**

Barristers and Solicitors

Brookfield Place

181 Bay Street, Suite 1800

Toronto, ON M5J 2T9

**D. Robb English (LSUC # 19862F)**

Tel: (416) 865-4748

Fax: (416) 863-1515

Email: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

*Lawyers for Link & Associates Inc., in its  
capacity as the Court-appointed receiver of  
Besnovo Inc.*

**TO: ATTACHED SERVICE LIST**

## **Schedule “A”**

### **Conference Details to join motion via Zoom**

Join Zoom Meeting

<https://zoom.us/j/97145272941?pwd=NzNCaFVZNXBBERFA4U1RiMkdXQXpzQT09>

**Meeting ID: 971 4527 2941**

**Password: 521351**

One tap mobile

+17789072071,,97145272941#,,1#,521351# Canada

+14388097799,,97145272941#,,1#,521351# Canada

Dial by your location

+1 778 907 2071 Canada

+1 438 809 7799 Canada

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

Meeting ID: 971 4527 2941

**ISABELLE ROBERTS**

- and - **BESNOVO INC. et al.**

Applicant

Respondents

Court File No. CV-18-607866-00CL

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

**Proceedings commenced at Toronto**

**NOTICE OF MOTION**  
**(returnable June 18<sup>th</sup>, 2020)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
P.O. Box 754  
Toronto, ON M5J 2T9

**D. Robb English (LSUC # 19862F)**

Tel: (416) 865-4748

Fax: (416) 863-1515

Email: [renchlish@airdberlis.com](mailto:renchlish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

*Lawyers for Link & Associates Inc., in its capacity as the Court-appointed receiver of Besnovo Inc.*

# TAB 2

Court File No.: CV-18-607866-00CL

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

B E T W E E N :

ISABELLE ROBERTS

Applicant

- and -

BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.,  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as  
SHAWN YUAN)

Respondents

FIRST REPORT OF LINK & ASSOCIATES INC.  
COURT-APPOINTED RECEIVER OF BESNOVO INC.

June 9, 2020

## **INDEX OF APPENDICES**

- A. Appointment Order dated March 12, 2020
- B. 245/246 Notice
- C. Receiver's Borrowing Certificates Issued
- D. Business Re-Opening Plan
- E. Stalking Horse Offer
- F. Terms and Conditions
- G. Independent Legal Opinion
- H. Receiver's Interim Statement of Receipts and Disbursements to June 3, 2020
- I. Receiver's Fee Affidavit
- J. Fee Affidavit of Counsel to Receiver

## I. INTRODUCTION

1. By Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 12, 2020 (the “**Appointment Order**”), Link & Associates Inc. (“**Link**”) was appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Besnovo Inc. (“**Besnovo**”, the “**Debtor**” or the “**Company**”) acquired for, or used in relation to a business carried on by the Debtor (the “**Property**”). A copy of the Appointment Order is attached to this report as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
  - (a) take possession and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of, or from, the Property;
  - (b) manage, operate, and carry on the business of Besnovo, including the powers to enter into any agreements (including any amendments and modifications thereto), repudiate or disclaim any agreement, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform, modify or terminate any contracts;
  - (c) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;



- (d) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of the Court; and
  - (e) to apply for any vesting order or other orders necessary to convey the Property or any part of parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property.
3. The Appointment Order and other relevant documents have been posted on the Receiver's website, which presently can be found at [www.linkassociates.ca](http://www.linkassociates.ca) under Files In Progress/Besnovo.
4. The Receiver has retained the firm of Aird & Berlis LLP to act as its independent legal counsel.

## **II. PURPOSE OF THE REPORT**

5. The purpose of this first report of the Receiver (the “**First Report**”) is to:
- (a) report on, and seek approval for, the actions, activities, conduct and findings of the Receiver since the date of the Appointment Order to the date of this First Report;
  - (b) provide the Court with information on the Receiver's proposed sale process (the “**Sale Procedure**”) for the sale of the Property;
  - (c) provide the Court with a summary of the Receiver's cash receipts and disbursements for the period from March 12, 2020 to June 3, 2020 (the “**Interim R&D**”); and
  - (d) seek an Order:
    - (i) authorizing the Receiver to conduct the Sale Procedure;

- (ii) providing direction to the Receiver with regard to accepting the Stalking Horse Offer (defined later herein);
- (iii) approving the First Report and the Receiver's Interim R&D;
- (iv) approving the interim professional fees and disbursements of the Receiver and those of its legal counsel as set forward in the fee affidavits filed and attached to this First Report;
- (v) approving that the borrowing limit of \$1,000,000 for the Receiver's borrowings subject to the Receiver's Borrowing Charge, as established in paragraph 21 of the Appointment be increased to \$1,500,000; and
- (vi) such further and other relief as to this Honourable Court may seem just and appropriate.

## 2.1 Terms of Reference

6. In preparing this First Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in this report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness.
7. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with

Canadian Auditing Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

### III. BACKGROUND

9. Besnovo is a corporation operating under the laws of Ontario and currently operating from leased premises in Ajax, Ontario. Besnovo was formerly known as BRIC Engineered Systems Inc. (“**BRIC**”) until February 8, 2018 when articles of amendment were filed to effect a name change from BRIC to Besnovo.
10. Cleeve Holdings Inc. (“**Cleeve Holdings**”) is an Ontario corporation holding 50% of the shares of the Debtor. PengYuan Holding Limited (“**PengYuan**”) is a Canadian corporation holding the other 50% of the shares of the Debtor.
11. PengYuan acquired its 50% interest in the Debtor from Cleeve Holdings on or around December 13, 2016 (prior to the name change from BRIC noted above).
12. In consideration for the shares, PengYuan paid \$5 million to Cleeve Holdings and from this \$5 million, Cleeve Holdings was required to loan \$2 million back to the Debtor (the “**Cleeve Holdings Loan**”).
13. In addition, PengYuan was required to, and did, advance a separate \$5 million demand loan to the Debtor (the “**PengYuan Loan**”).

14. The net effect of the entire transaction was that PengYuan and Cleeve Holdings would each own 50% of the Debtor, PengYuan would have a \$5 million shareholder loan, Cleeve Holdings would have a \$2 million shareholder loan, and the Debtor would have several million dollars of working capital to fund research and development and operating costs.
15. The Receiver notes that Isabelle Roberts also claims to be a shareholder of the Debtor and previously commenced an application seeking a declaration regarding same.
16. As set out in the Motion Record dated February 28, 2020 which gave rise to the appointment of the Receiver on March 12, 2020, the Debtor is subject to ongoing litigation regarding competing claims of ownership of the Debtor, a dispute between shareholders as to entitlement to claim a security interest over the assets of the Debtor, and has exhausted its cash reserves to the point where continuing operations would not be possible without ongoing funding.
17. It was against this backdrop that the Receiver was appointed with the power to borrow, to operate, and to market and sell the Debtor's property for the benefit of its creditors.

### **3.1 The Business**

18. Besnovo is in the business of developing mobile industrial automation and laser de-coating solutions for various industries, including aerospace.
19. Besnovo has been to date primarily involved in research, development and testing but has not yet achieved commercialization or generated customer revenue.
20. The Company is continuing to research and develop a method using laser technology and a robotic arm mounted on a mobile platform, as a more environmentally friendly paint removal

system for airplanes and vessels, to significantly reduce labour cost and avoid the use of harsh chemicals and the resulting hazardous waste that is generated from the current method of chemical stripping.

21. While it is beyond the scope of this First Report to provide detailed technological descriptions of the laser and scanning systems and the ongoing research and testing procedures involved, the Company estimates that another 18 – 24 months and several million dollars of additional investment will be required before a market-ready product will likely be available.
22. Development of this technology requires ongoing collaboration with the major Original Equipment Manufacturers (“OEM”) for airplanes, such as Boeing, as any system will need to be approved for use and certified by the individual OEM’s and incorporated into their maintenance manuals and training procedures.
23. Given the nature of the business and the technology under development, the Receiver is of the opinion that any non-public details of the Company’s technology (current or planned) which may be considered proprietary and/or developmental and experimental in nature, must remain confidential and not otherwise disclosed in this First Report.

### **3.2 Company’s Financial Position**

24. Besnovo’s historical financial performance has been what one may expect from a company investing heavily in research and development.
25. Management believes that significant continued investment will be necessary to translate its research endeavours into a commercialized product on the necessary scale to generate

sufficient cash flow to meet its debt obligations and provide a return on capital to its shareholders.

26. Since early 2017 the Company's operations have been funded primarily by the working capital provided by the PengYuan Loan and the Cleeve Holdings Loan, and to a lesser degree, government grant programs.

27. From 2017 through 2019, Besnovo's revenues consisted primarily of interest income (from the large cash balances maintained from the proceeds of the PengYuan and Cleeve Holdings Loans), foreign exchange gains, and modest government grants.

28. Expenses consist primarily of salaries and wages, consulting and professional fees, research and development expenditures, rent, and interest on the PengYuan and Cleeve Holdings Loans.

29. A balance sheet summary for fiscal 2017 through 2019 is set out below

<b>BALANCE SHEET</b>				
CAD 000's				
		Year Ended December 31		
		2017	2018	2019
<b>ASSETS</b>				
Cash		4,729	2,711	433
Inventory		535	634	843
Capital Assets		101	126	121
Other		214	451	264
<b>TOTAL ASSETS</b>		<b>5,579</b>	<b>3,922</b>	<b>1,661</b>
<b>LIABILITIES</b>				
Trade Debt		20	36	23
Shareholder Loan				
PengYuan		5,112	5,150	5,300
Cleeve		2,035	2,061	2,121
<b>TOTAL LIABILITIES</b>		<b>7,167</b>	<b>7,247</b>	<b>7,444</b>
Retained Earnings (Deficit)		(1,588)	(3,325)	(5,783)

30. The summary reflects the steady decline in cash reserves from 2017, minimal trade payables, and the PengYuan and Cleeve Holdings interest-bearing shareholder loans.
31. Besnovo has a retained earnings deficit of almost \$6 million as at the date of this First Report.

#### **IV. ACTIVITIES OF THE RECEIVER**

##### **4.1 Initial Activities**

32. Upon the making of the Appointment Order on March 12, 2020, the Receiver attended at the business premises to take the steps that it considered necessary for possession and control and to carry out its initial duties.
33. Electronic back-ups of the Company's servers and computers were taken by the Receiver and removed from the Premises.

##### ***Creditor Notification***

34. In accordance with Section 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), the Receiver prepared and filed with the Office of the Superintendent of Bankruptcy, and mailed and/or sent via email to all known creditors, the statutory notice of its appointment (the "**245/246 Notice**"), a copy of which is attached as **Appendix "B"**.
35. On March 18, 2020, Isabelle Roberts e-mailed the Receiver to advise that her company (CG Belle Industries) should have been listed as a creditor for \$125,000 pursuant to unpaid consulting invoices dating back to 2017.
36. In reply, on March 18, 2020, the Receiver requested Roberts to provide copies of all such invoices for amounts being claimed, along with a copy of her contract with Besnovo setting

out the scope of work, and/or her employment contract, and any and all other documents pertaining to same for review by the Receiver.

37. On March 24, 2020, Ms. Roberts provided electronic copies of 20 invoices totaling \$306,051.46, stating that *“some of these are still outstanding”*. In reply, on March 26, 2020, the Receiver asked Ms. Roberts to first identify which invoices are actually unpaid according to her accounting records, and to provide a complete listing of all payments received by her from BRIC/Besnovo over this time period so that the Receiver could review further.

38. No further or additional information has been provided by Roberts in this regard, and the Receiver has not come across any information which would indicate Ms. Roberts is a creditor.

### ***Insurance***

39. After reviewing Besnovo’s insurance documents and corresponding with the insurance broker, the Receiver determined that the coverage is satisfactory, that the policy is in full force and effect and that premium payments are up-to-date.

40. The Receiver has been added as an additional named insured and loss payee to the policy. The current policy term expires on November 13, 2020.

### ***Premises***

41. The Company operates from leased premises at Unit #11-14, 695 Westney Road South in Ajax, Ontario (the **“Premises”**). Upon its appointment the Receiver attended at the premises each business day, daily from March 12 to March 20, 2020 to carry out its initial activities.



42. The Receiver did not change the locks or alarm due to the continued operation of the Company at the Premises. The Receiver obtains access to the Premises by the provision of a key and alarm code specific to the Receiver.
43. The lease for the Premises was set to expire on August 14, 2020. The Receiver contacted the landlord to notify it of the Receiver's appointment and was advised by the landlord that the lease was in good standing and that all payments under the lease were current.
44. The Receiver negotiated with the landlord to extend the current lease for an additional six months to February 14, 2021, with a three-month notice to vacate or extend the lease. This extension was done in consultation with management.

### ***Employees***

45. There were twenty-three active employees on the date of the Appointment Order. Employees were advised of the appointment of the Receiver and the role of the Receiver in the business.
46. No employees have been terminated as a result of the receivership, and no applications have been made under the *Wage Earner Protection Program Act*.
47. The human resources manager resigned on March 20, 2020. Her role has been temporarily assumed by the Company's in-house accounting and finance person.

### ***Banking***

48. The Receiver opened a trust account at The Bank of Nova Scotia (the "**Trust Account**"). As provided for in Paragraph 13 of the Appointment Order, the Receiver also elected to continue to use the Company's operating accounts at TD Canada Trust ("**TD**").

49. The Receiver was of the view that continued use of the TD accounts was more efficient due to its integration with the Company's accounting and payroll systems, direct payment abilities in dual currencies, direct deposit arrangements set-up with CRA and other government agencies, and it is a simple matter for the Receiver to monitor this account on a daily basis.
50. The Receiver provided TD Canada Trust with a copy of the Appointment Order and asked for the signing authorities to be changed to that of the Receiver. TD advised it would take several days since all such matters were not handled at the branch, but centrally from another service location.
51. It was around this time that businesses were being ordered to close due to the pandemic. The Receiver exercised what it believed to be reasonable discretion in not assuming sole signing authority on the TD Accounts, as it was entirely unclear what would physically be permitted and/or possible during periods of quarantine and eventually shutdown to ensure timely processing of critical payments, including payroll.
52. The Receiver chose to continue to authorize the Company's internal accountant (the "**Accountant**") and its VP/Chief Technology Officer (the "**CTO**") to continue to jointly sign cheques once they are approved by the Receiver, in accordance with the approved budget and cash flow, due to their geographic proximity to the Premises and level of management responsibility.
53. The Receiver has instituted a process by which the Receiver reviews and approves all purchases, payroll and any other disbursements before any such payments are processed. No payments or transactions are made without the Receiver's prior written approval. There have been no transactions conducted contrary to this process.

### ***Budget and Borrowing Process***

54. The Receiver coordinates with the Accountant and the CTO to prepare an operating budget each month (the “**Budget**”). The Budget is used to forecast monthly cash requirements for the Company and incorporates operational overhead costs, costs associated with research and development, and the purchase of equipment required for same.
55. Since the Company has no revenues and its working capital reserves have been depleted, it requires ongoing access to funds to continue to operate. The Receiver has been authorized to issue up to \$1 million in Receiver’s Borrowing Certificates pursuant to the Appointment Order.
56. To access funding, the Receiver prepares and submits a detailed request showing the projected cash needs based on the Budget and submits same to PengYuan, which has agreed to act as the lender.
57. To date, the Receiver has issued two Receiver’s Borrowing Certificates to PengYuan, the first for \$175,000 on April 14, 2020 and the second for \$100,000 on May 27, 2020. Copies of the Receiver’s Borrowing Certificates are attached as **Appendix “C”**.

### **4.2 Canada Revenue Agency (“CRA”)**

58. The Receiver immediately notified CRA of the receivership appointment. The Receiver has confirmed that all GST/HST returns and corporate income tax filings are current.
59. The Company employs a third-party payroll service provider, which ensures that all withholding taxes are deducted and remitted to CRA. There are no known obligations owing to CRA of any kind.

***Scientific Research & Experimental Development (“SR&ED”)***

60. The Company filed applications for tax refunds available under the SR&ED program for 2017 and 2018, and both were approved but the refunds were not received until early in fiscal 2020.
61. In particular, the Company received a SR&ED refund in the amount of \$254,586.91 arising from the 2017 taxation year on March 9, 2020, just prior to the Appointment Order being made.
62. The SR&ED refund arising from the 2018 taxation year in the amount of \$210,306.21 was received on January 13, 2020.
63. The Company’s December 31, 2019 tax return is in progress and includes an application for a potential SR&ED refund of approximately \$280,000.

**4.3 Industrial Research Assistance Program (“IRAP”)**

64. IRAP is a Canadian government funding program designed to accelerate the research and development (“R&D”) projects of Canadian innovators. The program is administered and managed by the National Research Council of Canada (“NRC”) for companies performing a technology-driven research and development project in Canada.
65. The core funding type provided by NRC-IRAP is in the form of financial contributions to support technical R&D projects.
66. Besnovo made an application and it was deemed suitable for funding, which will offset a portion of technical labour and subcontractor costs to assist with the development and/or commercialization. Initial funding of \$112,582.71 was received on June 3, 2020 by way of

direct deposit to the Company's account, as reported in the Receiver's Interim R&D. Further funding of approximately \$75,000 is potentially available.

#### **4.4 Receiver's Ongoing Activities**

67. The Receiver held several meetings with management to obtain an understanding of the technology being developed, the history of the development, the future development plans and the challenges facing the Company.

68. The Receiver also worked with management to develop the appropriate framework and protocols for day-to-day business, reporting structure and approvals.

69. It was intended that the Company would continue to operate during the receivership, with funding by way of Receiver's Borrowing Certificates, while the Receiver conducted a Court-approved sales process. Management and employees worked cooperatively with the Receiver in this regard.

70. The Receiver commenced preparation of an Information Package to be used for the purpose of marketing the Company and its technology as part of a Court-approved sales process.

71. However, this initiative was interrupted by the COVID-19 pandemic, the effects of which are set out below.

#### **4.5 Request for Increased Borrowing Limit**

72. The original borrowing limit of \$1,000,000 established in the Appointment Order contemplated the funding needed to cover projected business operating costs and professional fees for 3 to 4 months.

73. Given the pandemic and deferral of sales and marketing efforts, the timeline of the anticipated completion of the receivership has necessarily been extended. In addition, there is now the proposed commencement of a Stalking Horse Sale Procedure, with potential for an auction process and increased Receiver's and legal fees.
74. For this reason, the Receiver recommends increasing the borrowing limit from \$1,000,000 to \$1,500,000, to ensure that there is sufficient funding for the business to continue to operate during the proposed Stalking Horse Sale Procedure and to account for all professional fees and expenses, and to avoid the time and expense of a subsequent Court appearance solely for the purpose of seeking a limit increase.
75. PengYuan, acting as the lender, has consented to this proposed increase to the borrowing limit and is prepared to fund same.

#### **4.6 Impact of COVID-19**

76. Shortly after the appointment of the Receiver, the following COVID-19 related events occurred, and their effect on the Company's operations is outlined below:
- i) On March 17, 2020, the Government of Ontario ("**Ontario**") declared a state of emergency (the "**Ontario Emergency Order**").
  - ii) On March 23, 2020, Ontario ordered the closure of all non-essential businesses for 14 days, to be effective at the close of business March 24, 2020 (this closure was subsequently extended);
  - iii) In response to the Ontario Emergency Order and business closure requirement for non-essential businesses, the following steps were taken by the Receiver and management:

- (a) the Premises were closed and the employees were told not to attend at the Premises, except for the purpose of periodic inspection to comply with insurance requirements, and for the purpose of accessing materials and services required for remote operation, as allowed under the *Emergency Management and Civil Protection Act*;
- (b) the Company had been conducting testing of its research machine at a hangar located in the Muskoka, Ontario airport. This testing had to cease due to the Ontario Emergency Order. Arrangements were made with the Muskoka airport to allow the equipment to remain on site until testing could either resume, or be removed;
- (c) four employees were placed on lay-off, twelve employees were asked to work from home with reduced hours, and the remaining employees were asked to work from home; and
- (d) although the Company was not eligible for the Canada Emergency Wage Subsidy as it is limited to companies with revenues, it was able to avail itself of the Temporary 10% Wage Subsidy offered by the Federal Government, and was able to reduce its payroll cost by \$21,637 up to the end of May, 2020.

