

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

BETWEEN:

FCMI PARENT CO.

Applicant

- and -

**GEDEX SYSTEMS INC., GEDEX AVIATION INC.,
BLACK BAY MINERALS CORPORATION,
GEDEX EXPLORATION INC., and GEDEX EARTH INC.**

Respondents

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C 1985, c. C-36**

**MOTION RECORD
(Returnable September 3, 2019)**

August 27, 2019

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TO: THE SERVICE LIST

SERVICE LIST
(as at August 26, 2019)

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AND TO:	DEPARTMENT OF JUSTICE 3400-130 King Street West Tax Section, PO Box 36, Exchange Tower Toronto, ON M5X 1K6 Diane H. A. Winters Tel: (416) 973-3172 Fax: (416) 973-0810 diane.winters@justice.gc.ca
AND TO:	MINISTRY OF FINANCE Legal Services Branch 22 King Street West, 6 th Floor P.O. Box 6274. Stn. A Oshawa, ON L1H 8H5 Kevin J. O'Hara Tel: 1 (905) 433-6934 Fax: 1 (905) 436-4510 kevin.ohara@fin.gov.on.ca

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TAB 1

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

BETWEEN:

FCMI PARENT CO.

Applicant

- and -

**GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY MINERALS
CORPORATION, GEDEX EXPLORATION INC., and GEDEX EARTH INC.**

Respondents

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C 1985, c. C-36**

**NOTICE OF MOTION
(Returnable September 3, 2019)**

FCMI Parent Co. (“**FCMI**”), a secured creditor of Gedex Systems Inc., Gedex Aviation Inc., Black Bay Minerals Corporation, Gedex Exploration Inc. and Gedex Earth Inc. (collectively, the “**Debtors**”), will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on September 3, 2019, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard orally.

THE MOTION IS FOR:

1. An Order, substantially in the form attached hereto as **TAB 3** of the Motion Record, for the following relief:

- (a) Abridging and validating the timing and method of service of this Notice of Motion and Motion Record so that this Motion is properly returnable on September 3, 2019, and dispensing with further service thereof;

- (b) Extending the Stay Period, as defined in paragraph 16 of the August 12, 2019 initial order made in this proceeding (“**Initial Order**”), to December 10, 2019;
- (c) Increasing the borrowing amount, as set out in paragraph 34 of the Initial Order to \$1,000,000; and,

2. Granting such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- 1. FCMI is a Nova Scotia company and is a secured creditor of the Debtors, both for funds it directly advanced to the Debtors and as agent for certain other lenders;
- 2. On an application made by FCMI, the Debtors were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) pursuant to the Initial Order.
- 3. Pursuant to the Initial Order, Zeifman Partners Inc. was appointed as monitor (“**Monitor**”).
- 4. On the same date, this Honourable Court granted a further Order (the “**SISP Approval Order**”) authorizing and approving a sales and investor solicitation process (the “**SISP**”) in respect of the property, assets and undertakings of the Debtors and appointing Robert (Bob) Benia (“**SISP Advisor**”) to lead the SISP.

Extension of Stay Period

- 5. The Initial Order provided for, among other things, a stay of proceedings in respect of the Debtors for the initial period up to and including September 11, 2019 (the “**Stay Period**”), 30 days from the date of the Initial Order. At the same time, the SISP Approval Order contemplates a sale process that remains open to accept offers until October 28, 2019.

6. In light of the ongoing SISP, extending the Stay Period until December 10, 2019, should allow sufficient time after the bid deadline to conclude any negotiations related to bids received pursuant to the SISP and conclude some type of transaction.

7. The SISP is ongoing and the Debtors have been and are continuing to work with the Monitor and the SISP Advisor and are continuing to act in good faith and with due diligence in respect of the SISP;

DIP Increase

8. The Initial Order provided a DIP Lender's Charge in favour of FCMI up to the amount of \$550,000. That was based on an initial 13-week cash flow forecast showing a need for up to \$505,000 in funding.

9. The revised forecast runs to the end of December 2019. Based on the revised cash flow it now appears that at least to the new stay extension date funding of up to \$975,000 may be necessary. FCMI will continue to make the funding necessary to allow the SISP to run its course provided that the Court approve an increase in the amount available under the DIP Lender's Charge (as defined in the Initial Order) to \$1 million.

General

10. Subsection 11.02(2) of the CCAA;

11. The *Rules of Civil Procedure* (Ontario), including Rules 1.04, 2.02, 2.03, 16.04 and 37; and,

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the Affidavit of Yakov Friedman affirmed August 27, 2019, and the exhibits thereto;

2. the first report of the Monitor, to be filed separately; and,
3. such further and other evidence as counsel may advise and this Honourable Court may permit.

Dated: August 27, 2019

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Lawyers for the Applicant, FCMI Parent Co.