77. In addition to the closure of non-essential businesses, the Federal Government closed the border to all non-essential travel. The effect on airlines and manufacturers was immediate, with multiple airlines slashing routes and laying off thousands of employees.

78. The global stock markets went into freefall, with the TSX closing down as low as 11,228 on March 23, 2020 after reaching a high of 17,944 on February 20, 2020. Similarly, the Dow Jones fell from a high of 29,551 on February 12, 2020 to 19,898 on March 18, 2020.

79. It was within this economic environment, and new rules surrounding quarantine, social distancing, and extreme uncertainty about what the coming weeks would bring, that the Receiver elected to defer advancing any form of sales process until greater clarity could be found.
80. Notwithstanding the early stages of the pandemic, the Receiver continued with its duties remotely and worked with management to the greatest extent possible to ensure no interruption to employment or business continuity.

## **V. BUSINESS RE-OPENING**

81. On May 14, 2020, Ontario expanded its list of essential businesses to include those companies involved in research and development.
82. The Receiver worked with management to prepare a plan to re-open the business, following the recommendations of various government agencies regarding safety, cleaning, social distancing, minimizing employees on site and other matters.
83. A copy of the re-opening plan prepared by management and approved by the Receiver is included as **Appendix “D”**.
84. The Premises were prepared for re-opening during the week of May 18, 2020, and the Company was re-opened on May 25, 2020, with limited attendance by employees. Employees are encouraged to continue to work from home whenever possible.
85. Certain employees who had their hours of work reduced were reinstated to full time hours.



86. The research equipment that had been sent to the Muskoka airport for testing is in the process of being returned to the Premises.

87. Research and development activities resumed at the Premises in late May.

## **VI. PROPOSED SALES PROCESS**

88. The Appointment Order authorizes the Receiver to market the Property for sale.

89. As set out above, due to the COVID-19 pandemic, the Ontario Emergency Order, shutdown of businesses, and the airline industry being so negatively impacted, the Receiver believed it was preferable to defer the marketing process until greater certainty could be established. This decision was communicated to both shareholders.

90. The Company has no revenue, given that it remains in the research and development stage. Its sole source of funding is loans made available by PengYuan pursuant to Receiver's Borrowing Certificates, as described in paragraphs 55 to 57 above, as well as government programs for research and development.

91. As the Company will continue to require funding by way of such Receiver's Borrowing Certificates on an ongoing basis, the Receiver believes that it is desirable to bring the receivership to a prompt conclusion.

92. The Receiver believes that with businesses slowly re-opening in Ontario, it is now appropriate to commence the marketing process for the Property. The Receiver is therefore seeking the Court's approval of the Sale Procedure, as described at paragraphs 107 to 110 below.

93. For the purpose of establishing a floor price and to ensure that only serious offers are received for the purchase of the Property, PengYuan has submitted a stalking horse credit bid offer (the **“Stalking Horse Offer”**).
94. The Receiver is of the view that, provided that PengYuan’s debt and security are confirmed by the Court to be outstanding and valid, then the Stalking Horse Offer appears to be advantageous.
95. The Receiver is seeking the direction of the Court regarding the acceptance of the Stalking Horse Offer (once accepted, the **“Stalking Horse Agreement”**), in conjunction with carrying out the Sale Procedure. The Stalking Horse Offer is described below.

## **VII. THE STALKING HORSE OFFER**

96. Capitalized terms used in this section of the First Report are as defined in the Stalking Horse Offer unless otherwise defined. A copy of the Stalking Horse Offer is attached hereto as **Appendix “E”**.
97. The Stalking Horse Offer is a “credit bid” by PengYuan, one of Besnovo’s shareholders and its only registered secured creditor (the **“Purchaser”** or the **“Stalking Horse Bidder”**).
98. The key provisions of the Stalking Horse Offer are set out below. The Purchaser will acquire the Assets (as defined in the Stalking Horse Offer) for the price set out in the Stalking Horse Offer (the **“Stalking Horse Price”**). The Stalking Horse Price shall be satisfied by the Purchaser providing a credit to the Debtor in the amount of the Secured Debt plus the Advances Under the Receiver’s Borrowing Certificates (the **“Credit Bid Amount”**).

99. The Stalking Horse Offer includes the following material provisions:

- (i) the Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Vendor or of any other Person, whether known or unknown, fixed, contingent or otherwise, including any debts, Claims, liens, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the Vendor's ownership of or interest in the Assets and any business conducted by the Vendor, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**").
- (ii) for greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:
  - (a) all Taxes payable by the Vendor arising with respect to any taxation year or period ending on or prior to the Closing Date, all Taxes for any taxation year or period that commences prior to the Closing Date and ends after the Closing Date, where such Taxes are allocated to the Vendor on the basis that such taxation year or period ends on the Closing Date, and all Taxes payable relating to any matters or assets other than Taxes expressly assumed by the Purchaser under this Agreement; and
  - (b) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date;
- (iii) the Assets are being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date and without any express or implied agreement,

representation or warranty of any kind whatsoever as to the title, condition, area, suitability for development, physical characteristics, profitability, availability of development charge credits, use or zoning, the existence of latent defects, any environmental matter, the quality thereof or as to the accuracy, currency or completeness of any information or documentation supplied or to be supplied in connection with the Assets;

- (iv) the Purchase Price shall be adjusted as at Closing; and
- (v) the Closing Date shall be the tenth business day after the satisfaction or waiver of all conditions, but no later than August 21, 2020.

100. The Stalking Horse Offer further contains the following provisions relating to the Sale Procedure:

- (a) the Vendor shall serve and file a motion with the Court (the "**Sale Motion**") returnable on or before June 18, 2020, seeking an Order approving: (i) the Receiver's acceptance of the Stalking Horse Offer; (ii) the Sale Procedure, inclusive of the auction and the bidding procedures provided for therein; and (iii) such other relief as may be required (the "**Stalking Horse and Bidding Procedures Order**");
- (b) the Stalking Horse Agreement shall be deemed to be a qualified bid for the purpose of the auction, and the Purchaser consents to the inclusion of the Stalking Horse Offer in the Receiver's Sale Motion without the need of any sealing order;
- (c) the Receiver shall administer the Sale Procedure and shall be entitled to solicit bids until the Bid Deadline (defined below). For certainty, the Receiver shall be entitled to

- hold discussions with bidders and control any other aspect of the Sale Procedure, provided that the Bid Deadline shall not be extended without the Purchaser's prior written consent (acting reasonably);
- (d) if the Receiver does not receive any qualified bids (other than the Stalking Horse Agreement) by the Bid Deadline, and provided that all of the conditions to closing set out in Article 5 have been satisfied or waived by the applicable Party, the Vendor will close the Transaction with the Purchaser in accordance with the Stalking Horse Agreement with any necessary amendments. The Vendor shall use their commercially reasonable efforts to promptly file and serve a motion with the Court for an Order (the "**Approval and Vesting Order**") in form and substance satisfactory to the Vendor, and the Purchaser, each acting reasonably, among other things, approving this Agreement and Transaction and vesting title to the Assets in the Purchaser free and clear;
- (e) if the Receiver receives one or more qualified bids (other than this Agreement), the Receiver shall use its commercially reasonable efforts to conduct the auction for the Assets in accordance with the bidding procedures established in the Sale Procedure;
- (f) the Receiver shall have the right to accept any bid that it determines to be the most favourable as the Successful Bid. If the Purchaser is not the Successful Bidder, the Purchaser shall be entitled to, and shall be paid, the Break Fee from the proceeds of the transaction with the Successful Bidder in the amount of \$300,000 (the "**Break Fee**");
- (g) if the Purchaser is the Successful Bidder (pursuant to the Stalking Horse Agreement or otherwise), the Purchaser shall provide any information and take such actions as may be reasonably requested by the Vendor to assist the Vendor in obtaining the Approval

and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction. The Purchaser and the Vendor covenant to take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or proper, consistent with Applicable Law, to consummate and make effective the Transaction as soon as possible following the issuance of the Approval and Vesting Order, and, in any case, by the Closing Date; and

- (h) in the event that any third party seeks leave to appeal, or an appeal is taken or a stay pending appeal is requested with respect to the Stalking Horse and Bidding Procedures Order or the Approval and Vesting Order, the Vendor shall promptly notify the Purchaser of such leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice(s) or order(s). The Vendor shall also provide the Purchaser with written notice of any motion or application filed in connection with any leave to appeal or appeal from such orders.

101. Pursuant to the Stalking Horse Offer, the mutual obligation of the Receiver and the Purchaser to complete the Transaction is subject to satisfaction of, or compliance with, on or before the Closing Date, each of the following conditions precedent:

- (i) the Stalking Horse and Bidding Procedures Order shall have been issued and entered by the Court and shall not have been stayed, set aside, amended, varied, vacated or subject to a pending appeal or motion to amend, set aside, stay, vary or vacate the Stalking Horse and Bidding Procedures Order, and no order shall have been issued that restrains or prohibits the completion of the Transaction; and

- (j) prior to the Closing Date, and in any event on or before August 18, 2020, provided that the Purchaser is the Successful Bidder, the Court shall have granted the Approval and Vesting Order and shall not have been stayed, set aside, amended, varied, vacated or subject to a pending appeal or motion to amend, set aside, stay, vary or vacate the Approval and Vesting Order shall be outstanding.

102. Pursuant to the Stalking Horse Offer, the obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed on the Closing Date:

- (i) all of the terms, covenants and conditions of the Stalking Horse Offer to be complied with or performed by the Vendor shall have been complied with or performed in all material respects;
- (ii) all of the representations and warranties of the Vendor set out in the Stalking Horse Offer shall be true and accurate in all material respects as if made as of the Closing;
- (iii) receipt of all deliveries to be made by the Vendor as set out in Section 7.1 of the Stalking Horse Offer; and
- (iv) the Vendor and the Purchaser shall, on or before the Closing Date, jointly execute in prescribed form and containing the prescribed information, and Purchaser will file within the required time, an election to have section 167 of the *Excise Tax Act* (Canada), and any similar provision of any applicable provincial legislation, apply in respect of the purchase and sale of the Assets hereunder such that no tax is payable under Part IX of the *Excise Tax Act* (Canada) in respect of such purchase and sale. The parties

represent that the Vendor and Purchaser are both registered under Part IX of the *Excise Tax Act* (Canada) for this purpose.

103. The obligation of the Receiver to complete the Transaction is subject to the following conditions being fulfilled or performed on the Closing Date:

- (i) on the Closing Date, all of the terms, covenants and conditions of the Stalking Horse Offer to be complied with or performed by the Purchaser shall have been complied with or performed in all material respects;
- (ii) all of the representations and warranties of the Purchaser set out in the Stalking Horse Offer shall be true and accurate in all material respects as if made as of the Closing;
- (iii) receipt of all deliveries to be made by the Purchaser as set out in Section 7.2 of the Stalking Horse Offer; and
- (iv) the Receiver shall have determined in accordance with the Sale Procedure that the Stalking Horse Agreement is the Successful Bid.

104. The Sale Procedure, described later in this Report, is intended to provide for a fair and transparent marketing process that will allow the Receiver to maximize realizations from the Property by seeking superior offers for the Assets. The Stalking Horse Offer sets a “floor price” for the Assets.

105. As contemplated in the Stalking Horse Offer, the Receiver intends to seek a vesting order to transfer title to the Property to:



- (i) PengYuan if the Sale Procedure does not result in an offer that is sufficiently higher than the Stalking Horse Offer, or
- (ii) to the Successful Bidder if the Sale Procedure does result in an offer that is higher than the Stalking Horse Offer.

## **VIII. THE SALE PROCEDURE**

106. The Receiver seeks approval to implement the Sale Procedure that, if approved, will set the parameters of the sales and marketing process pursuant to which the Receiver will seek offers superior to the Stalking Horse Offer for the Property, and will set out the requirements for the submission of offers by interested parties.

107. The Sale Procedure shall be as follows:

- (a) the Receiver shall solicit potential purchasers by:
  - (i) sending out a teaser letter to parties identified by the Receiver as potential purchasers as soon as reasonably practicable after the issuance of this Order;
  - (ii) placing an advertisement in the Globe & Mail (National Edition) within five (5) business days of the issuance of this Order; and
- (b) providing to any potential purchasers who execute a confidentiality agreement on terms satisfactory to the Receiver: (1) access to an electronic data room containing information reasonably required by prospective purchasers of the Debtor's Property to consider submitting a Qualified Bid (defined below) and facilitate the conduct of due diligence by prospective purchasers; and (2) an electronic copy of the Stalking Horse

- Offer, but provided that the Receiver shall not be obligated to disclose trade secrets or other proprietary information the disclosure of which the Receiver deems to be detrimental to the interests of the Debtor;
- (c) any interested purchaser shall submit a formal offer to purchase the Property in the form set out in paragraph 109 below, on or before the Bid Deadline. Any bids received which meet the requirements set out in paragraph 109 shall be deemed to be “**Qualified Bid(s)**”. For the purpose of the Sale Procedure, the Stalking Horse Offer shall constitute a Qualified Bid;
  - (d) the Receiver shall review any formal bids received by the Bid Deadline and determine if there are one or more Qualified Bids;
  - (e) if the Stalking Horse Agreement constitutes the only Qualified Bid, the Receiver shall bring a motion as soon as reasonably possible thereafter for approval of the Stalking Horse Agreement and an order to vest the Debtor’s Property in PengYuan and proceed with closing the transaction forthwith;
  - (f) if there is more than one Qualified Bid, the Receiver shall send out invitations on or before August 5, 2020, or as soon as reasonably practicable, to all bidders who have submitted a Qualified Bid (the “**Qualified Bidders**”), inviting the Qualified Bidders to attend an auction (the “**Auction**”) to be conducted by the Receiver at 10:00 a.m. (Toronto time) on August 10, 2020, at the offices of the Receiver, or otherwise as may be determined by the Receiver, in its sole discretion, together with a set of rules for the conduct of the Auction, and a copy of the most favourable Qualified Bid (the “**Lead Bid**”); and

- (g) the Receiver shall conduct the Auction by soliciting bids, starting at a minimum of \$50,000.00 increments above the amount of the Lead Bid, for which each bid must exceed the aggregate purchase price payable pursuant to the preceding bid by no less than \$50,000.00 and for which all consideration in excess of the amount set forth in the Lead Bid must be comprised only of cash consideration;
- (h) the Receiver may establish such timelines and protocols for the Auction as it considers appropriate, in its discretion, which will not be inconsistent with the terms of this Order;
- (i) the “**Successful Bidder**” shall be: (1) if there are no bids at the auction, the person with the Lead Bid; or (2) the bidder with the highest qualified bid at the Auction;
- (j) upon acceptance of the bid of the Successful Bidder, (the “**Successful Bid**”) there shall be a binding agreement of purchase and sale between the Successful Bidder and the Receiver; and
- (k) the Receiver shall make a motion to this Court, forthwith, to obtain an order to approve the agreement with the Successful Bidder and to vest the Debtor’s property in the Successful Bidder, proceed with closing the transaction forthwith and distribute the Break Fee (as such term is defined in the Stalking Horse Offer) from the proceeds of the transaction.

108. Subparagraphs 107(c) to 109(k) above collectively make up the “**Bidding Procedures**”.

109. To constitute a Qualified Bid, a bid must:

- (l) be accompanied by a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Offer, showing any and all variations from the Stalking Horse Offer, which includes the Terms and Conditions attached hereto as **Appendix “F”**, and a deposit in the amount equal to at least 10% of the aggregate purchase price under the subject bid by way of bank draft or certified cheque payable pursuant to the terms of the subject bid and which is not subject to any encumbrances;
- (m) remain open for acceptance and completion until 3:00 p.m. (Toronto time) on August 18, 2020;
- (n) be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Offer;
- (o) not contain any contingency relating to due diligence or financing or any other material conditions precedent to the subject bidder’s obligation to close that are not otherwise contained in the Stalking Horse Offer;
- (p) specify the assets that are subject to the subject bid, including, without limitation, any executory contracts and unexpired leases;
- (q) be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by the bid on the terms specified therein;  
and
- (r) contain, among other things, an aggregate purchase price at least equal to the Stalking Horse Offer, plus the Break Fee (as such term is defined in the Stalking Horse Offer) and an additional sum of \$50,000.00.

110. The Sale Procedure will be posted to the Receiver's website. Any potential interested party that contacts the Receiver will be invited to participate in the Sale Procedure.

111. In the Receiver's view, the Sale Procedure:

- (a) is consistent with market practice;
- (b) provides a reasonable opportunity for competing bidders to submit offers superior to the Stalking Horse Offer;
- (c) enables the Receiver to maximize realizations from the Property; and
- (d) is reasonable and appropriate in the circumstances.

## **IX. SECURED OR PRIORITY CLAIMS**

112. The Receiver requested its independent counsel, Aird & Berlis LLP, to provide a legal opinion on the validity and enforceability of the security held by PengYuan against the assets, property and undertaking of Besnovo. A copy of the security opinion dated April 6, 2020, (the "**Security Opinion**") is provided in **Appendix "G"** to this First Report.

113. Subject to the assumptions, qualifications and discussions contained in the Security Opinion, counsel to the Receiver is of the opinion that PengYuan holds a properly perfected security interest against Besnovo's assets.

114. PengYuan is the only creditor which has registered a security interest against the Debtor pursuant to the *Personal Property Security Act*.

115. The Security Opinion includes a qualification to the effect that PengYuan's rights and remedies, as provided for in its security, may be subject to and affected by general principles of equity.
116. The Receiver is aware that, by way of a statement of defence, cross-claim and counterclaim filed in this proceeding, Cleeve Holdings, Cleeve Technology Inc. and Paul Church (collectively, "**Cleeve**"), deny that PengYuan is entitled to hold security in Besnovo, such that the validity and enforceability of PengYuan's security remains unsettled.
117. The adjudication of this dispute, which forms part of ongoing litigation between these parties, is outside the scope of the Receiver's mandate.
118. As the Stalking Horse Offer and proposed Sale Procedure are dependent upon PengYuan holding debt and security that may form the basis of a credit bid, the Receiver requires the direction of the Court regarding the validity and enforceability of such debt and security in order to address the Stalking Horse Offer on a timely basis.

#### **X. RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

119. Attached to this report as **Appendix "H"** is the Receiver's Interim Statement of Receipts and Disbursements for the period March 12, 2020 to June 3, 2020 (the "**Interim R&D**").
120. During this period, receipts consisted primarily of an advance of \$275,000 from PengYuan under Receiver's Borrowing Certificates No. 1 and No. 2, IRAP funding, and HST refunds.
121. Disbursements were primarily operating expenses such as rent and payroll, purchase of equipment and supplies, and Receiver's fees and disbursements.

122. The Interim R&D incorporates all of the receipts and disbursements representing transactions conducted through the Receiver's trust account at Bank of Nova Scotia, and the operating accounts of Besnovo (CAD and USD) which are domiciled at TD Bank.

## **XI. PROFESSIONAL FEES**

123. The Receiver seeks approval of its interim fees and disbursements, and those of its legal counsel, Aird & Berlis LLP.
124. The Receiver's interim accounts for the period leading up to and after the date of the Appointment Order through May 31, 2020 consist of professional fees of \$39,714.50 and HST of \$5,162.89 (the "**Receiver's Accounts**"). Attached hereto as **Appendix "I"** is the Affidavit of Robert Link sworn June 9, 2020, incorporating copies of the Receiver's Accounts and a summary of the personnel, hours and hourly rates of the Receiver.
125. The interim accounts of the Receiver's legal counsel, Aird & Berlis LLP, for the period of February 26, 2020 to May 29, 2020, consist of \$17,313.50 in fees, disbursements of \$134,50, and HST of \$2,268.25 (the "**Counsel's Accounts**"). Attached hereto as **Appendix "J"** is the Affidavit of D. Robb English sworn June 9, 2020, incorporating copies of Counsel's Accounts, as well as a summary of the personnel, hours and hourly rates of the Receiver's legal counsel.

## **XII. CONCLUSION AND RECOMMENDATIONS**

126. The Receiver respectfully requests that the Court grant an Order:
- (a) authorizing the Receiver to conduct the Sale Procedure;

- (b) providing direction to the Receiver regarding accepting the Stalking Horse Offer;
- (c) approving the First Report, the Receiver's actions, activities, conduct and findings described therein, and the Receiver's Interim R&D;
- (d) approving the fees and disbursements of the Receiver and its counsel as set out herein; and
- (e) approving the increase in the limit for the Receiver's borrowings subject to the Receiver's Borrowing Charge from \$1,000,000 to \$1,500,000.

All of which is respectfully submitted to this Court as of this 9<sup>th</sup> day of June, 2020.



**LINK & ASSOCIATES INC.**

Court-Appointed Receiver of Besnovo Inc.  
and not in its personal or corporate capacities



# APPENDIX

“A”

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

JUSTICE

T. McEwen

THURSDAY, THE 12th

DAY OF MARCH, 2020



ISABELLE ROBERTS

Applicant

- and -

BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as SHAWN  
YUAN)

Respondents

ORDER  
(appointing Receiver)

THIS MOTION made by PengYuan Holding Limited and Xing Yuan for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Link & Associates Inc. as receiver (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of Besnovo Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Xing Yuan sworn February 24, 2020 and the Exhibits thereto and on hearing the submissions of counsel for PengYuan Holding Limited and Xing Yuan, counsel for the Cleeve and Church Respondents and counsel for Isabelle Roberts, and on reading the consent of Link & Associates Inc. to act as the Receiver,

## SERVICE

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

## APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Link & Associates Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

## RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver 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;
  - (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 of the Debtor, 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 the Debtor;
  - (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 Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) 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 the Debtor, the Property or the Receiver, 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;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver 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;
- (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 Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's 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 and, if the landlord disputes the Receiver'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 Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a **"Proceeding"**), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

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

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

11. THIS COURT ORDERS that no Person shall 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 the Debtor, without written consent of the Receiver or leave of this Court.

## **CONTINUATION OF SERVICES**

12. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, 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 Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver, or an existing account of the Debtor where the Receiver has assumed sole signing authority, (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.



## PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount as this Court may by further Order authorize) at

any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<●>'.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

27. Notwithstanding anything else herein, in respect of the proceedings bearing Court File No. CV-18-607866 00CL and 18-00610566-00CL (together, the "**Ongoing Litigation**") the Receiver shall cooperate with all reasonable requests by the parties to the Ongoing Litigation (collectively, the "**Litigation Participants**") for the production of Records in existence as of and after the date of this Order. Such requests to the Receiver shall be on notice to the Litigation Participants and any disputes over production shall be resolved by way of a motion to the Court for directions by the party seeking productions. The Receiver's reasonable costs in producing any Record shall be at the expense of the party requesting the Record, other than any costs, legal fees and disbursements that may be incurred in connection with any dispute over production which shall be allocated by the Court in its discretion. For greater certainty, nothing in this paragraph 27 shall require the production of Records which may not be disclosed or provided due to any privilege attaching to solicitor-client communications of the Debtor.

28. THIS COURT ORDERS that the Receiver shall not destroy any Records of the Debtor in the possession of the Receiver from time to time, without the written consent of the Litigation Participants or further Order of this Court.

#### **GENERAL**

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. 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.

32. THIS COURT ORDERS that the Receiver 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 Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

34. THIS COURT ORDERS that 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.



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

MAR 12 2020

PER / PAR



## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that Link & Associates Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Besnovo Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_\_ day of March, 2020 (the "**Order**") made in an action having Court file number CV-18-607866-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$1,000,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated monthly not in advance on the 1st day of each month after the date hereof at a notional rate of 7 per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

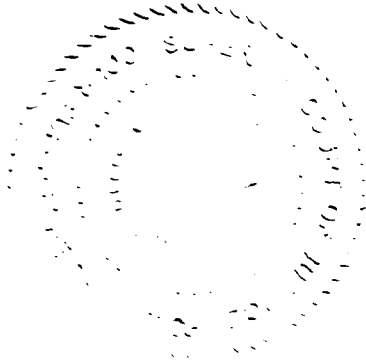
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



Link & Associates Inc. solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

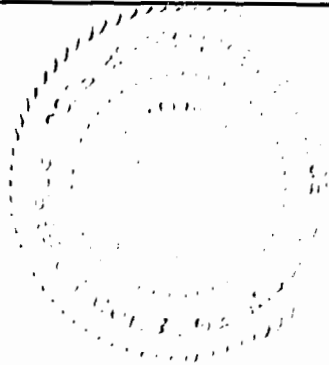
Per: \_\_\_\_\_

Name:

Title:

ISABELLE ROBERTS      BESNOVO INC.,  
Applicant      and      Respondents ET AL.

Court File No.: CV-18-607866-00CL



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at TORONTO

**ORDER  
(APPOINTING RECEIVER)**

**MILLER THOMSON LLP**

Scotia Plaza  
40 King Street West, Suite 5800  
P.O. Box 1011  
Toronto, ON Canada M5H 3S1

Bobby Sachdeva LSO#: 34454C  
bsachdeva@millerthomson.com  
Tel: 905.532.6670  
Fax: 416.595.8695

Erin Craddock LSO#: 62828J  
ecraddock@millerthomson.com  
Tel: 416.595.8631  
Fax: 416.595.8695

Lawyers for the Respondents  
PengYuan Holding Limited and Xing Yuan



# APPENDIX

“B”

District of Ontario  
Division No. 9  
Court No. CV-18-607866-00CL  
Estate No. 31-458927

**IN THE MATTER OF THE RECEIVERSHIP OF  
BESNOVO INC.  
OF THE TOWN OF AJAX, IN THE PROVINCE OF ONTARIO**

**NOTICE AND STATEMENT OF RECEIVER  
(Pursuant to Subsections 245(1) and 246(1) of the Bankruptcy and Insolvency Act)**

The Receiver gives notice and declares that:

1. On the 12<sup>th</sup> day of March, 2020, the undersigned became the Receiver in respect of all the assets, undertakings and properties of Besnovo Inc. ("**Besnovo**" or the "**Company**"), an insolvent person that is described below:

<b>Assets</b>	
Cash in Bank	\$ 276,160
Due From Shareholder	100,000
Office Furniture, Equipment, Computers	121,054
R&D Inventory	843,036
Prepaid Expenses	15,896
<b>Total Assets</b>	<b>\$ 1,356,146</b>

*NOTE: The above amounts listed reflect the book values recorded in the Company's books and records at or near the date of receivership, and do not necessarily reflect the actual realizable or sale value of the assets.*

2. The undersigned became Receiver by an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on March 12, 2020 (the "**Appointment Order**"). The Appointment Order was made on application by PengYuan Holding Limited.
3. The Receiver took possession of the assets on March 12, 2020.
4. The Receiver's intended course of action is to develop a sales process for the business and assets (subject to Court approval) while the business continues to operate.
5. The following information relates to our appointment:
  - i) Address of insolvent person: Unit #11-14, 695 Westney Rd. S., Ajax, ON M9W 1B3
  - ii) Principal line of business: Laser De-Coating Systems
  - iii) Location of business: Ajax, Ontario

Notice and Statement of Receiver  
BESNOVO INC.

---

6. The list of creditors of the insolvent person who appear to hold a security interest on the property of the insolvent person and the amount owed to each creditor is listed below.

➤ PengYuan Holding Limited - \$5,000,000

7. The list of other creditors of the insolvent person and the amount owed to each creditor and the total amount due by the insolvent person is attached hereto on **Schedule "A"**.

8. Contact information for the Receiver:

Link & Associates Inc.  
Receivers + Trustees  
77 King Street West, Suite 3000  
PO Box 95  
Toronto, ON  
M5K 1G8

Robert Link, CIRP, LIT  
Tel: 416) 862-7785 ext. #2  
Email: [rlink@linkassociates.ca](mailto:rlink@linkassociates.ca)

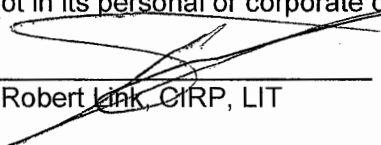
James Merryweather, CPA  
Tel: 416) 862-7785 ext. #5  
Email: [jmerryweather@linkassociates.ca](mailto:jmerryweather@linkassociates.ca)

Fax: (416) 862-2136  
Web: [www.linkassociates.ca](http://www.linkassociates.ca)

DATED AT Toronto, Ontario this 13<sup>th</sup> day of March, 2020.

**LINK & ASSOCIATES INC.**

Court-Appointed Receiver of Besnovo Inc.  
and not in its personal or corporate capacity

Per:   
Robert Link, CIRP, LIT

**SCHEDULE "A"**  
**Unsecured Creditors**  
**Besnovo Inc.**

Name of Creditor	Amount
ADT Security Services Canada Inc.	186.42
Cleeve Holdings Inc.	2,000,000.00
H.Howard Shen Professional Corporation	2,825.00
McMaster-Carr.	433.73
Rogers Wireless	249.21
Services de cartes Desjardins	801.71
Sun Life Assurance Company of Canada	3,429.59
ULINE Canada Corporation	424.61
UPS Canada	15.10
Waste Connection Of Canada	100.14
WSIB	258.97
	<hr/>
	\$ 2,008,724.48

# APPENDIX

“C”

## RECEIVER CERTIFICATE

CERTIFICATE NO. 0001

AMOUNT \$175,000

1. THIS IS TO CERTIFY that Link & Associates Inc., the receiver (the “**Receiver**”) of the assets, undertakings and properties of Besnovo Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the “**Property**”) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 12<sup>th</sup> day of March, 2020 (the “**Order**”) made in an action having Court file number CV-18-607866-00CL, has received as such Receiver from the holder of this certificate PengYuan Holding Limited (the “**Lender**”) the principal sum of \$175,000, being part of the total principal sum of \$1,000,000 which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated monthly not in advance on the 1<sup>st</sup> day of each month after the date hereof at a notional rate of 7.0 per cent.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 14<sup>th</sup> day of April, 2020.

Link & Associates Inc. solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

Per: 

Name: Robert G. Link, CIRP, LIT

Title: Authorized Signing Officer

## RECEIVER CERTIFICATE

CERTIFICATE NO. 0002

AMOUNT \$100,000

1. THIS IS TO CERTIFY that Link & Associates Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of Besnovo Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12<sup>th</sup> day of March, 2020 (the "**Order**") made in an action having Court file number CV-18-607866-00CL, has received as such Receiver from the holder of this certificate PengYuan Holding Limited (the "**Lender**") the principal sum of \$100,000, being part of the total principal sum of \$1,000,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated monthly not in advance on the 1<sup>st</sup> day of each month after the date hereof at a notional rate of 7.0 per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.



7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 27<sup>th</sup> day of May, 2020.

Link & Associates Inc. solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

Per: 

Name: Robert G. Link, CIRP, LIT

Title: Authorized Signing Officer

# APPENDIX

“D”



# Besnovo Reopening Plan

May 22th, 2020

# Outline

---

- Legal Basis
- Reopening Roadmap
- Protective equipment & materials
- Safety measures

# Legal Basis

- List of Essential Workplaces<sup>1</sup> – **updated on May 15th**
  - 35. **Research** “Businesses and organizations that maintain research facilities and engage in research, including medical research and other research and development activities.”
- List of Stage 1 Openings<sup>2</sup> – **effective on May 19<sup>th</sup>**
  - “Professional services related to Research & **experimental development** in physical, **engineering** and life sciences including electronics, computers, ..., environmental...”
- **Confirmation by Durham Police Department on May 21<sup>st</sup>**

1: O. Reg. 82/20: Emergency Management and Civil Protection Act

2: A Framework for Reopening our Province

# Besnovo Reopening Roadmap

- **Step 1**

- Starting date: May 25<sup>th</sup>
- Limited experimental work in office and most staff continue to work from home (WFH)
- Allowed activities on premises
  - Laser tests & associated preparation & analyzing work
  - Shipping and unloading equipment from Muskoka
  - Meetings that absolutely need to be in person
  - Receiving important equipment

- **Step 2**

- TBD

# Protective Equipment & Materials in Step 1

- The following equipment & materials will be distributed to individuals or placed in designated areas

Item	Individuals	Areas
Facial mask	√	NA
Gloves	√	NA
Goggles	√	NA
Disinfection wipes	√	Kitchen, meeting rooms,
Hand sanitizer	√	Reception desk, Kitchen
Hand soap	NA	Washroom, kitchen
Isopropyl alcohol	NA	Reception desk

# Safety Measures – Minimize On-Premises Activities

- Require staff to WFH whenever possible
- Minimize the number of people in facility whenever possible and allow no more than ten people in facility at one time
- Only needed & authorized staff are allowed in office
- No meetings with external visitors
- No business trips and travels



# Safety Measures in Step 1 – Social Distancing (2 meters)

- Keep social distancing during staff communication
- Wear masks at all time while in office
- Hold meetings in large rooms to ensure social distancing
- Designated lunch time and location for on-premises staff
- Allow no more than one person in lunchroom
- Only one person is allowed in a washroom at a time
- Reassign desks temporarily to avoid staff sitting next to each other

# Safety Measures in Step 1 – Disinfections & Hygiene

- Staff are required to wear masks and clean hands (using hand sanitizer) before entering office
- Staff are requested to measure their body temperature before entering office
- Staff feeling sick shall not come to office
- Staff are required to wipe equipment, desks, computers, kitchen table & appliance, boardroom table, etc. before and after use
- Staff are required to take away their trash everyday

# General Guidelines to Be Posted in Facility

- Clean hands & wear masks before entering office
- Wear masks in office at all time
- Wash hands for 20 seconds and frequently
- Keep distance when talking with others and in meetings
- Wipe desks, computers, equipment, etc. before and after use
- Do not come to office without authorization
- Do not come to office when feeling sick & report any illness the company

# *Strive for Best Innovation*



---

12 – 695 Westney Road South  
Ajax, Ontario  
Canada, L1S 6M9

[www.besnovo.com](http://www.besnovo.com)

Tel: +1(905)239-9888  
Fax: +1(905)239-9880  
Email: [info@besnovo.com](mailto:info@besnovo.com)

# APPENDIX

“E”

## STALKING HORSE ASSET PURCHASE AGREEMENT

This Agreement made as of June 4, 2020,

BETWEEN:

**Link & Associates, in its capacity as the Court appointed Receiver of Besnovo Inc.**  
(the "**Vendor**" or the "**Receiver**")

-and-

**PengYuan Holding Limited,**  
(the "**Purchaser**")

**WHEREAS** Link & Associates was appointed the receiver of the assets, undertakings and properties of Besnovo Inc. ("**Besnovo**") pursuant to the Order of the Honourable Mr. Justice McEwen of the Commercial List in Toronto on March 12, 2020;

**AND WHEREAS** the Purchaser is the only secured creditor of Besnovo with the secured debt being FIVE MILLION DOLLARS CDN (\$5,000,000.00) together with all outstanding accrued interest (the "**Secured Debt**");

**AND WHEREAS** the Purchaser has to date advanced the sum of TWO HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS CDN (\$275,000.00) with interest at the rate of 7 per cent per month compounded monthly pursuant to Receiver's Borrowing Certificates and the Purchaser will be making additional advances pursuant to Receiver's Borrowing Certificates (collectively the "**Advances Under the Receiver's Borrowing Certificates**");

**AND WHEREAS** the Purchaser has agreed to act as a stalking horse bidder, subject to the terms and conditions in this Agreement, for the purpose of running a sale and investment solicitation process ("**SISP**") such that this Agreement may constitute a stalking horse bid for all of the assets, undertaking and properties of Besnovo (the "**Assets**");

**AND WHEREAS** in the event that this Agreement is selected as the Successful Bid in the SISP, the Purchaser has agreed to purchase the Property on the terms and subject to the conditions set forth in this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and the sum of Two Dollars (\$2.00) paid by the Purchaser to the Vendor and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereby agree and declare as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

The terms defined herein shall have the following meanings, unless the context expressly or by necessary implication otherwise requires:

- (a) "**Adjustments**" means the adjustments to the Purchase Price provided for and determined pursuant to Section 3.2;

- (b) **"Agreement"** means this agreement of purchase and sale, as amended from time to time; **"Article"**, **"Section"** and **"Subsection"** mean and refer to the specified article, section and subsection of this Agreement;
- (c) **"Approval and Vesting Order"** has the meaning ascribed thereto in Section 4.1(d);
- (d) **"Applicable Law"** means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or order that applies in whole or in part to such Person, property, transaction or event;
- (e) **"Auction"** has the meaning ascribed thereto in Section 4.1(a);
- (f) **"Bid Deadline"** means ●, 2020 or such later date as established by the Proposal Trustee with the consent of the Purchaser;
- (g) **"Bidding Procedures"** means the bidding procedures for the SISP to be drafted by the Receiver for approval by a Judge of the Commercial List in Toronto;
- (h) **"Break Fee"** has the meaning ascribed thereto in Section 4.1(d);
- (i) **"Business Day"** means any day, other than a Saturday, Sunday or statutory holiday in Toronto, Ontario;
- (j) **"Claims"** means all past, present and future claims, suits, proceedings, liabilities, obligations, losses, damages, penalties, judgments, costs, expenses, fines, disbursements, legal fees on a solicitor and client basis, interest, demands and actions of any nature or kind whatsoever;
- (k) **"Closing"** means the closing and consummation of this Transaction, including without limitation the payment of the Purchase Price and the delivery of the Closing Documents, on the Closing Date at the offices of the Vendor's Solicitors;
- (l) **"Closing Date"** means, unless otherwise agreed by the Parties, the tenth Business Day after the satisfaction or waiver of all conditions set out in Sections 5.1, 5.2 and 5.3, but no later than August 21, 2020;
- (m) **"Closing Documents"** means the agreements, instruments and other documents to be delivered by the Vendor to the Purchaser pursuant to Section 7.1 and the agreements, instruments and other documents to be delivered by the Purchaser to the Vendor pursuant to Section 7.2;
- (n) **"Confidential Information"** has the meaning ascribed thereto in Section 2.4;
- (o) **"Court"** means the Commercial list in Toronto;
- (p) **"Credit Bid"** means the Purchase Price offered by the Purchaser by way of the Secured Debt and the Advances Under the Receiver's Borrowing Certificates.
- (q) **"Cure Period"** means a period of three (3) Business Days commencing on the day that the Purchaser notifies the Vendor of an Interim Financing Event of Default;