TO: THE SERVICE LIST

FCMI PARENT CO.

- and - **GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK
BAY MINERALS CORPORATION, GEDEX EXPLORATION
INC., and GEDEX EARTH INC.**

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(Returnable September 3, 2019)**

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Lawyers for the Applicant, FCMI Parent Co.

TAB 2

Court File No.

CV-19-625224-00CL

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

BETWEEN

FCMI PARENT CO.

Applicant

- and -

**GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY MINERALS
CORPORATION, GEDEX EXPLORATION INC., and GEDEX EARTH INC.**

Respondents

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C 1985, c. C-36**

**AFFIDAVIT OF YAKOV Z. FRIEDMAN
(Affirmed August 27, 2019)**

I, Yakov Z. Friedman, of the City of Toronto, in the Province of Ontario, **SOLEMNLY
AFFIRM AND SAY AS FOLLOWS:**

1. I am an employee of FCMI Parent Co. ("**FCMI**"), the Applicant in the within proceedings. FCMI is a company incorporated pursuant to the laws of Nova Scotia. I have personal knowledge of the matters to which I hereinafter depose or, if I do not have personal knowledge, I have stated the source of my information. In all such cases, I believe such information to be true.
2. I affirm this affidavit in support of FCMI's motion for an Order extending the stay period from September 11, 2019, to December 10, 2019.

Background

3. FCMI is a Nova Scotia company and is a secured creditor of the of Gedex Systems Inc., Gedex Aviation Inc., Black Bay Minerals Corporation, Gedex Exploration Inc. and Gedex Earth Inc. (collectively, the “**Debtors**”), both for funds FCMI directly advanced to the Debtors and as agent for certain other lenders.

4. On an application made by FCMI (the “**Initial Application**”), the Debtors were granted protection from their creditors under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) pursuant to the Order of the Honourable Mr. Justice Penny dated August 12, 2019 (the “**Initial Order**”). A copy of the Initial Order is attached hereto and marked as **Exhibit “A”**.

5. Pursuant to the Initial Order, Zeifman Partners Inc. was appointed as monitor (“**Monitor**”).

6. On the same date, this Honourable Court granted a further Order (the “**SISP Approval Order**”) authorizing and approving a sales and investor solicitation process (the “**SISP**”) in respect of the property, assets and undertakings of the Debtors and appointing Robert (Bob) Benia to lead the SISP. A copy of the SISP Approval Order is attached hereto and marked as **Exhibit “B”**.

7. Additional background details regarding the Debtors, the factors leading to the Initial Application and the SISP are set out in my affidavit, affirmed August 9, 2019 in support of the Initial Application. A copy of my August 9th, 2019 affidavit, without exhibits, is attached hereto and marked as **Exhibit “C”**.

Extension of Stay Period

8. The Initial Order provided for, among other things, a stay of proceedings in respect of the Debtors for the initial period up to and including September 11, 2019 (the “**Stay Period**”), 30 days from the date of the Initial Order. Our counsel, Kenneth Kraft of Dentons Canada LLP, advises me that this was the maximum period pursuant to which the Court could grant a stay of proceedings pursuant to the Initial Order. At the same time, the SISP Approval Order contemplates a sale process that remains open to accept offers until October 28, 2019.

9. In light of the ongoing SISP, FCMI is requesting to extend the Stay Period until December 10, 2019. It is FCMI’s expectation that this should allow sufficient time after the bid deadline to conclude any negotiations related to bids received pursuant to the SISP and conclude some type of transaction.

10. I am advised by Mr. Allan Rutman, the person in charge of this matter for the Monitor, and Mr. Benia that the SISP is progressing and that Debtors have been and are continuing to act in good faith and with due diligence in respect of the SISP. They both advise me that details around what has taken place to date in relation to the SISP will be set out in the report that the Monitor will be filing in connection with this motion (“**Monitor’s First Report**”).

DIP Increase

11. The Initial Order provided a DIP Lender’s Charge in favour of FCMI up to the amount of \$550,000. That was based on an initial 13-week cash flow forecast showing a need for up to \$505,000 in funding.

12. Mr. Benia and Mr. Rutman have now done a revised cash flow forecast. The forecast will be included in the Monitor's First Report. This cash flow runs to the end of December 2019. Based on the revised cash flow it now appears that at least to the new stay extension date funding of up to \$975,000 may be necessary. FCMI will continue to make the funding necessary to allow the SISP to run its course and, as a result, FCMI requests that the Court increase the amount available under the DIP Lender's Charge to \$1 million.