- (r) **"Excluded Liabilities"** has the meaning ascribed thereto in Section 2.2;
- (s) **"Encumbrances"** means all mortgages, pledges, charges, liens, writs, executions, debentures, hypothecs, liens, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, the Assets or any part thereof or interest therein including, without limitation, any agreements, options, easements, rights-of-way, restrictions, executions and any other encumbrances affecting the Property or any part thereof or interest therein;
- (t) **"Governmental Authority"** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal, any governmental agency, ministry, department, court (including the Court), Tribunal, commission, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government;
- (u) **"Initial Order"** means the order granted by the Honourable Justice T. McEwen dated March 12, 2020 appointing the Receiver;
- (v) **"Parties"** means the Vendor and the Purchaser and **"Party"** means either one of them;
- (w) **"Person"** includes individuals, corporations, limited and unlimited liability companies, general and limited partnerships, associations, trusts, unincorporated organizations, joint ventures and Governmental Authorities;
- (x) **"Purchase Price"** means FOUR MILLION and NINE HUNDRED THOUSAND DOLLARS CDN (\$4,900,000.00) together with all outstanding accrued interest and plus all principal and interest owing as of the Closing Date pursuant to all Receiver's Borrowing Certificates;
- (y) **"Purchaser's Solicitors"** means Miller Thomson LLP or such other firm or firms of solicitors or agents as are retained by the Purchaser from time to time and notice of which is provided to the Vendor;
- (z) **"Qualified Bids"** shall have the meaning ascribed thereto in the Bidding Procedures to be established by the Receiver and approved by the Commercial List;
- (aa) **"Receiver"** means Link & Associates;
- (bb) **"Receiver's Certificate"** means the certificate of the Receiver customarily attached as a schedule to the Approval and Vesting Order, among other things, certifying that all of the conditions to this Agreement have been satisfied and Closing has occurred;
- (cc) **"Receiver's Borrowing Certificates"** means certificates issued by the Receiver in the Receivership of Besnovo for funding of the Receivership.
- (dd) **"Representative"** means an officer, employee, agent, solicitor, consultant or other advisor or representative of either the Vendor or the Purchaser, as the context may require;
- (ee) **"Sale Hearing"** has the meaning ascribed thereto in Section 4.1(a);



- (ff) **"Sale Motion"** has the meaning ascribed thereto in Section 4.1(a);
- (gg) **"SISP"** has the meaning ascribed thereto in the recitals;
- (hh) **"Stalking Horse and Bidding Procedures Order"** means an order, in form and substance satisfactory to the Vendor and the Purchaser, each acting reasonably, and as may be granted by a Judge of the Commercial List, among other things:
  - (i) approving the execution of this Agreement by the Vendor as a "stalking horse" purchase agreement, including for greater certainty payment of the Break Fee, and
  - (ii) the SISP and Bidding Procedures;
- (ii) **"Successful Bid"** shall have the meaning ascribed thereto in the Bidding Procedures;
- (jj) **"Successful Bidder"** shall have the meaning ascribed thereto in the Bidding Procedures;
- (kk) **"Tax Return"** means any return, declaration, report, claim for refund, information return, or other document (including any related or supporting estimates, elections, schedules, statements, notices, amendments or information) filed or required to be filed in connection with the determination, assessment, or collection of any Tax or the administration of any Applicable Law or administrative requirements relating to any Tax and whether in tangible or electronic form;
- (ll) **"Taxes"** means any tax, duty, fee, royalty, levy, impost, assessment, deduction, charge or withholding, any instalments and all liabilities with respect thereto including any penalty and interest payable with respect thereto, levied, imposed or assessed from time to time by any Governmental Authority or taxing authority, domestic or foreign, and shall include all stamp, documentary, property, land transfer, alternative minimum, value added, income, gross receipt, gross profits, production, commodity, occupation, excise, sales, goods and services, harmonized sales, transfer, franchise, capital, payroll, employer health, and other taxes and assessments of any kind whatsoever imposed on or assessed with respect to or measured by or charged against or attributable to any person, including employment insurance premiums, Canada or provincial pension plan payments, workers' compensation payments and customs duties, together with any interest, penalties, additions to tax or additional amounts imposed by any Governmental Authority;
- (mm) **"Transaction"** means the purchase and sale of the Assets as contemplated by this Agreement;
- (nn) **"Tribunal"** means any court (including a court of equity), arbitrator or arbitration panel and any other Governmental Authority, stock exchange, professional or business organization or association or other body exercising adjudicative, regulatory, judicial or quasi-judicial powers;
- (oo) **"Vendor's or Receiver's Solicitors"** means Aird & Berlis or such other firm or firms of solicitors or agents as are retained by the Vendor from time to time and notice of which is provided to the Purchaser;

## **ARTICLE 2 AGREEMENT OF PURCHASE AND SALE**

### **2.1 Purchase and Sale of Assets**

Subject to the terms and conditions of this Agreement, the Vendor hereby agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the Vendor, the Assets in consideration of the payment of the Purchase Price by way of a Credit Bid, subject to adjustments in accordance with Section 3.2 This Agreement shall be completed on the Closing Date at the offices of the Vendor's Solicitors.

### **2.2 Excluded Liabilities**

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Vendor or of any other Person, whether known or unknown, fixed, contingent or otherwise, including any debts, Claims, liens, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the Vendor's ownership of or interest in the Assets and any business conducted by the Vendor, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) all Taxes payable by the Vendor arising with respect to any taxation year or period ending on or prior to the Closing Date, all Taxes for any taxation year or period that commences prior to the Closing Date and ends after the Closing Date, where such Taxes are allocated to the Vendor on the basis that such taxation year or period ends on the Closing Date, and all Taxes payable relating to any matters or assets other than Taxes expressly assumed by the Purchaser under this Agreement
- (b) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

### **2.3 Acknowledgement of Purchaser as to Condition of Assets**

The Purchaser acknowledges and agrees that, subject to the representations and warranties of the Vendor contained in Section 6.2:

- (a) in entering into this Agreement, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Assets, including without limitation, the physical and environmental condition of the Assets and a review of the documentation delivered or made available to the Purchaser pursuant to this Agreement, and the Purchaser acknowledges it is not relying on any information furnished by the Vendor or any other Person or entities on behalf of or at the direction of the Vendor in connection therewith; and
- (b) the Assets are being purchased and assumed by the Purchaser on an "as is, where is" basis as of the Closing Date and without any express or implied agreement, representation or warranty of any kind whatsoever as to the title, condition, area, suitability for development, physical characteristics, profitability, availability of development charge credits, use or zoning, the existence of latent defects, any

environmental matter, the quality thereof or as to the accuracy, currency or completeness of any information or documentation supplied or to be supplied in connection with the Assets.

The Vendor shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Assets or the condition thereof save as otherwise expressly provided in this Agreement. The provisions of this Section 2.3 shall not merge on, but shall survive Closing.

## 2.4 Confidentiality

- (a) Until Closing (and in the event this Agreement is terminated for any reason other than its completion, then also from and after such termination), the Purchaser and its consultants, agents, advisors and solicitors shall keep confidential all information, documentation and records obtained from the Vendor or its, agents, advisors or solicitors with respect to the Assets as well as any information arising out of the Purchaser's access to the Vendor's records and its due diligence with respect thereto (collectively, the "**Confidential Information**"). The Purchaser shall not use any Confidential Information for any purposes not related to this Transaction or in any way detrimental to the Vendor.

Nothing herein contained shall restrict or prohibit the Purchaser from disclosing the Confidential Information to its consultants, agents, advisors and solicitors as long as such parties provide a letter addressed to the Vendor agreeing to keep such information confidential or the Vendor receives such other assurances as are acceptable to it.

- (b) The Confidential Information referred to in this Section 2.4 shall not include:
  - (i) public information or information in the public domain at the time of receipt by the Purchaser or by its consultants, agents, advisors and solicitors;
  - (ii) information which becomes public through no fault or act of the Purchaser or its consultants, agents, advisors and solicitors;
  - (iii) information in the possession of the Purchaser not provided by the Vendor or its consultants, agents, advisors or solicitors; or
  - (iv) information required to be disclosed by law.
- (c) If this Agreement is terminated for any reason, the Purchaser shall promptly return to the Vendor all Confidential Information and similar material including all copies, and agrees to provide to the Vendor, at no cost to the Vendor, with copies of all written reports and documentation which set out the results of all tests, audits, inspections and investigations conducted by the Purchaser or its agents and representatives with respect to the Assets.

### ARTICLE 3 PURCHASE PRICE

#### 3.1 Satisfaction of Purchase Price

The Purchase Price shall be paid by the Purchaser to the Proposal Trustee pursuant to the Purchaser's Credit Bid on Closing.

#### 3.2 General Adjustments

The Purchase Price shall be adjusted as at Closing. The Vendor shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval no later than five (5) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based on the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Unless otherwise provided in this Agreement, in no event shall the Purchaser be responsible for any charges, fees, Taxes, costs or other adjustments in any way relating to any period on or prior to the Closing Date, whether imposed on the Vendor or charged in respect of the Assets, or relating to the Excluded Liabilities or to any matters or assets.

### ARTICLE 4 STALKING HORSE

#### 4.1 Stalking Horse and Bidding Procedures Order; Vesting Order

- (a) The Vendor shall serve and file a motion with the Court (the "**Sale Motion**") returnable on or before June 18, 2020, seeking an Order approving: (i) the Stalking Horse and Bidding Procedures Order; (ii) the scheduling of an auction and sale hearing as contemplated by the Bidding Procedures (the "**Auction**" and "**Sale Hearing**", respectively); (iii) such other relief as may be required.
- (b) This Agreement shall be deemed to be a Qualified Bid and the Purchaser consents to the inclusion of this Agreement in the Receiver's Sale Motion without the need of any sealing order.
- (c) The Receiver shall administer the SISP and shall be entitled to solicit bids until the Bid Deadline. For certainty, the Receiver shall be entitled to hold discussions with bidders and control any other aspect of the SISP, provided that the Bid Deadline shall not be extended without the Purchaser's prior written consent (acting reasonably).
- (d) If the Receiver does not receive any Qualified Bids (other than this Agreement) by the Bid Deadline, and provided that all of the conditions to closing set out in Article 5 have been satisfied or waived by the applicable Party, the Vendor will close the Transaction with the Purchaser in accordance with this Agreement with any necessary amendments. The Vendor shall use their commercially reasonable efforts to promptly file and serve a motion with the Court for an Order (the "**Approval and Vesting Order**") in form and substance satisfactory to the Vendor, and the Purchaser, each acting reasonably, among other things, approving this

Agreement and Transaction and vesting title to the Assets in the Purchaser free and clear.

If the Proposal Trustee receives one or more Qualified Bids (other than this Agreement), the Proposal Trustee shall use its commercially reasonable efforts to conduct the Auction for the Assets on or before ●, 2020 in accordance with the Bidding Procedures. The Proposal Trustee shall have the right to accept any bid that it determines to be the most favourable as the Successful Bid. If the Purchaser is not the Successful Bidder, the Purchaser shall be entitled to, and shall be paid, the Break Fee from the proceeds of the transaction with the Successful Bidder in the amount of \$300,000 (the "**Break Fee**").

- (e) If the Purchaser is the Successful Bidder (pursuant to this Agreement or otherwise), the Purchaser shall provide any information and take such actions as may be reasonably requested by the Vendor to assist the Vendor in obtaining the Approval and Vesting Order and any other order of the Court reasonably necessary to consummate the Transaction. The Purchaser and the Vendor covenant to take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or proper, consistent with Applicable Law, to consummate and make effective the Transaction as soon as possible following the issuance of the Approval and Vesting Order, and, in any case, by the Closing Date.
- (f) In the event that any third party seeks leave to appeal, or an appeal is taken or a stay pending appeal is requested with respect to the Stalking Horse and Bidding Procedures Order or the Approval and Vesting Order, the Vendor shall promptly notify the Purchaser of such leave to appeal, appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice(s) or order(s). The Vendor shall also provide the Purchaser with written notice of any motion or application filed in connection with any leave to appeal or appeal from such orders.

## **ARTICLE 5 CONDITIONS**

### **5.1 Mutual Conditions**

The Parties' respective obligation to complete this Transaction is subject to the satisfaction of, or compliance with, on or before the Closing Date, each of the following conditions precedent:

- (a) the Stalking Horse and Bidding Procedures Order shall have been issued and entered by the Court and shall not have been stayed, set aside, amended, varied, vacated or subject to a pending appeal or motion to amend, set aside, stay, vary or vacate the Stalking Horse and Bidding Procedures Order, and no order shall have been issued that restrains or prohibits the completion of the Transaction; and
- (b) prior to the Closing Date, and in any event on or before August 18, 2020, provided that the Purchaser is the Successful Bidder, the Court shall have granted the Approval and Vesting Order and shall not have been stayed, set aside, amended, varied, vacated or subject to a pending appeal or motion to amend, set aside, stay, vary or vacate the Approval and Vesting Order shall be outstanding;

The foregoing conditions are for the benefit of both Parties and non-satisfaction or non-performance of any condition may only be waived by both Parties, in their sole discretion, in whole or in part, at any time and from time to time without prejudice to any other rights which the waiving Party may have. Any such waiver is only binding on a Party if it is made in writing and delivered forthwith, however neither party shall be able to delay or prevent Closing due to non-satisfaction of these mutual conditions due to a breach of this Agreement by that Party.

## **5.2 Vendor Closing Conditions**

The Vendor's obligation to complete this Transaction is subject to the satisfaction of, or compliance with, on or before the Closing Date, each of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser have been complied with or performed in all material respects;
- (b) as of the Closing Date, the Purchaser shall have delivered, or caused to be delivered to the Vendor all other items referred to in Section 7.2;
- (c) the Receiver shall have determined in accordance with the Bidding Procedures that this Agreement is the Successful Bid.

The above conditions are inserted for the sole benefit of the Vendor and may be waived in whole or in part by the Vendor by written notice to the Purchaser prior to Closing.

## **5.3 Purchaser Closing Condition**

The Purchaser's obligation to complete this Transaction is subject to the satisfaction, of or compliance with, on or before the Closing Date, each of the following conditions precedent:

- (a) all of the terms, covenants and conditions of this Agreement to be complied with or performed by the Vendor have been complied with or performed in all material respects;
- (b) as of the Closing Date, the Vendor shall have delivered, or caused to be delivered to the Purchaser all other items referred to in Section 7.1;
- (c) all representations and warranties of the Vendor contained in this Agreement shall be true and correct as at the Closing Date with the same force and effect as if made at and as of such time; and
- (d) the Receiver shall have determined in accordance with the Bidding Procedures that this Agreement is the Successful Bid.
- (e) The Vendor and the Purchaser shall, on or before the Closing Date, jointly execute in prescribed form and containing the prescribed information, and Purchaser will file within the required time, an election to have section 167 of the *Excise Tax Act* (Canada), and any similar provision of any applicable provincial legislation, apply in respect of the purchase and sale of the Assets hereunder such that no tax is payable under Part IX of the *Excise Tax Act* (Canada) in respect of such purchase and sale. The parties represent that the Vendor and Purchaser are both registered under Part IX of the *Excise Tax Act* (Canada) for this purpose

The above conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part by the Purchaser by notice to the Vendor prior to Closing.

#### **5.4 Non-Satisfaction of Conditions**

If by Closing, the Vendor or the Purchaser, as applicable, having the benefit of the conditions set out in Sections 5.2 and 5.3 respectively, has not given notice to the other that any of such conditions has not been satisfied, such condition shall be deemed to have been waived. If the Vendor or the Purchaser, as applicable, does so notify the other, then this Agreement shall be terminated and null and void,

### **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

#### **6.1 Purchaser's Representations**

The Purchaser represents and warrants to and in favour of the Vendor that as of the date of this Agreement:

- (a) the Purchaser is a corporation validly existing under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law.
- (c) The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms; and

#### **6.2 Vendor's Representations**

The Vendor hereby represents and warrants to and in favour of the Purchaser that as of the date of this Agreement:

- (a) the Vendor is not a non-resident of Canada within the meaning of section 116 of the *Income Tax Act* (Canada).

### **ARTICLE 7 CLOSING DOCUMENTS**

#### **7.1 Vendor's Closing Documents**

On or before Closing, subject to the provisions of this Agreement, the Vendor shall execute or cause to be executed and shall deliver or cause to be delivered to the Purchaser's Solicitors the following:

- (a) a statutory declaration that the Vendor is not a non-resident pursuant to the terms of section 116 of the *Income Tax Act* of Canada;



- (b) a certificate of the Vendor executed by a senior officer of the Vendor to his or her knowledge (without personal liability) that the representations and warranties of the Vendor contained in Section 6.2 are true and accurate in all material respects as of the Closing Date;
- (c) an executed copy of the Receiver's Certificate; and
- (d) a copy of the issued Approval and Vesting Order.

All documentation shall be in form and substance acceptable to the Purchaser acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

## **7.2 Purchaser's Closing Documents**

On or before Closing, subject to the provisions of this Agreement, the Purchaser shall execute or cause to be executed and shall deliver or cause to be delivered to the Vendor's Solicitors the following:

- (a) the HST Undertaking and Indemnity; and
- (b) all other documents which are required by this Agreement or which the Vendor has reasonably requested on or before the Closing Date to give effect to this Transaction.

All documentation shall be in form and substance acceptable to the Vendor acting reasonably and in good faith, provided that none of such documents shall contain covenants, representations or warranties which are in addition to or more onerous upon either the Vendor or the Purchaser than those expressly set forth in this Agreement.

## **ARTICLE 8 TERMINATION**

### **8.1 Termination**

This Agreement may be validly terminated:

- (a) upon mutual written agreement of the Parties;
- (b) by either Party in accordance with Section 5.1
- (c) by the Purchaser in accordance with Sections 5.3; or
- (d) by the Vendor in accordance with 5.2.



## **ARTICLE 9 GENERAL**

### **9.1 Gender and Number**

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

### **9.2 Captions and Table of Contents**

The caption, headings and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation.

### **9.3 Obligations as Covenants**

Each agreement and obligation of any of the Parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

### **9.4 Applicable Law**

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto and shall be treated in all respects as an Ontario contract.

### **9.5 Currency**

All reference to currency in this Agreement shall be deemed to be reference to Canadian dollars.

### **9.6 Invalidity**

If any immaterial covenant, obligation, agreement or part thereof or the application thereof to any Person or circumstance, to any extent, shall be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement or part thereof to any person, party or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

### **9.7 Amendment of Agreement**

No supplement or modification of this Agreement shall be binding unless executed in writing by the Parties hereto in the same manner as the execution of this Agreement.

### **9.8 Time of the Essence**

Time shall be of the essence of this Agreement.

### **9.9 Further Assurances**

Each of the Parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

### **9.10 Entire Agreement**

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the Parties hereto constitute the entire agreement between the Parties hereto pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the Parties hereto in connection with the agreement of purchase and sale provided for herein except as specifically set forth in this Agreement or the Schedules attached hereto.

### **9.11 Waiver**

No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise expressed or provided.

### **9.12 Solicitors as Agents and Tender**

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Vendor's Solicitors on behalf of the Vendor and any tender of Closing Documents and the Balance may be made upon the Vendor's Solicitors and the Purchaser's Solicitors, as the case may be. The Vendor and Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete this Transaction that can be performed or undertaken by the tendering party's solicitor without the co-operation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing Document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such documents to the other party's solicitor for registration.

### **9.13 Merger**

Except as otherwise expressly set out herein, this Agreement shall merge with the Closing contemplated herein.

### **9.14 Successors and Assigns**

All of the covenants and agreements in this Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall ensure to the benefit of and be enforceable by the Parties hereto and their respective successors and their permitted assigns pursuant to the terms and conditions of this Agreement.

### **9.15 Assignment**

The Purchaser shall not assign its rights and/or obligations hereunder to any other Person, at arm's length of the Purchaser, without the prior written consent of the Proposal Trustee, which consent may not be unreasonably withheld.

The Purchaser shall be able, prior to the hearing of the motion for the Approval and Vesting Order, to direct the title to the purchased assets to any other Person at non-arm's length to the Purchaser,

without the prior written consent of the Proposal Trustee, provided that no such direction shall relieve the Purchaser from its obligation to make payment of the Purchase Price in the manner stipulated herein.

#### **9.16 Notice**

Any notice, demand, approval, consent, information, agreement, offer, request or other communication (hereinafter referred to as a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery during regular business hours on any Business Day or by e-mail transmission or other electronic communication which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) Vendor/Receiver:

Aird & Berlis LLP  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto ON  
M5J 2T9

Attention: Robb English  
Email: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

(b) Purchaser: PengYuan Holding Limited

Attention: Shawn Yuan  
E-mail: [shawnyuan8@outlook.com](mailto:shawnyuan8@outlook.com)

and

Miller Thomson LLP  
40 King Street West, Suite 5800  
Toronto, Ontario  
M5H 3S1

Attention: Bobby Sachdeva and Andy Kim  
Email: [bsachdeva@millerthomson.com](mailto:bsachdeva@millerthomson.com)  
[akim@millerthomson.com](mailto:akim@millerthomson.com)

Any Notice, if personally delivered, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by e-mail or other electronic communication with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the Business Day it was sent provided that it is prior to 5:00 p.m. on such day, and otherwise on the next following Business Day if sent after 5:00 p.m.

#### **9.17 Facsimiles/Counterparts**

All Parties agree that this Agreement may be executed in counterpart and transmitted by telecopier or PDF and that the reproduction of signatures in counterpart and by way of telecopier or PDF will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

**[The remainder of this page has been intentionally left blank.]**

IN WITNESS WHEREOF the Vendor and Purchaser have executed this Agreement as of the day and year first above written.

**PENGYUAN HOLDING LIMITED**

Per:   
\_\_\_\_\_  
Name: Shawn Yuan  
Title: Director

**LINK & ASSOCIATES, in its capacity as  
the Court Appointed Receiver of  
Besnovo Inc.**

Per: \_\_\_\_\_  
Name: Robert Link  
Title: President  
I/We have the authority to bind the corporation

40184211.2

46861607.1

# APPENDIX

“F”

## TERMS AND CONDITIONS OF SALE

### THE VENDOR

Link & Associates Inc., solely in its capacity as the Court-appointed receiver (the “**Receiver**” and/or the “**Vendor**”), without security, of all the assets, undertakings and properties (collectively, the “**Assets**”) of Besnovo Inc. (the “**Company**”), is offering for sale by bid and auction all of the assets, undertakings and properties of Besnovo (the “**Assets**”).

The Receiver has obtained an Order of the Ontario Superior Court of Justice (Commercial List) dated June 18, 2020 (collectively, the “**Stalking Horse Order**”) which sets out, *inter alia*, the terms, conditions of sale and a timetable for bidding and an auction with respect to the purchase and sale of the Assets (the “**SISP**”), as further outlined below (a copy of the Stalking Horse Order is attached hereto as **Schedule “A”**).

### THE SALE PROCEDURE

The Stalking Horse Order recognizes the initial bid from PengYuan Holding Limited (“**PengYuan**”). The initial bid by PengYuan is contained in an Agreement of Purchase and Sale dated as of June 18, 2020, executed by the Receiver and PengYuan (the “**Agreement of Purchase and Sale**”) (a copy of the Agreement of Purchase and Sale is attached hereto as **Schedule “B”**) as a baseline or “stalking horse bid” (the “**Stalking Horse Bid**”), in the amount of \$4,900,000, together with all outstanding accrued interest and plus all principal and interest owing as of the Closing Date pursuant to all Receiver’s Borrowing Certificates, by way of a Credit Bid, as further provided in the Agreement of Purchase and Sale, as such terms are defined in the Agreement of Purchase and Sale, plus any and all retail sales taxes (including any goods and services taxes) and all other transfer taxes, duties or other like charges payable upon or in connection with the subject transaction (collectively, the “**Taxes**”).

The Stalking Horse Order provides for, *inter alia*, the marketing and sale of the Assets by the Receiver and a competitive bidding and auction procedure, to be administered by the Receiver, in order to determine if a materially higher price (compared to the Stalking Horse Bid) can be obtained for the sale of the Assets.

In consideration for PengYuan’s expenditure of time and money in acting as the initial bidder in the Stalking Horse Bid and the preparation of the Agreement of Purchase and Sale, and in performing due diligence pursuant to the Agreement of Purchase and Sale, the Stalking Horse Order provides for liquidated damages in the amount of \$300,000.00 (the “**Break Fee**”), payable by the Vendor to PengYuan in the event that a materially higher offer than the offer advanced by PengYuan pursuant to the Stalking Horse Bid is obtained for the Assets through the SISP and, as a consequence, the Vendor sells all, or substantially all of the Assets to a person or entity other than PengYuan.

In addition, the Stalking Horse Order provides that in order to be accepted by the Receiver, any competing bid (“**Competing Bid(s)**”) for the Assets must be on substantially the same terms and conditions as those terms and conditions contained in the Agreement of Purchase and Sale,

except with respect to price (any Competing Bid(s) that are accepted by the Vendor as superior bid(s) to the Stalking Horse Bid are referred to herein as the “**Superior Bid(s)**”).

In order for any Competing Bid to be accepted by the Receiver as a Superior Bid to the Stalking Horse Bid, the Competing Bid must meet all of the following minimum criteria:

- (a) the Competing Bid must be accompanied by a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Bid, showing any and all variations from the Stalking Horse Bid, and a deposit in the amount equal to at least 10% of the aggregate purchase price under the subject competing bid by way of bank draft or certified cheque payable pursuant to the terms of the subject competing bid and which is not subject to any encumbrances;

the Competing Bid must remain open for acceptance and completion until 3:00 p.m. (Toronto time) on August 18, 2020;

the Competing Bid must be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Bid;

the Competing Bid must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the subject bidder’s obligation to close that are not otherwise contained in the Stalking Horse Bid;

the Competing Bid must specify the assets that are subject to the subject competing bid, including, without limitation, any executory contracts and unexpired leases;

the Competing Bid must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by the competing bid on the terms specified therein; and

the Competing Bid must contain, among other things, an aggregate purchase price at least equal to the Stalking Horse Bid, plus the Break Fee and an additional sum of \$50,000.00.

### **COMPETING BID OFFERS**

Sealed bids marked “DO NOT OPEN - BID – BESNOVO INC.” shall be delivered or mailed postage prepaid to Link & Associates Inc., Receiver of Besnovo Inc., Attention: Robert Link, so as to be received by the Receiver on or before 5:00 p.m. (Toronto time) on July 31, 2020.

Every Competing Bid must be in writing and submitted in the form of an amended Agreement of Purchase and Sale, as provided herein. Any Competing Bids received by the Receiver that are not in the correct form may be rejected immediately by the Receiver, acting in its sole and unfettered discretion.



The opening of any Competing Bid(s) received by the Receiver will be conducted between July 31, 2020 and August 4, 2020, in private and in the presence of representatives of the Receiver and its solicitors.

In consideration of the Receiver receiving any Competing Bid and upon receipt by the Receiver of any such Competing Bid, the competing bidder shall not be entitled to retract, withdraw, revoke, vary or countermand its Competing Bid.

In the event that any Competing Bids received by the Receiver are on substantially the same terms, conditions and/or amounts of one another, the Receiver may, subject to the approval of the Court, call upon such competing bidders to submit further bids.

No Competing Bid may contain proposals to vary, amend or supplement these Terms and Conditions of Sale.

Any documentation or other materials provided to prospective bidders relating to the Assets have been prepared solely for the convenience of prospective bidders and is not warranted to be complete or accurate, and do not form part of these Terms and Conditions of Sale. Every bidder shall be deemed to have relied entirely on its own inspection and investigation of the Assets and the title thereto.

By submitting an offer to purchase the Assets, the bidder acknowledges that it has inspected the Assets and that the Assets are being sold on an “*as is, where is*” basis at the time of closing and that there is no representation, warranty or condition, expressed or implied, statutory or otherwise, as to title, encumbrances, description, fitness for any purpose, merchantability, quality, quantity, state, condition (environmental or otherwise), defect (patent or latent), existence, location, value, the validity or enforceability of any rights (including intellectual property rights, any requirement for licenses, permits, approvals, consents for ownership, occupation or use or compliance with any government laws, regulations, bylaws and orders or in respect of any other matter or thing whatsoever. The Assets are specifically offered, as they now exist with no adjustments to be allowed for changes in conditions, qualities or quantities of such parcels from the date hereof to the Closing Date (as the term is defined below) of the contemplated transaction. The bidder acknowledges that the Receiver is not required to inspect or count, or provide any inspection or counting, of the Assets or any part thereof and the bidder shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. It shall be the bidder’s sole responsibility to obtain, at its own expense, any consents to such transfer of the Assets and any further documents or assurances which are necessary or desirable in the circumstances.

The Receiver, at its sole and unfettered discretion, may waive or vary any or all of the terms and conditions contained hereof.

## **DEPOSIT**

Competing Bids shall be stated in Canadian currency and must be accompanied by a deposit in the form of a draft of or a cheque certified by a Canadian bank payable to “Link & Associates Inc., Receiver of Besnovo Inc., in trust.” The deposit for any Competing Bid shall be ten percent (10%) of the aggregate purchase price payable under the subject Competing Bid. If a Competing Bid is accepted to be the Winning Bid (as the term is defined below), the subject deposit

shall be deemed to be a cash deposit and will be applied by the Vendor towards the purchase price of the Assets on closing of the contemplated transaction.

Cheques accompanying Competing Bids that are not accepted by the Receiver to be Superior Bids will be returned to the respective bidder(s) by prepaid ordinary mail addressed to the respective competing bidders at the address set out in their offers.

### **THE AUCTION PROCESS AND THE WINNING BID**

If there is at least one Superior Bid that meets the above conditions, the Receiver will distribute to the makers of these Superior Bid(s), together with PengYuan, on or before August 5, 2020, the following:

- (a) an invitation to an auction of the Assets to be held at 10:00 a.m. (Toronto time) on August 10, 2020 at the offices of the Receiver, or otherwise as may be determined by the Receiver, in its sole discretion (the “**Auction**”);

a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all of the features of the bids, believes to be the most favourable bid as between the Stalking Horse Bid and all of the Superior Bids (the “**Lead Bid**”); and

a copy of a set of rules for the conduct of the Auction, established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the price for the Assets (the “**Auction Rules**”), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than \$50,000.00 increments, solely for the purpose of determining the successful bid at the Auction, and all amounts in excess of the amount of the Lead Bid shall be entirely comprised of cash consideration; and (iii) the highest bid received at the Auction shall be the “winning bid” (the “**Winning Bid**”).

Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the “**Purchaser**”) and the Vendor of the Assets (the “**Winning Bid Agreement**”), with respect to which the Winning Bid was accepted by the Vendor. The Winning Bid Agreement shall be constituted by:

- (a) the Stalking Horse Bid or one of the Superior Bids, as the case may be, as amended pursuant to the Auction;

these Terms and Conditions of Sale;

the amended Agreement of Purchase and Sale submitted by the Purchaser, as amended pursuant to the Auction; and

the acceptance of the Winning Bid.

The Receiver will make a motion to the Court, forthwith, to obtain an order to approve the agreement with the Purchaser and to vest the Company's property in the Purchaser. Thereafter, the Receiver will advise the Purchaser of the outcome of the said motion and proceed with closing the transaction forthwith.

Title to the Assets shall not pass to the Purchaser nor shall the Purchaser be entitled to possession of same until the purchase price and all other payments to be made by the Purchaser pursuant to the Winning Bid Agreement have been paid in full, and the Purchaser has complied with all of its covenants contained herein and in the Winning Bid Agreement, which shall have been duly executed and delivered to the Vendor.

The Vendor shall not be required to pay any commission with respect to a sale made pursuant to these Terms and Conditions of Sale.

### **CLOSING DATE**

The closing of the contemplated transaction shall take place at the office of the Vendor's solicitors, Aird & Berlis LLP, at the later of August 21, 2020 or the third business day following the effective date of an Order of the Court approving the acceptance and completion of the Winning Bid (the "**Closing Date**").

The Vendor shall not be required to produce any abstract of title, title deed or documents or copies thereof or any evidence as to title pertaining to the Assets, other than those in its possession.

### **EVENT OF FORFEITURE**

If the Purchaser fails to comply with the terms and conditions of the Winning Bid Agreement, or any of them, all deposits shall be forfeited to the Vendor on account of agreed liquidated damages, the Assets being conveyed to the Purchaser may be resold by the Vendor, and the Purchaser shall pay to the Vendor on demand: (i) an amount equal to the amount, if any, by which the purchase price under the Winning Bid Agreement exceeds the net purchase price received by the Vendor pursuant to such resale, and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of or occasioned by the Purchaser's failure to comply with the Winning Bid Agreement.

### **GENERAL**

Link & Associates Inc. is acting solely in its capacity as the Receiver, without security, of the assets, undertakings and properties of the Company and shall have no personal or corporate liability hereunder or from any agreement contemplated hereby or as a result of any contemplated sale.

The terms and conditions contained herein shall not merge on the closing of the transaction contemplated herein but shall survive such closing and remain in full force and effect and be binding on the Purchaser thereafter.

The terms and conditions hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

The terms and conditions contained herein shall enure to the benefit of and be binding upon the parties thereto and their permitted heirs, executors, administrators, successors or assigns, as the case may be.

Unless otherwise provided herein, any tender of documents or money hereunder may be made upon the Vendor or the Purchaser, or their respective solicitors. Money may be tendered by cheque certified by a Canadian chartered bank, Canadian trust company or by bank draft.

The obligations of the Vendor to complete any agreement contemplated herein or hereby shall be relieved if, on or before the closing of such sale, the Assets or any part thereof which are the subject of the sale have been removed from the control of the Vendor by any means or process, enjoined, or the Assets, or any part thereof, are redeemed, whereupon the only obligation of the Vendor shall be to return the applicable deposit, without interest, deduction costs or compensation.

The Purchaser shall not assign the Winning Bid Agreement without the Receiver's prior written approval, which approval may be granted or withheld in the Receiver's sole and unfettered discretion.

Time is of the essence of any agreement entered into pursuant to these Terms and Conditions of Sale, any rule of law or equity to the contrary notwithstanding, provided that the Vendor in its discretion may authorize the extension of any deadlines set out in this process by a maximum of seven days.

The Vendor reserves its rights, subject to Court approval, to withdraw the Assets or any part thereof on or before the Closing Date if there is any actual or threatened litigation with respect to any of the Assets or if any Asset has been redeemed or is subject to any lien or encumbrance which the Vendor cannot remove and the Purchaser will not assume. The Vendor shall be under no obligation to compensate any third party in order to complete any applicable agreement and shall return the deposit to the Purchaser without interest, costs or compensation.

Unless the context otherwise requires, words importing the singular include the plural and vice versa.

The submission of a bid by a resident of the Province of Quebec will be deemed to constitute the declaration and acknowledgement by such resident that it has requested these Terms and Conditions of Sale, the form of bid referred to herein and all other documentation relating to its bid and the acceptance thereof to be drawn up in the English language.

La présentation d'une soumission par une personne résident au Québec constituera la déclaration et la reconnaissance expresse par la soumissionnaire qu'il a consenti que ces Termes et Conditions de Vente, la formule de soumission mentionnées en ceci et tous autres documents relatifs à la soumission et à son acceptation soient rédigés en langue anglaise.

DATED at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**LINK & ASSOCIATES INC.** in its capacity as  
the Court-appointed receiver , without security,  
of the assets, undertakings and properties of  
Besnovo Inc. and not in its personal capacity

Per:

---

Name:

Title:

# APPENDIX

“G”

April 6, 2020

**VIA EMAIL**

**Link & Associates Inc.**

Receivers + Trustees  
77 King Street West  
Suite 3300, P.O. Box 95  
TD Centre North Tower  
Toronto, Ontario M5K 1G8

**Attention: Robert Link**

Dear Sirs/Mesdames:

**Re: Receivership of Besnovo Inc.**

---

Link & Associates Inc., in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of Besnovo Inc. (the “**Debtor**”), has requested our opinion concerning the perfection of the security documents herein discussed granted to Pengyuan Holdings Limited (the “**Secured Creditor**”) by the Debtor pursuant to that certain Promissory Note. We confirm that we have received and reviewed the security documents granted by the Debtor in favour of the Secured Creditor described herein, and hereby provide you with our opinion concerning the perfection of same.

**A. DOCUMENTS EXAMINED AND SEARCHES CONDUCTED**

In connection with the opinions contained in this letter, we have examined a copy of:

- (a) the shareholders agreement dated December 12, 2016 (the “**Shareholders Agreement**”) among Cleeve Holdings Inc. (“**Cleeve**”) and the Secured Creditor. Based on our review of the Share Purchase Agreement (as defined herein), there appears to be an error in the date of the Shareholders Agreement as it was to be dated the same date as the Share Purchase Agreement. However, this irregularity would not affect our opinion on the Security;
- (b) the promissory note dated December 20, 2018 with an effective date as of October 18, 2018 (the “**Note**”);
- (c) the general security agreement dated October 18, 2018 (the “**GSA**”), granted by the Debtor to the Secured Creditor in connection with the Note;
- (d) the certified cheque dated April 7, 2017;

- (e) the share purchase agreement dated December 13, 2016 (the “**Share Purchase Agreement**”) among Cleeve and the Secured Creditor;
- (f) the Resolution of the Board of Directors of the Debtor dated July 23, 2018;
- (g) the Joint Resolution of the Directors and Shareholders of BRIC Engineered Systems Inc. (a prior name of the Debtor) dated July 31, 2017; and
- (h) By-Law # 3 of the Debtor dated July 31, 2017,

(collectively, the “**Security**”).

In addition, in connection with the opinions contained in this letter, we have conducted the following searches:

1. a corporation profile report and business names search from the Province of Ontario Ministry of Government Services for the Debtor; and
2. a certified search from the Ontario Personal Property Registration System against the Debtor with file currency of April 2, 2020 (the “**PPSA Search**”).

We have conducted no further searches in connection with the delivery of this opinion.

## **B. OPINIONS**

### **GSA**

We have reviewed the GSA and note that it appears to be properly executed and delivered on behalf of the Debtor by Xing Yan, his capacity as Director, President and Treasurer. Registration under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) in respect of the GSA was made on October 19, 2018, under Reference File No. 744964875 and Registration No. 20181019 1016 1862 4635. This registration covers “Inventory”, “Equipment”, “Accounts”, “Other” and “Motor Vehicle”. This registration appears to be in good order with an expiry date of October 19, 2028. Based on, limited by and subject to the assumptions and qualifications contained below, we are of the opinion that the security interests created by the GSA in the collateral described therein have been properly perfected under the PPSA (to the extent required) and rank in priority to the interest of a trustee in bankruptcy in the assets, properties and undertakings of the Debtor which are described in the GSA and are located in the Province of Ontario, or, in the case of accounts, where the party obligated to pay an account is a resident of the Province of Ontario.

## **C. OTHER PPSA REGISTRATIONS**

We note that there are no other registration made by any companies and/or individuals against the Debtor.



#### **D. ASSUMPTIONS**

In connection with the opinions contained in this letter, we have assumed the following:

1. The entering into, execution and delivery of the Security to the Secured Creditor has been duly authorized by all necessary resolutions and other corporate actions on the part of the Debtor.
2. The Security has been executed and delivered to the Secured Creditor by a director and/or officer of the Debtor duly authorized to execute and deliver those documents, and the signatures on the copies of the Security examined by us is that of the duly authorized director and/or officer of the Debtor.
3. The Security constitutes valid and enforceable obligations of the Debtor to the Secured Creditor as security for the Debtor's obligations to the Secured Creditor, subject to the requirements of the *Personal Property Security Act* (Ontario) (the "PPSA") and the *Bankruptcy and Insolvency Act* (Canada) (the "BIA").
4. The Security has been unconditionally delivered by the Debtor to the Secured Creditor.
5. The Security has not been assigned, released, discharged or otherwise impaired, either in whole or in part.
6. The financing statements filed under the PPSA in respect of the Security, if any, were completed in compliance with the regulations under the PPSA and copies thereof were delivered to the Debtor in accordance with the provisions of the PPSA.
7. The Debtor is indebted to the Secured Creditor and received adequate consideration for the grant of the Security.
8. The genuineness of the signatures and the conformity to authentic original documents of the documents submitted to us as photocopies, electronic copies or fax copies, and that all documents were fully completed prior to signature.
9. "BRIC Engineered Systems Inc." and "Besnovo Inc." were the proper legal name of the Debtor at the time of execution and delivery of the Security, as applicable, and that this name has not subsequently been changed.
10. The Debtor was a valid and subsisting corporation at the time of execution and delivery of the Security.
11. The copy of the PPSA Search examined by us in connection with the opinions given herein was complete and accurate when examined and continues to reflect registrations against the Debtor as of the date hereof.
12. The Debtor and the Secured Creditor intended the security interests created by the Security to attach, value has been given and the Debtor obtained rights in the collateral secured by the Security.

13. All facts set forth in official public records and other documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate.

## **E. QUALIFICATIONS**

The opinions that we have expressed in this letter are further subject to the following qualifications:

1. We express no opinion as to the right, title or interest of the Debtor in or to any of the assets, undertakings and properties of the Debtor.
2. We express no opinion on whether any secured party may have a perfected purchase money security interest which may exist in respect of any of the assets, undertakings and properties of the Debtor.
3. We express no opinion as to whether a security interest was created in the following property:
  - (a) property consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement to the extent that the terms of such property or any applicable law prohibit its assignment or require, as a condition of its assignability, a consent, approval or other authorization or registration which has not been made or given;
  - (b) permits, quotas or licenses which are held by or issued to the Debtor;
  - (c) federal crown debts; and
  - (d) any real property or interest therein.
4. We have made no searches under applicable statutes, including the *Copyright Act* (Canada), the *Patent Act* (Canada) and the *Trade-marks Act* (Canada), to confirm that the Secured Creditor has made registrations that may be necessary to perfect its security interests, if any, in intellectual property.
5. We express no opinion as to the ranking or priority of any of the Security in relation to the security interests, liens or trust claims of any other party, if any.
6. The validity, binding effect and enforceability of the Security may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium, or other similar laws affecting the enforceability of creditors' rights generally.
7. The rights and remedies of the Secured Creditor contained in the Security may be subject to and affected by general principles of equity.

8. No opinion is expressed as to the enforceability of any provision in the Security which suggests that modifications, amendments or waivers of or with respect to any of the Security that are not in writing will not be effective.
9. No opinion is given regarding any provision in the Security which purports to relieve a person from a liability or duty otherwise owed or to require compliance regardless of law.
10. We express no opinion as to the effect of those provisions of the Security which purport to allow the severance of invalid, illegal or unenforceable provisions or restricting their effect.
11. Enforcement of the Security may be affected or limited by any collateral agreements or arrangements relating thereto entered into between the parties thereto, of which we are not aware.
12. Enforcement of the rights to indemnity, contribution and waiver of contribution may be limited or voided by applicable law and may not be ordered by a court on grounds of public policy.
13. The enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find that any provision of the Security will be unenforceable as an attempt to vary or exclude a limitation period under that statute.
14. We express no opinion as to the enforceability of any provision of the Security which may be characterized by a court as an unenforceable penalty and not as a genuine pre-estimate of damages.
15. We express no opinion as to the application of the *Securities Act* (Ontario).
16. We express no opinion as to the enforceability of any provision of the Security:
  - (a) which purports to waive all defences which might be available to, or constitute a discharge of the liability of the Debtor or any party thereto;
  - (b) to the extent it purports to exculpate, or provide indemnity to, the Secured Creditor, its agents or any receiver, manager or receiver – manager appointed by it from liability in respect of acts or omissions which may be illegal, fraudulent or involve wilful misconduct; or
  - (c) which states that amendments or waivers of or with respect to the Security that are not in writing will not be effective.
17. We express no opinion as to any provision of the Security which states that any failure to exercise, or any delay in exercising, any right or remedy shall not operate as a waiver thereof.

18. We have not explored and express no opinion as to whether the Security may be successfully attacked as a preference under section 95 of the BIA or any similar provincial legislation.
19. A waiver of a provision of applicable law may not be effective.
20. Any provision which is considered to offend public policy or to contravene laws of public order may not be enforceable.
21. To the extent that the Security purports to extend the benefit thereof to persons who are not parties to the Security, those persons may be unable to enforce that benefit.

The opinions that we have expressed in this letter are limited to the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario. We trust that the foregoing opinions are satisfactory for your purposes. If you should have any questions or require further clarification in any respect, please do not hesitate to contact us.

Yours truly,

AIRD & BERLIS LLP

*Aird & Berlis LLP*

39491652.2

# APPENDIX

“H”

**BESNOVO INC.**  
**Receiver's Interim Statement of Receipts & Disbursements**  
**For the Period of March 12 to June 3, 2020**

	Trust Account BNS (CAD)	Besnovo Account TD (CAD)	Besnovo Account TD (USD)
<b>RECEIPTS</b>			
Opening Cash In Bank	\$ -	\$ 267,024.57	\$ 16,576.56
Proceeds of Receiver Certificates Issued		275,000.00	-
Temporary 10% Wage Subsidy		21,637.24	-
National Research Council Funding		112,587.71	-
HST Refunds/Recovery		25,431.00	-
Interest		10.76	-
Other and Miscellaneous		-	-
<b>Total Receipts</b>	<b>\$ -</b>	<b>\$ 701,691.28</b>	<b>\$ 16,576.56</b>
<b>DISBURSEMENTS</b>			
Filing Fee	\$ 70.00	-	-
Ascend License Fee	275.00	-	-
Telecom/Internet/IT services	2,229.96	-	-
Company Operations - Office Expenses		72,479.40	5,820.00
Company Operations - Equipment Purchases		648.20	24,500.00
Company Operations - Test Project Expenses		37,716.12	1,332.08
Company Operations - Payroll		276,511.54	-
HST paid on expenses	325.64	16,517.77	1,012.62
Bank Wire and Service Charges and Miscellaneous	61.20	1,050.85	15.37
Receiver's Fees and Disbursements	39,714.50	-	-
HST on Receiver Fees/Disbursements	5,162.89	-	-
Receiver's Legal Fees and Disbursements	17,488.00	-	-
HST on Receiver's Legal Fees/Disbursements	2,268.25	-	-
Account Transfers	(80,000.00)	103,347.68	(16,200.00)
<b>Total Disbursements</b>	<b>-\$ 12,404.56</b>	<b>\$ 508,271.56</b>	<b>\$ 16,480.07</b>
<b>Excess of Receipts over Disbursements</b>	<b>\$ 12,404.56</b>	<b>193,419.72</b>	<b>96.49</b>
<b>Closing Cash Balance</b>	<b>\$ 12,404.56</b>	<b>\$ 193,419.72</b>	<b>\$ 96.49</b>

# APPENDIX

“I”

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

B E T W E E N :

ISABELLE ROBERTS

Applicant

- and -

BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.,  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as  
SHAWN YUAN)

Respondents

**AFFIDAVIT OF ROBERT G. LINK  
SWORN JUNE 9, 2020**

I, Robert G. Link, of the Town of Georgina, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the President of Link & Associates Inc., in its capacity as Court-Appointed Receiver, without security (the **“Receiver”**) of all of the assets, undertakings and properties of Besnovo Inc. (the **“Debtor”**) pursuant to an Order of the Honourable Justice McEwen dated March 12, 2020 (the **“Appointment Order”**) and, as such, have knowledge of the matters contained in this affidavit.



2. The Receiver's activities leading up to and after the date of the Appointment Order through May 31, 2020, are set out in the Receiver's First Report to Court dated June 9, 2020.
3. Attached hereto and marked as **Exhibit "A"** are true copies of the accounts rendered by the Receiver for the period ending March 31, 2020 (the "**Accounts Approval Period**") totaling \$44,877.39, consisting of professional fees of \$39,714.50 and HST of \$5,162.89.
4. A total of 101.9 hours were expended by the Receiver in the Accounts Approval Period in performing services in its capacity as Receiver, which equates to an average hourly rate of \$389.74.
5. The hourly billing rates outlined in Exhibit "A" are normal average hourly rates charged by Link & Associates Inc., for services rendered in relation to engagements similar to its engagement as Receiver. These accounts accurately reflect the services provided by the Receiver in this matter.
6. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of Link & Associates Inc. and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

**SWORN BEFORE ME** by video conference from the City of Toronto, Ontario, to the community of Keswick, in the Town of Georgina, Regional Municipality of York, Ontario, this 9<sup>th</sup> day of June, 2020

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)

Miranda Spence

} \_\_\_\_\_  
ROBERT G. LINK

This is Exhibit "A" to the Affidavit of  
Robert G. Link sworn before me virtually  
this 9<sup>th</sup> day of June, 2020



---

A Commissioner etc.

Miranda Spence

40255401.2

Link & Associates Inc.  
Receivers + Trustees

April 7, 2020

Besnovo Inc.  
c/o Link & Associates Inc.  
Court Appointed Receiver  
77 King Street West, Suite 3000  
Toronto ON  
M5K 1G8

Invoice #1180

---

**\* I N V O I C E \***

**Re: Receivership of Besnovo Inc.**

To: Professional services rendered in our capacity as Court Appointed Receiver for the period ending March 31, 2020.

Our Fee:	\$ 24,555.00
HST	3,192.15
Subtotal Fee:	<u>\$ 27,747.15</u>

<b>Total Invoice</b>	<b>\$ 27,747.15</b>
----------------------	---------------------

Billing Summary	Hours	Hourly Rate	Total
Robert Link, CIRP, LIT	20.0	\$400	8,000.00
James Merryweather, CPA, CGA	43.0	\$385	16,555.00
Total			<u>\$ 24,555.00</u>

HST #81903 2178

Tel. 416.862.7785 Fax. 416.862.2136

enquiries@linkassociates.ca

77 King Street West, Suite 3000, P.O. Box 95, TD Centre North Tower, Toronto, Ontario Canada M5K 1G8

<p style="text-align: center;"><b>BESNOVO INC. - RECEIVERSHIP</b> <b>Robert Link - Time Docket</b> <b>For the period of January 15 to March 31, 2020</b></p>
--

**January 15, 2020**

0.5

Telconf w/ A Chan and B Sachdeva re: possible receivership appointment

**February 3, 2020**

0.5

Receive and review court materials from existing actions; t/f B Sachdeva.

**February 5, 2020**

0.8

Teleconf w/ Chan, Sachdeva, Yuan.

**February 24, 2020**

2.5

Prepare information request; meeting w/ Chan, Sachdeva, Yuan at MT offices.

**February 25, 2020**

0.8

Review financials and other requested info; follow up emails w/ Yuan to obtain additional financial and company information; emails re 9:30 appointment and expected motion date.

**February 26, 2020**

0.2

Emails and tel R English to act as Receiver's counsel, discuss same.

**February 27, 2020**

0.3

Prepare and provide signed consent to act; emails t/f counsel; review draft order and affidavit in support of application.

**February 28, 2020**

0.3

Review emails between counsel; review motion record.

**March 2, 2020**

4.0

Meetings with Yuan and key employees at Besnovo; tour premises, laser system.

**March 5, 2020**

0.5

Emails Yuan re SRED refund, cash flow/budget projections, review same; emails re employee issues; t/f Chan.

**March 6, 2020**

1.0

Emails and tel English; emails Yuan re employee bonus question, trademarks; review draft materials.

**March 12, 2020**

2.0

Draft 245/246 notice; prepare for and attend court; open trust account; obtain and review minute book; tel and emails re TD banking arrangements.

**March 13, 2020**

3.0

Attend company to take possession and all ancillary activities; meet with key employees; fax court order to CRA intake centre; finalize stat notices and fax OR; all other tel and email.

**March 18, 2020****1.0**

Emails from I Roberts re claim for unpaid fees, JM and Ammara review, reply to Roberts; emails JM re operational and creditor issues, cash projections.

**March 23, 2020****0.3**

Emails re mandatory provincial shutdown order and deal with same; emails English.

**March 24, 2020****0.3**

Review details of Roberts' reply to request for backup of her claim, review JM analysis for same and reply.

**March 25, 2020****0.4**

Consider employment matters re layoffs and reduced hours.

**March 27, 2020****0.5**

Corr Merryweather, review memo re activities, discuss operations, corr from Roberts.

**March 28, 2020****0.3**

Emails re premises; emails re security review.

**March 30, 2020****0.7**

Email update to counsel of all parties re status, considerations, go-forward.

**March 31, 2020****0.1**

Emails Merryweather.

**TOTAL****20.0**

DATE	DESCRIPTION	TIME (hh/mm)
<b>JAMES MERRYWEATHER, CPA, CGA</b>		
12-Mar-20	attend to banking setup; mtg w RL to coordinate and implement receivership; attend at premises; dealing with accounting, tax, and information issues; arrange for IT back-ups	4.00
13-Mar-20	attend at premises; various mtgs w RL, staff; corr w insurer, landlord; finalize S246 report; prepare creditor database; various analysis	5.50
16-Mar-20	attend at premises; key account analysis; review banking; various mtg w accountant; review and analyze tax accounts	6.25
17-Mar-20	attend at premises; mtg w principal; dealing w payroll issue; prepare liability accounting; mtg w HR re staff and premises issues; dealing w payroll issue	4.00
18-Mar-20	attend at premises; dealing w landlord and renewal option; review tax documents and related matter; review banking, approve disbursements; mtg w AW re April budget preparation	5.25
19-Mar-20	attend at premises; mtg w AW and DV to transition payroll and HR; mtg w MZ re technology write-up; work on information package; review banking; research competitor info, regulatory matters; mtg w Sanjeev re IT backup; expense approval	5.25
20-Mar-20	attend at premises; work on information package; review banking, update cash analysis; mtg re IT backup ;	4.00
23-Mar-20	dealing w government ordered shutdown, insurance, property issues; distribute Notice and Statement of Receiver to creditors, counsel; review and approve purchasing	2.00
24-Mar-20	review and approve payroll; review banking, update cash analysis; various corr w AW re accounting; creditor analysis'; dealing w office closing issues	2.50
25-Mar-20	dealing with office closure and employee issues	0.5
26-Mar-20	review and approve disbursements; review banking, update cash analysis; corr w creditor; dealing w layoff issues	1.00
27-Mar-20	detailed review and approve payment (VISA); dealing with building security issue; review banking, update cash analysis; draft memo; corr w insurer re property	2.00
31-Mar-20	review banking, update cash analysis; corr w AW re accounting, lease; review GOC guidelines re COVID19 business subsidies; corr w staff re information requests	0.75
<b>TOTAL</b>	<b>JAMES MERRYWEATHER</b>	<b>43.00</b>

Link & Associates Inc.  
Receivers + Trustees

April 30, 2020

Besnovo Inc.  
c/o Link & Associates Inc.  
Court Appointed Receiver  
77 King Street West, Suite 3000  
Toronto ON  
M5K 1G8

Invoice #1189

---

**\* I N V O I C E \***

**Re: Receivership of Besnovo Inc.**

To: Professional services rendered in our capacity as Court Appointed Receiver for the month of April, 2020 per the attached time dockets.

Our Fee:	\$ 6,870.00
HST	893.10
Subtotal Fee:	<u>\$ 7,763.10</u>

<b>Total Invoice</b>	<b>\$ 7,763.10</b>
----------------------	--------------------

Billing Summary	Hours	Hourly Rate	Total
Robert Link, CIRP, LIT	3.7	\$400	1,480.00
James Merryweather, CPA, CGA	14.0	\$385	5,390.00
Total			<u>\$ 6,870.00</u>

HST #81903 2178

Tel. 416.862.7785 Fax. 416.862.2136

enquiries@linkassociates.ca

77 King Street West, Suite 3000, P.O. Box 95, TD Centre North Tower, Toronto, Ontario Canada M5K 1G8

<p align="center"><b>BESNOVO INC. - RECEIVERSHIP</b>  <b>Robert Link - Time Docket</b>  <b>For the period of April 1 to April 30, 2020</b></p>
--

**April 2, 2020**

**1.0**

Tel from S Yuan; tel JM.

**April 6, 2020**

**0.1**

Review insurance, email JM re same.

**April 7, 2020**

**1.0**

T/F B Sachdeva; T/F R English; review draft security opinion.

**April 9, 2020**

**0.2**

Review cash and funding projections, tel JM re same.

**April 14, 2020**

**0.5**

Prepare and send funding request to Yuan; emails t/f English; review email w/ draft security opinion to all parties.

**April 17, 2020**

**0.2**

Prepare and send Rec Cert #1 to Yuan to confirm \$175K funding.

**April 18, 2020**

**0.1**

Email Zhang.

**April 20, 2020**

**0.2**

Review email from Gowlings; emails t/f English re same; email reply from Zhang.

**April 21, 2020**

**0.2**

Review email from MT to Gowlings; emails t/f English re same.

**April 22, 2020**

**0.2**

Tel R English.

**TOTAL**

**3.7**



DATE	DESCRIPTION	TIME (hh/mm)
<b>JAMES MERRYWEATHER, CPA, CGA</b>		
01-Apr-20	review banking, update cash analysis; various corr w AW re accounting matters	0.50
02-Apr-20	review banking, update cash analysis; review and approve invoice; review status memo	0.75
03-Apr-20	review banking, update cash analysis; integrate April budget into cashflow	0.50
06-Apr-20	review banking, update cash analysis; corr w insurer; review and approve AP and payroll; prepare Receiver GL write-up	1.00
07-Apr-20	review banking, update cash analysis; review and approve cheque disbursements	0.50
08-Apr-20	review banking, update cash analysis; prepare funding support analysis; corr w AW re budget	1.00
09-Apr-20	review banking, update cash analysis; update funding support analysis; integrate Receiver R&D into cash analysis; various corr w AW, MZ re May budget; prepare Mav 1-15 budget	2.50
13-Apr-20	review banking, update cashflow analysis; corr w AW re wage subsidy, review calculations	0.50
14-Apr-20	review banking, update cashflow analysis; various corr w AW re wage subsidy; review draft legal opinion	0.50
16-Apr-20	review banking, update cashflow analysis; update Receiver R&D, incl. HST analysis; various corr w AW re accounting and payroll issues	1.50
17-Apr-20	review banking, update cashflow analysis; review approvals and budget	0.75
21-Apr-20	review banking, update cashflow analysis; review and approve payroll and expenses; extend cashflow to May; corr w AW re accounting issues	1.00
23-Apr-20	review banking, update cashflow analysis; review AW May budget, corr re same; review disbursements	1.00
27-Apr-20	review banking, update cashflow analysis; corr w AW re payroll and GST issues	0.50
30-Apr-20	review banking, update cashflow analysis; dealing w AW re payroll matters, expense approvals; dealing with monthly accounting and interest matters	1.50
<b>TOTAL</b>	<b>JAMES MERRYWEATHER</b>	<b>14.00</b>

Link & Associates Inc.  
Receivers + Trustees

May 31, 2020

Besnovo Inc.  
c/o Link & Associates Inc.  
Court Appointed Receiver  
77 King Street West, Suite 3000  
Toronto ON  
M5K 1G8

Invoice #1191

---

**\* I N V O I C E \***

**Re: Receivership of Besnovo Inc.**

To: Professional services rendered in our capacity as Court Appointed Receiver for the month of May, 2020 per the attached time dockets.

Our Fee:	\$ 8,289.50
HST	1,077.64
Subtotal Fee:	<u>\$ 9,367.14</u>

<b>Total Invoice</b>	<b>\$ 9,367.14</b>
----------------------	--------------------

Billing Summary	Hours	Hourly Rate	Total
Robert Link, CIRP, LIT	8.5	\$400	3,400.00
James Merryweather, CPA, CGA	12.7	\$385	4,889.50
Total			<u>\$ 8,289.50</u>

HST #81903 2178

Tel. 416.862.7785 Fax. 416.862.2136

enquiries@linkassociates.ca

77 King Street West, Suite 3000, P.O. Box 95, TD Centre North Tower, Toronto, Ontario Canada M5K 1G8

**BESNOVO INC. - RECEIVERSHIP**  
**Robert Link - Time Docket**  
**For the period of May 1 to May 31, 2020**

**May 5, 2020**

0.4

Tel and emails English re security opinion, lease expiry and proposed renewal.

**May 7, 2020**

0.6

Tel conf w/ English and Gowlings; tel Rosekat.

**May 13, 2020**

0.3

Deal w/ gradual re-opening issues and compliance, lease renewal emails.

**May 14, 2020**

1.5

Deal w/ employee issues and concerns over re-opening, tel and email re same. Tel from A Chan; tel English; consider lease renewal issues and re-opening considerations; emails t/f management re same.

**May 19, 2020**

1.2

Conf call between Receiver and company management to review detailed re-opening plan; tel and emails JM before and after call re: same; emails counsel.

**May 20, 2020**

0.3

Review IRAP information.

**May 21, 2020**

0.5

Tel conf w/ counsel and counsel to PengYuan.

**May 22, 2020**

0.3

Review and approve final re-opening plan.

**May 25, 2020**

0.5

Emails re employee layoffs, outline of court report w/ possible stalking horse.

**May 26, 2020**

0.4

Review projected funding needs and budget; lease issues.

**May 27, 2020**

1.0

Email Merryweather; email Yuan re funding request. Report drafting.

**May 29, 2020**

1.5

Prepare and send Rec Cert #2 to Yuan to confirm \$100K funding; email Gowlings w/ update on borrowing and re-opening of business; emails t/f English and drafting court report.

**TOTAL**

**8.5**

DATE	DESCRIPTION	TIME (hh/mm)
<b>JAMES MERRYWEATHER, CPA, CGA</b>		
05-May-20	review banking, update cash analysis; update R&D; HST analysis; review and approve payroll, disbursements.	1.00
07-May-20	review banking, update cash analysis; corr w landlord re lease extension; review wage subsidy issue.	0.80
11-May-20	review banking, update cash analysis; various corr w/ AW re purchases, customs issues; review and approve orders and payables.	0.80
12-May-20	review banking, update cash analysis; review and approve Muskoka facility repairs	0.50
14-May-20	review and research re CV19 re-opening requirements, various corr re same; corr w landlord re lease extension; review banking; tc w government re opening	2.00
19-May-20	review banking, update cash analysis, expand into June; conference call w R Link, AW, MZ, SY re business re-opening; review and approve payroll and disbursements; review draft re-opening plan. comments	2.00
20-May-20	review and approve purchase; tc w Ministry of Health re re-opening; dealing w re-opening matters	0.80
25-May-20	review banking, update cash analysis; draft funding request; dealing w landlord re lease extension; review June budget, various corr w AW re same update Receiver R&D	3.50
26-May-20	review banking, update cash analysis; finalize funding request; corr w landlord, amend and accept renewal; review and approve purchases	1.30
<b>TOTAL</b>	<b>JAMES MERRYWEATHER</b>	<b>12.70</b>

ISABELLE ROBERTS

-and-

BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE  
TECHNOLOGY INC., PENGYUAN HOLDING LIMITED,  
PAUL CHURCH, and XING YUAN (also known as SHAWN  
YUAN)

Applicant

Respondents

Court File No. CV-18-607866-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF ROBERT G. LINK  
SWORN JUNE 9, 2020**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**D. Robb English (LSUC # 19862F)**

Tel: (416) 865-4748

Fax: (416) 863-1515

Email: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

*Lawyers for Link & Associates Inc., in its capacity as the Court-appointed  
receiver of Besnovo Inc*

# APPENDIX

“J”

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

**ISABELLE ROBERTS**

Applicant

- and -

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as  
SHAWN YUAN)**

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985,  
c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**AFFIDAVIT OF D. ROBB ENGLISH  
(sworn June 9, 2020)**

I, D. ROBB ENGLISH, of the City of Toronto, in the Province of Ontario, **MAKE  
OATH AND SAY AS FOLLOWS:**

1. I am a lawyer at Aird & Berlis LLP and, as such, I have knowledge of the matters to which I hereinafter depose. Aird & Berlis LLP is acting as counsel for Link & Associates Inc., in its capacity as the Court-appointed receiver of Besnovo Inc. (in such capacity, the “**Trustee**”).
2. Aird & Berlis LLP has prepared statements of account in connection with its mandate as counsel to the Trustee, detailing its services rendered and disbursements incurred, namely:
  - (a) an account dated May 29, 2020 in the amount of \$19,756.25 in respect of the period from February 26, 2020 to May 29, 2020..

3. Attached hereto and marked as **Exhibit "B"** to this Affidavit is a chart detailing the lawyers, law clerks and articling students who have worked on this matter.
4. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of Aird & Berlis LLP and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

Mifanda Spence

**D. ROBB ENGLISH**



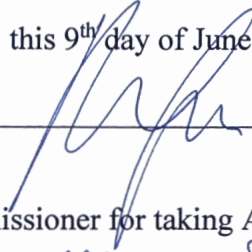
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF D. ROBB ENGLISH

Sworn before me

this 9<sup>th</sup> day of June, 2020

A handwritten signature in blue ink, appearing to read "Miranda Spence", is written over a horizontal line.

Commissioner for taking Affidavits, etc

*Miranda Spence*

## STATEMENT OF RESPONSIBLE INDIVIDUALS

*Aird & Berlis LLP's professional fees herein are made with respect to the following individuals*

<b>Lawyer</b>	<b>Call to Bar</b>	<b>Hrly Rate</b>	<b>Total Time</b>	<b>Value</b>
English, D. R.	1980	\$875.00	16.6	\$14,525.00
Spence, M. E	2011	\$525.00	1.7	\$892.50
<b>Clerk/Student</b>	<b>Call to Bar</b>	<b>Avg Hrly Rate</b>	<b>Total Time</b>	<b>Value</b>
Morris, S. R.	N/A	\$385.00	4.8	\$1,848.00
McLean, J. E.	N/A	\$240.00	0.2	\$48.00

*\*Standard hourly rates listed. However, in certain circumstances adjustments to the account were made.*

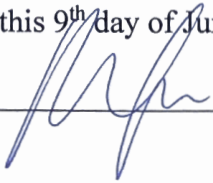
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF D. ROBB ENGLISH

Sworn before me

this 9<sup>th</sup> day of June, 2020



---

Commissioner for taking Affidavits, etc

*Miranda Spence*

IN ACCOUNT WITH:

**AIRD BERLIS**

Brookfield Place, 181 Bay Street, Suite 1800  
Toronto, Ontario, Canada M5J 2T9  
T 416.863.1500 F 416.863.1515  
airdberlis.com

Link & Associates Inc.  
3000-77 King Street West  
PO Box 95  
TD Centre North Tower  
Toronto, ON  
M5K 1G8

Attention: Mr. Robert Link

**Account No.: 672557**

PLEASE WRITE ACCOUNT NUMBERS  
ON THE BACK OF ALL CHEQUES

File No.: 46217/155850

May 29, 2020

---

**Re: Receiver of Besnovo Inc.**

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended May 29, 2020:

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DRE	26/02/20	\$875.00	1.00	\$875.00	Telephone call with R. Link; Review next steps and process; Review counsel emails; Review background documents
DRE	27/02/20	\$875.00	0.50	\$437.50	Review draft Order and Affidavit - comment back to counsel
DRE	27/02/20	\$875.00	0.40	\$350.00	Letter from R. Link re interest rate on DIP; Letter to Bobby Sachdeva
DRE	28/02/20	\$875.00	0.40	\$350.00	Letter to B. Sachdeva; Letter to R. Link; Telephone call with Cole
DRE	05/03/20	\$875.00	0.20	\$175.00	Telephone call with and email to R. Link
DRE	06/03/20	\$875.00	0.70	\$612.50	Telephone call with R. Link and run through issues; Telephone call with C. Cole; Telephone call with T. Gertner; Letter to B. Sachdeva; Letter to A. Chan
DRE	06/03/20	\$875.00	0.50	\$437.50	Dealing with various requested changes to draft Order
JEM	06/03/20	\$240.00	0.10	\$24.00	Order PPSA search against

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Besnovo Inc.
DRE	09/03/20	\$875.00	0.30	\$262.50	Deal with last revisions to Order
JEM	09/03/20	\$240.00	0.10	\$24.00	Review and report on certified PPSA search
DRE	10/03/20	\$875.00	0.30	\$262.50	Finalize order and attendance issues; Letter to R. Link
DRE	12/03/20	\$875.00	0.50	\$437.50	Review endorsement; Send Order; Letter to R. Link on next steps
DRE	12/03/20	\$875.00	0.20	\$175.00	Further dealings with next steps with Receiver
DRE	16/03/20	\$875.00	0.30	\$262.50	Letter to R. Link re update and court status
DRE	23/03/20	\$875.00	0.20	\$175.00	Telephone call with R. Link re sales process
DRE	24/03/20	\$875.00	0.40	\$350.00	Consult on court options; Consult with R. Link
DRE	26/03/20	\$875.00	0.40	\$350.00	Telephone call with R. Link
DRE	30/03/20	\$875.00	0.50	\$437.50	Letter from B Sachedeva and R. Link; Instruct clerk - suggest Gowlings contact
SRM	30/03/20	\$385.00	0.50	\$192.50	Emails from and to R. English; Begin review of security documents
DRE	01/04/20	\$875.00	0.20	\$175.00	Instruct clerk
DRE	03/04/20	\$875.00	0.20	\$175.00	Instruct clerk
SRM	03/04/20	\$385.00	3.80	\$1,463.00	Review minute book, share purchase agreement, shareholders agreement, promissory note, general security agreement and searches; Prepare draft security opinion
SRM	05/04/20	\$385.00	0.20	\$77.00	Finalize draft security review
DRE	06/04/20	\$875.00	0.40	\$350.00	Review and revise security review
DRE	06/04/20	\$875.00	0.40	\$350.00	Revise opinion letter; Letter to R. Link

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SRM	06/04/20	\$385.00	0.30	\$115.50	Review comments from R. English and further revise security review
DRE	07/04/20	\$875.00	0.70	\$612.50	Revise report; Telephone call with Receiver; Discuss options for next steps
DRE	14/04/20	\$875.00	0.40	\$350.00	Letter to R. Link; Letter to counsel re draft opinion
DRE	14/04/20	\$875.00	0.20	\$175.00	Telephone call from B. Sachdeva
DRE	17/04/20	\$875.00	0.40	\$350.00	Letter to R. Link re receiver's certificate; Update on security review comments
DRE	20/04/20	\$875.00	0.60	\$525.00	Letters with T. Gerner; Discuss status with R. Link and determine not to seek current court approval of status
DRE	21/04/20	\$875.00	0.30	\$262.50	Letter from B. Sachdeva; Update R. Link
DRE	21/04/20	\$875.00	0.20	\$175.00	Consult with R. Link
DRE	22/04/20	\$875.00	1.00	\$875.00	Telephone call with B. Sachdeva; Telephone call with R. Link; Confirm status with B. Sachdeva; Review security and finalize opinion; Discuss sales options
DRE	05/05/20	\$875.00	0.80	\$700.00	Update with R. Link; Telephone call with B. Sachdeva; Letter to T. Gertner
DRE	07/05/20	\$875.00	0.80	\$700.00	Conference call with R. Link and Gowlings; Email to B. Sachdeva; Schedule counsel call
DRE	14/05/20	\$875.00	0.40	\$350.00	Update settlement prospects with MT; Telephone call with R. Link; Issue re request to employee to attend
DRE	14/05/20	\$875.00	0.20	\$175.00	Telephone call with R. Link
DRE	19/05/20	\$875.00	0.30	\$262.50	Letter re settlement discussions
DRE	20/05/20	\$875.00	0.30	\$262.50	Update from counsel and set up call

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
DRE	21/05/20	\$875.00	0.50	\$437.50	Conference call
DRE	22/05/20	\$875.00	0.20	\$175.00	Telephone call with B. Sachdeva
DRE	27/05/20	\$875.00	0.50	\$437.50	Instruct and brief M. Spence on sales process motion
MES	27/05/20	\$525.00	0.80	\$420.00	Discussion with R. English re: stalking horse bid and motions arising from same; Review materials
DRE	28/05/20	\$875.00	0.20	\$175.00	Review draft orders
MES	28/05/20	\$525.00	0.40	\$210.00	Review stalking horse bid agreements
DRE	29/05/20	\$875.00	0.60	\$525.00	Review drafts of stalking horse docs; Instruct M. Spence; Letter to R. Link; Receive new Receiver's Certificate
MES	29/05/20	\$525.00	0.50	\$262.50	Exchange emails with R. English, R. Link, S. John re: stalking horse bid process and preparation of materials
<b>TOTAL:</b>			23.30	\$17,313.50	

<b>OUR FEE</b>	\$17,313.50
HST at 13%	\$2,250.76

#### DISBURSEMENTS

#### COST INCURRED ON YOUR BEHALF AS AN AGENT

Search Under P.P.S.A.	\$40.00
-----------------------	---------

#### Subject to HST

Service Provider Fee	\$22.50
Photocopies - Local	\$63.00
Corporate Search	\$49.00

Total Disbursements	\$134.50
HST at 13%	\$17.49

#### AMOUNT NOW DUE

---



---

**\$19,756.25**

THIS IS OUR ACCOUNT HEREIN  
Aird & Berlis LLP

*D. Robb English*

D. Robb English  
/ph  
E.&O.E.

**PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT**

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

40196014.1



**ISABELLE ROBERTS**

- and - **BESNOVO INC. et al.**

Applicant

Respondents

Court File No. CV-18-607866-00CL

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

**Proceedings commenced at Toronto**

**AFFIDAVIT OF FEES**

**AIRD & BERLIS LLP**

Barristers and Solicitors

Brookfield Place

181 Bay Street, Suite 1800

P.O. Box 754

Toronto, ON M5J 2T9

**D. Robb English (LSUC # 19862F)**

Tel: (416) 865-4748

Fax: (416) 863-1515

Email: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

Lawyers for Link & Associates Inc., in its capacity as the Court-appointed receiver of Besnovo Inc.

# TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) DAY, THE <\*> DAY  
)  
JUSTICE ) OF <\*>, 2020

B E T W E E N :

**ISABELLE ROBERTS**

Applicant

- and -

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.  
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as  
SHAWN YUAN)**

Respondents

**ORDER  
(re: Stalking Horse Sale Procedure)**

**THIS MOTION**, made by Link & Associates Inc. (“**Link**”), in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Besnovo Inc. (the “**Debtor**”), for an order, amongst other things, approving the first report of the Receiver dated June 9, 2020 (the “**First Report**”) and the stalking horse bid process outlined therein, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver, PengYuan Holding Limited (“**PengYuan**”) and Cleeve Holdings Inc., Cleeve Technology Inc. and Paul Church (collectively, “**Cleeve**”) no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of <\*> sworn <\*>, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the First Report and the activities of the Receiver described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to enter into an agreement to sell the Debtor's Property to PengYuan, substantially in accordance with the Agreement of Purchase and Sale attached as **Appendix "E"** to the First Report (the "**Stalking Horse Offer**"), subject to the terms of this Order.
4. **THIS COURT ORDERS** that the completion of the sale contemplated in paragraph 3 of this Order shall be conditional upon the Receiver not receiving a bid from a purchaser other than PengYuan on or before 5:00 p.m. (Toronto time) on July 31, 2020 (the "**Bid Deadline**") that the Receiver considers, in its sole discretion, to be superior to the Stalking Horse Bid, and which must:
  - (a) be accompanied by a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Offer, showing any and all variations from the Stalking Horse Offer, which includes the Terms and Conditions attached hereto as Schedule "A", and a deposit in the amount equal to at least 10% of the aggregate purchase price under the subject bid by way of bank draft or certified cheque payable pursuant to the terms of the subject bid and which is not subject to any encumbrances;
  - (b) remain open for acceptance and completion until 3:00 p.m. (Toronto time) on August 18, 2020;
  - (c) be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Offer;

- (d) not contain any contingency relating to due diligence or financing or any other material conditions precedent to the subject bidder's obligation to close that are not otherwise contained in the Stalking Horse Offer;
- (e) specify the assets that are subject to the subject bid, including, without limitation, any executory contracts and unexpired leases;
- (f) be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by the bid on the terms specified therein; and
- (g) contain, among other things, an aggregate purchase price at least equal to the Stalking Horse Offer, plus the Break Fee (as such term is defined in the Stalking Horse Offer) and an additional sum of \$50,000.00.

Every bid which meets the requirements above will be a “**Qualified Bid**” and each person who submits a Qualified Bid will be a “**Qualified Bidder**”. For the purpose of the Sale Procedure defined below, the Stalking Horse Offer shall constitute a Qualified Bid.

5. **THIS COURT ORDERS** that the sale procedure (the “**Sale Procedure**”) with respect to any or all of the Property be and is hereby approved as follows:

- (a) the Receiver shall solicit potential purchasers by:
  - (i) sending out a teaser letter to parties identified by the Receiver as potential purchasers, as soon as reasonably practicable after the issuance of this Order;
  - (ii) placing an advertisement in the Globe & Mail (National Edition) within five (5) business days of the issuance of this Order; and

- (b) providing to any potential purchasers who execute a confidentiality agreement on terms satisfactory to the Receiver: (1) access to an electronic data room containing information reasonably required by prospective purchasers of the Debtor's Property to consider submitting a Qualified Bid and facilitate the conduct of due diligence by prospective purchasers; and (2) an electronic copy of the Stalking Horse Offer, but provided that the Receiver shall not be obligated to disclose trade secrets or other proprietary information the disclosure of which the Receiver deems to be detrimental to the interests of the Debtor;
- (c) any interested purchaser shall submit a formal offer to purchase the Property in the form set out in paragraph 4 above, on or before the Bid Deadline;
- (d) the Receiver shall review any formal bids received by the Bid Deadline and determine if there are one or more Qualified Bids;
- (e) if the Stalking Horse Agreement constitutes the only Qualified Bid, the Receiver shall bring a motion as soon as reasonably possible thereafter for approval of the Stalking Horse Agreement and an order to vest the Debtor's Property in PengYuan and proceed with closing the transaction forthwith;
- (f) if there is more than one Qualified Bid, the Receiver shall send out invitations on or before August 5, 2020, or as soon as reasonably practicable, to all Qualified Bidders inviting the Qualified Bidders to attend an auction (the "**Auction**") to be conducted by the Receiver at 10:00 a.m. (Toronto time) on August 10, 2020, at the offices of the Receiver, or otherwise as may be determined by the Receiver, in its sole discretion,

together with a set of rules for the conduct of the Auction, and a copy of the most favourable Qualified Bid (the “**Lead Bid**”);

- (g) the Receiver shall conduct the Auction by soliciting bids, starting at a minimum of \$50,000.00 increments above the amount of the Lead Bid, for which each bid must exceed the aggregate purchase price payable pursuant to the preceding bid by no less than \$50,000.00 and for which all consideration in excess of the amount set forth in the Lead Bid must be comprised only of cash consideration;
- (h) the Receiver may establish such timelines and protocols for the Auction as it considers appropriate, in its discretion, which will not be inconsistent with the terms of this Order;
- (i) the “**Successful Bidder**” shall be: (1) if there are no bids at the auction, the person with the Lead Bid; or (2) the bidder with the highest qualified bid at the Auction;
- (j) upon acceptance of the bid of the Successful Bidder, (the “**Successful Bid**”) there shall be a binding agreement of purchase and sale between the Successful Bidder and the Receiver; and
- (k) the Receiver shall make a motion to this Court, forthwith, to obtain an order to approve the agreement with the Successful Bidder and to vest the Debtor’s property in the Successful Bidder, proceed with closing the transaction forthwith and distribute the Break Fee (as such term is defined in the Stalking Horse Offer) from the proceeds of the transaction.

6. **THIS COURT ORDERS** that the borrowing limit of \$1,000,000 for the Receiver's borrowings subject to the Receiver's Borrowing Charge, as established in paragraph 21 of the Order of the Honourable Justice McEwen dated March 12, 2020, be and is hereby increased to \$1,500,000.

---



## SCHEDULE "A"

### TERMS AND CONDITIONS OF SALE

#### 1. THE VENDOR

1.1 Link & Associates Inc., solely in its capacity as the Court-appointed receiver (the "**Receiver**" and/or the "**Vendor**"), without security, of all the assets, undertakings and properties (collectively, the "**Assets**") of Besnovo Inc. (the "**Company**"), is offering for sale by bid and auction all of the assets, undertakings and properties of Besnovo (the "**Assets**").

1.2 The Receiver has obtained an Order of the Ontario Superior Court of Justice (Commercial List) dated June 18, 2020 (collectively, the "**Stalking Horse Order**") which sets out, *inter alia*, the terms, conditions of sale and a timetable for bidding and an auction with respect to the purchase and sale of the Assets (the "**SISP**"), as further outlined below (a copy of the Stalking Horse Order is attached hereto as **Schedule "A"**).

#### 2. THE SALE PROCEDURE

2.1 The Stalking Horse Order recognizes the initial bid from PengYuan Holding Limited ("**PengYuan**"). The initial bid by PengYuan is contained in an Agreement of Purchase and Sale dated as of June 18, 2020, executed by the Receiver and PengYuan (the "**Agreement of Purchase and Sale**") (a copy of the Agreement of Purchase and Sale is attached hereto as **Schedule "B"**) as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**"), in the amount of \$4,900,000, together with all outstanding accrued interest and plus all principal and interest owing as of the Closing Date pursuant to all Receiver's Borrowing Certificates, by way of a Credit Bid, as further provided in the Agreement of Purchase and Sale, as such terms are defined in the Agreement of Purchase and Sale, plus any and all retail sales taxes (including any goods and services taxes) and all other transfer taxes, duties or other like charges payable upon or in connection with the subject transaction (collectively, the "**Taxes**").

2.2 The Stalking Horse Order provides for, *inter alia*, the marketing and sale of the Assets by the Receiver and a competitive bidding and auction procedure, to be administered by the Receiver, in order to determine if a materially higher price (compared to the Stalking Horse Bid) can be obtained for the sale of the Assets.

2.3 In consideration for PengYuan's expenditure of time and money in acting as the initial bidder in the Stalking Horse Bid and the preparation of the Agreement of Purchase and Sale, and in performing due diligence pursuant to the Agreement of Purchase and Sale, the Stalking Horse Order provides for liquidated damages in the amount of \$300,000.00 (the "**Break Fee**"), payable by the Vendor to PengYuan in the event that a materially higher offer than the offer advanced by PengYuan pursuant to the Stalking Horse Bid is obtained for the Assets through the SISP and, as a consequence, the Vendor sells all, or substantially all of the Assets to a person or entity other than PengYuan.

2.4 In addition, the Stalking Horse Order provides that in order to be accepted by the Receiver, any competing bid ("**Competing Bid(s)**") for the Assets must be on substantially the

same terms and conditions as those terms and conditions contained in the Agreement of Purchase and Sale, except with respect to price (any Competing Bid(s) that are accepted by the Vendor as superior bid(s) to the Stalking Horse Bid are referred to herein as the “**Superior Bid(s)**”).

2.5 In order for any Competing Bid to be accepted by the Receiver as a Superior Bid to the Stalking Horse Bid, the Competing Bid must meet all of the following minimum criteria:

- (a) the Competing Bid must be accompanied by a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Bid, showing any and all variations from the Stalking Horse Bid, and a deposit in the amount equal to at least 10% of the aggregate purchase price under the subject competing bid by way of bank draft or certified cheque payable pursuant to the terms of the subject competing bid and which is not subject to any encumbrances;
- (b) the Competing Bid must remain open for acceptance and completion until 3:00 p.m. (Toronto time) on August 18, 2020;
- (c) the Competing Bid must be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Bid;
- (d) the Competing Bid must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the subject bidder's obligation to close that are not otherwise contained in the Stalking Horse Bid;
- (e) the Competing Bid must specify the assets that are subject to the subject competing bid, including, without limitation, any executory contracts and unexpired leases;
- (f) the Competing Bid must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by the competing bid on the terms specified therein; and
- (g) the Competing Bid must contain, among other things, an aggregate purchase price at least equal to the Stalking Horse Bid, plus the Break Fee and an additional sum of \$50,000.00.

### **3. COMPETING BID OFFERS**

3.1 Sealed bids marked “DO NOT OPEN - BID – BESNOVO INC.” shall be delivered or mailed postage prepaid to Link & Associates Inc., Receiver of Besnovo Inc., Attention: Robert Link, so as to be received by the Receiver on or before 5:00 p.m. (Toronto time) on July 31, 2020.

3.2 Every Competing Bid must be in writing and submitted in the form of an amended Agreement of Purchase and Sale, as provided herein. Any Competing Bids received by the Receiver that are not in the correct form may be rejected immediately by the Receiver, acting in its sole and unfettered discretion.

3.3 The opening of any Competing Bid(s) received by the Receiver will be conducted between July 31, 2020 and August 4, 2020, in private and in the presence of representatives of the Receiver and its solicitors.

3.4 In consideration of the Receiver receiving any Competing Bid and upon receipt by the Receiver of any such Competing Bid, the competing bidder shall not be entitled to retract, withdraw, revoke, vary or countermand its Competing Bid.

3.5 In the event that any Competing Bids received by the Receiver are on substantially the same terms, conditions and/or amounts of one another, the Receiver may, subject to the approval of the Court, call upon such competing bidders to submit further bids.

3.6 No Competing Bid may contain proposals to vary, amend or supplement these Terms and Conditions of Sale.

3.7 Any documentation or other materials provided to prospective bidders relating to the Assets have been prepared solely for the convenience of prospective bidders and is not warranted to be complete or accurate, and do not form part of these Terms and Conditions of Sale. Every bidder shall be deemed to have relied entirely on its own inspection and investigation of the Assets and the title thereto.

3.8 By submitting an offer to purchase the Assets, the bidder acknowledges that it has inspected the Assets and that the Assets are being sold on an “*as is, where is*” basis at the time of closing and that there is no representation, warranty or condition, expressed or implied, statutory or otherwise, as to title, encumbrances, description, fitness for any purpose, merchantability, quality, quantity, state, condition (environmental or otherwise), defect (patent or latent), existence, location, value, the validity or enforceability of any rights (including intellectual property rights, any requirement for licenses, permits, approvals, consents for ownership, occupation or use or compliance with any government laws, regulations, bylaws and orders or in respect of any other matter or thing whatsoever. The Assets are specifically offered, as they now exist with no adjustments to be allowed for changes in conditions, qualities or quantities of such parcels from the date hereof to the Closing Date (as the term is defined below) of the contemplated transaction. The bidder acknowledges that the Receiver is not required to inspect or count, or provide any inspection or counting, of the Assets or any part thereof and the bidder shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. It shall be the bidder’s sole responsibility to obtain, at its own expense, any consents to such transfer of the Assets and any further documents or assurances which are necessary or desirable in the circumstances.

3.9 The Receiver, at its sole and unfettered discretion, may waive or vary any or all of the terms and conditions contained hereof.

#### **4. DEPOSIT**

4.1 Competing Bids shall be stated in Canadian currency and must be accompanied by a deposit in the form of a draft of or a cheque certified by a Canadian bank payable to “Link & Associates Inc., Receiver of Besnovo Inc., in trust.” The deposit for any Competing Bid shall be ten percent (10%) of the aggregate purchase price payable under the subject Competing Bid.

If a Competing Bid is accepted to be the Winning Bid (as the term is defined below), the subject deposit shall be deemed to be a cash deposit and will be applied by the Vendor towards the purchase price of the Assets on closing of the contemplated transaction.

4.2 Cheques accompanying Competing Bids that are not accepted by the Receiver to be Superior Bids will be returned to the respective bidder(s) by prepaid ordinary mail addressed to the respective competing bidders at the address set out in their offers.

## **5. THE AUCTION PROCESS AND THE WINNING BID**

5.1 If there is at least one Superior Bid that meets the above conditions, the Receiver will distribute to the makers of these Superior Bid(s), together with PengYuan, on or before August 5, 2020, the following:

- (a) an invitation to an auction of the Assets to be held at 10:00 a.m. (Toronto time) on August 10, 2020 at the offices of the Receiver, or otherwise as may be determined by the Receiver, in its sole discretion (the “**Auction**”);
- (b) a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all of the features of the bids, believes to be the most favourable bid as between the Stalking Horse Bid and all of the Superior Bids (the “**Lead Bid**”); and
- (c) a copy of a set of rules for the conduct of the Auction, established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the price for the Assets (the “**Auction Rules**”), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than \$50,000.00 increments, solely for the purpose of determining the successful bid at the Auction, and all amounts in excess of the amount of the Lead Bid shall be entirely comprised of cash consideration; and (iii) the highest bid received at the Auction shall be the “winning bid” (the “**Winning Bid**”).

5.2 Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the “**Purchaser**”) and the Vendor of the Assets (the “**Winning Bid Agreement**”), with respect to which the Winning Bid was accepted by the Vendor. The Winning Bid Agreement shall be constituted by:

- (a) the Stalking Horse Bid or one of the Superior Bids, as the case may be, as amended pursuant to the Auction;
- (b) these Terms and Conditions of Sale;

- (c) the amended Agreement of Purchase and Sale submitted by the Purchaser, as amended pursuant to the Auction; and
- (d) the acceptance of the Winning Bid.

5.3 The Receiver will make a motion to the Court, forthwith, to obtain an order to approve the agreement with the Purchaser and to vest the Company's property in the Purchaser. Thereafter, the Receiver will advise the Purchaser of the outcome of the said motion and proceed with closing the transaction forthwith.

5.4 Title to the Assets shall not pass to the Purchaser nor shall the Purchaser be entitled to possession of same until the purchase price and all other payments to be made by the Purchaser pursuant to the Winning Bid Agreement have been paid in full, and the Purchaser has complied with all of its covenants contained herein and in the Winning Bid Agreement, which shall have been duly executed and delivered to the Vendor.

5.5 The Vendor shall not be required to pay any commission with respect to a sale made pursuant to these Terms and Conditions of Sale.

## **6. CLOSING DATE**

6.1 The closing of the contemplated transaction shall take place at the office of the Vendor's solicitors, Aird & Berlis LLP, at the later of August 21, 2020 or the third business day following the effective date of an Order of the Court approving the acceptance and completion of the Winning Bid (the "**Closing Date**").

6.2 The Vendor shall not be required to produce any abstract of title, title deed or documents or copies thereof or any evidence as to title pertaining to the Assets, other than those in its possession.

## **7. EVENT OF FORFEITURE**

7.1 If the Purchaser fails to comply with the terms and conditions of the Winning Bid Agreement, or any of them, all deposits shall be forfeited to the Vendor on account of agreed liquidated damages, the Assets being conveyed to the Purchaser may be resold by the Vendor, and the Purchaser shall pay to the Vendor on demand: (i) an amount equal to the amount, if any, by which the purchase price under the Winning Bid Agreement exceeds the net purchase price received by the Vendor pursuant to such resale, and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of or occasioned by the Purchaser's failure to comply with the Winning Bid Agreement.

## **8. GENERAL**

8.1 Link & Associates Inc. is acting solely in its capacity as the Receiver, without security, of the assets, undertakings and properties of the Company and shall have no personal or corporate liability hereunder or from any agreement contemplated hereby or as a result of any contemplated sale.

8.2 The terms and conditions contained herein shall not merge on the closing of the transaction contemplated herein but shall survive such closing and remain in full force and effect and be binding on the Purchaser thereafter.

8.3 The terms and conditions hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

8.4 The terms and conditions contained herein shall enure to the benefit of and be binding upon the parties thereto and their permitted heirs, executors, administrators, successors or assigns, as the case may be.

8.5 Unless otherwise provided herein, any tender of documents or money hereunder may be made upon the Vendor or the Purchaser, or their respective solicitors. Money may be tendered by cheque certified by a Canadian chartered bank, Canadian trust company or by bank draft.

8.6 The obligations of the Vendor to complete any agreement contemplated herein or hereby shall be relieved if, on or before the closing of such sale, the Assets or any part thereof which are the subject of the sale have been removed from the control of the Vendor by any means or process, enjoined, or the Assets, or any part thereof, are redeemed, whereupon the only obligation of the Vendor shall be to return the applicable deposit, without interest, deduction costs or compensation.

8.7 The Purchaser shall not assign the Winning Bid Agreement without the Receiver's prior written approval, which approval may be granted or withheld in the Receiver's sole and unfettered discretion.

8.8 Time is of the essence of any agreement entered into pursuant to these Terms and Conditions of Sale, any rule of law or equity to the contrary notwithstanding, provided that the Vendor in its discretion may authorize the extension of any deadlines set out in this process by a maximum of seven days.

8.9 The Vendor reserves its rights, subject to Court approval, to withdraw the Assets or any part thereof on or before the Closing Date if there is any actual or threatened litigation with respect to any of the Assets or if any Asset has been redeemed or is subject to any lien or encumbrance which the Vendor cannot remove and the Purchaser will not assume. The Vendor shall be under no obligation to compensate any third party in order to complete any applicable agreement and shall return the deposit to the Purchaser without interest, costs or compensation.

8.10 Unless the context otherwise requires, words importing the singular include the plural and vice versa.

8.11 The submission of a bid by a resident of the Province of Quebec will be deemed to constitute the declaration and acknowledgement by such resident that it has requested these Terms and Conditions of Sale, the form of bid referred to herein and all other documentation relating to its bid and the acceptance thereof to be drawn up in the English language.

8.12 La présentation d'une soumission par une personne résident au Québec constituera la déclaration et la reconnaissance expresse par la soumissionnaire qu'il a consenti que ces Termes et Conditions de Vente, la formule de soumission mentionnées en ceci et tous autres documents relatifs à la soumission et a son acceptation soient rédigés en langue anglaise.

DATED at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**LINK & ASSOCIATES INC.** in its capacity as  
the Court-appointed receiver , without security, of  
the assets, undertakings and properties of Besnovo  
Inc. and not in its personal capacity

Per:

\_\_\_\_\_

Name:

Title:

**ISABELLE ROBERTS**

- and - **BESNOVO INC. et al.**

Applicant

Respondents

Court File No. CV-18-607866-00CL

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

**Proceedings commenced at Toronto**

**ORDER**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
Suite 1800, Box 754  
181 Bay Street  
Toronto, ON M5J 2T9

**D. Robb English (LSO# 19862F)**

Tel: 416.865.4748

Email: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**

Tel: 416.865.3414

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

Fax: 416.863.1515

*Lawyers for Link & Associates Inc., in its capacity as the Court-appointed receiver of Besnovo Inc. and not in its personal capacity*



# TAB 4

**SERVICE LIST**

(As of June 9, 2020)

TO: **AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
Toronto, ON M5J 2T9

**D. Robb English (LSO# 19862F)**  
Tel: (416) 865-4748  
Fax: (416) 863-1515  
Email: [renglish@airdberlis.com](mailto:renglish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**  
Tel: (416) 865-3414  
Fax: (416) 863-1515  
Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

Lawyers for Link & Associates Inc.,  
in its capacity as the Court-appointed receiver of Besnovo Inc.

AND TO: **MILLER THOMSON LLP**  
Scotia Plaza  
40 King Street West, Suite 5800  
Toronto, Ontario  
M5H 3S1

**Bobby Sachdeva LSO#: 34454C**  
Email: [bsachdeva@millerthomson.com](mailto:bsachdeva@millerthomson.com)  
Tel: (905) 532-6670  
Fax: (905) 660-0139

**Erin Craddock LSO#: 62828J**  
Email: [ecraddock@millerthomson.com](mailto:ecraddock@millerthomson.com)  
Tel: (416) 595-8631  
Fax: (416) 595-8695

Lawyers for the Respondents,  
PengYuan Holding Limited and  
Xing Yuan (also known as Shawn Yuan)

AND TO: **SPARK LLP**  
67 Yonge Street  
2<sup>nd</sup> Floor  
Toronto, Ontario M5E 1J8

**Jeff Rosekat**  
Tel: (416) 639-2151  
Fax: (647) 490-4888  
Email: [jeff@spark.law](mailto:jeff@spark.law)

Lawyers for Isabelle Roberts

AND TO: **GARDINER ROBERTS**  
Bay Adelaide Centre – East Tower  
22 Adelaide Street West, Suite 3600  
Toronto, Ontario M5H 4E3

**Dara Shane Hirbod**  
Tel: (416) 865-4014  
Fax: (416) 865-6636  
Email: [dhirbod@grllp.com](mailto:dhirbod@grllp.com)

Lawyers for Besnovo Inc.

AND TO: **GOWLING WLG (CANADA) LLP**  
1 Frist Canadian Place  
100 King Street West, Suite 1600  
Toronto, Ontario M5X 1G5

**Clifford Cole LSO #20549T**  
Tel: (416) 862-7525  
Fax: (416) 862-7661  
Email: [Clifford.cole@gowlingwlg.com](mailto:Clifford.cole@gowlingwlg.com)

**Thomas Gertner**  
Tel: (416) 369-4618  
Fax: (416) 862-7661  
Email: [thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)

Lawyers for Cleeve Holdings Inc., Cleeve Technology Inc., and Paul Church

AND TO: **LINK & ASSOCIATES, INC.**  
77 King Street West, Suite 3000  
PO Box 95  
TD Centre North Tower  
Toronto, ON M5K 1G8

Robert Link  
Tel: (416) 862-7785 ext. 2  
Email: [rlink@linkassociates.ca](mailto:rlink@linkassociates.ca)

Court Appointed Receiver

AND TO: **ATTORNEY GENERAL OF CANADA**  
Department of Justice Canada  
Ontario Regional Office, Tax Law Section  
120 Adelaide Street West, Suite 400  
Toronto, ON M5H 1P9

**Diane Winters**  
Tel: (647) 256-7459  
Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

AND TO: **MINISTRY OF FINANCE (ONTARIO)**  
Legal Services Branch  
777 Bay Street, 11th Floor  
Toronto, ON M5G 2C8

**Kevin O'Hara**  
Tel: (416) 327-8463  
Email: [kevin.ohara@ontario.ca](mailto:kevin.ohara@ontario.ca)

**ISABELLE ROBERTS**

- and - **BESNOVO INC. et al.**

Applicant

Respondents

Court File No. CV-18-607866-00CL

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

**Proceedings commenced at Toronto**

**MOTION RECORD**  
**(returnable June 18<sup>th</sup>, 2020)**

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street, Suite 1800  
P.O. Box 754  
Toronto, ON M5J 2T9

**D. Robb English (LSUC # 19862F)**

Tel: (416) 865-4748

Fax: (416) 863-1515

Email: [renchlish@airdberlis.com](mailto:renchlish@airdberlis.com)

**Miranda Spence (LSO# 60621M)**

Tel: (416) 865-3414

Fax: (416) 863-1515

Email: [mspence@airdberlis.com](mailto:mspence@airdberlis.com)

*Lawyers for Link & Associates Inc., in its capacity as the Court-appointed receiver of Besnovo Inc.*