13. Mr. Benia and Mr. Rutman explained to me that the reasons for the requested increase can be categorized as follows:

- a) The forecast period covered by the updated cash flow forecast is now five months as opposed to the initial cash flow forecast of three months;
- b) The updated cash flow forecast reflects the payment of an additional \$5,000 per month of rent than forecasted in the initial cash flow forecast. The amended lease arrangements with the landlord result in additional \$60,000 in expenditure as a result of the rental increase and the additional time frame;
- c) The updated cash flow forecast provides for an increase for engaging personnel to assist in the SISP process from the initial sum of \$97,000 to \$298,000 including employee benefits. The SISP team determined that additional personnel were required to be retained for a longer period of time supplemented by others with intellectual knowledge to provide continuity, technical knowledge and know-how for Gedex during the SISP period; and
- d) Forecasted professional fees have increased from \$200,000 to \$300,000 primarily because of the additional time covered by the forecast period. This avoids the necessity of having to attend for additional DIP request should professional fees increase in addition as a result of other matters arising during the course of the CCAA.

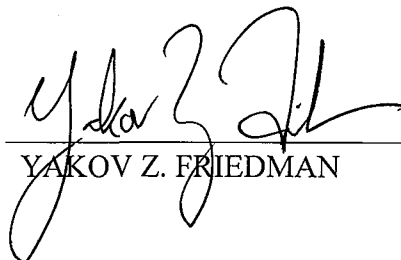
14. Accordingly, I believe that it is in the best interests of the Debtors and all of their stakeholders that there is an extension of the Stay Period to December 10th, an increase in the Dip Lender's Charge to \$1 million, and that these proceedings continue to allow the SISP the necessary time to be completed.

15. This Affidavit is made in support of the within motion, and for no other or improper purpose.

AFFIRMED before me in the City of Toronto, in the Province of Ontario, this 27th day of August, 2019.


A Commissioner, etc.

Elizabeth Anne McLellan,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 21, 2020.


YAKOV Z. FRIEDMAN

TAB A

This is Exhibit "A" referred to in the
Affidavit of Yakov Z. Friedman
affirmed this 27th day of August, 2019

A handwritten signature in black ink, appearing to read 'Elizabeth Anne McLellan', is written above a horizontal line.

A commissioner for taking Affidavits, etc.
Elizabeth Anne McLellan,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 21, 2020.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE *PENNY*

)
)
)

MONDAY, THE 12TH
DAY OF AUGUST, 2019

FCMI PARENT CO.

Applicant

- and -

 **GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY MINERALS CORPORATION, GEDEX EXPLORATION INC., and GEDEX EARTH INC.**

Respondents

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C 1985, c. C-36**

INITIAL ORDER

THIS APPLICATION, made by FCMI Parent Co. (the "**Applicant**"), a secured creditor of Gedex Systems Inc., Gedex Aviation Inc., Black Bay Minerals Corporation, Gedex Exploration Inc. and Gedex Earth Inc. (collectively, the "**Debtors**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Yakov Friedman, affirmed August 9, 2019, and the exhibits thereto, the pre-filing report of Zeifman Partners Inc. ("**Zeifman**"), in its capacity as proposed monitor ("**Proposed Monitor**") of the Debtors dated August 9, 2019, and on being advised that the Debtors and any secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for the Proposed Monitor, no one else appearing although duly served as appears from the affidavit of service of Sandra Cooper sworn August 9, 2019, and on reading the consent of Zeifman (the "**Monitor**") to act as the Monitor, filed,

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that each of the Debtors is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Debtors shall have the authority to file with this Court and submit to the Debtors' creditors one or more plans of compromise or arrangement (hereinafter referred to as the "**Plan**").

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that, subject to paragraphs 10 through 12 of this Order, the Debtors shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Debtors shall continue to carry on business in a manner consistent with the preservation of its business (the "**Business**") and Property. The Debtors are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Debtors shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in

the ordinary course of business and consistent with existing compensation policies and arrangements; and

- (b) the fees and disbursements of any Assistants retained or employed by the Debtors in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Debtors shall be entitled but not required to pay all reasonable expenses incurred by the Debtors in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Debtors following the date of this Order.

7. **THIS COURT ORDERS** that the Debtors shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Debtors in connection with the sale of goods and services by the Debtors, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Debtors.

8. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Debtors shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated among the Debtors and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Debtors are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Debtors to any of its creditors as of the date of this Order;
- (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and
- (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

10. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their 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

Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor, and shall deliver all such Property to the Monitor upon the Monitor's request.

11. **THIS COURT ORDERS** that all Persons shall forthwith advise the Monitor 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 Debtors, including any marketing materials and investor solicitation materials, and any computer programs, computer tapes, computer disks, data rooms, 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 Monitor or permit the Monitor to make, retain and take away copies thereof and grant to the Monitor unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 11 or in paragraph 12 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 Monitor due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

12. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, including a data room, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Monitor for the purpose of allowing the Monitor 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 Monitor in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Monitor. Further, for the purposes of this paragraph, all Persons shall provide the Monitor with all such assistance in gaining immediate access to the information in the Records as the Monitor may in its discretion require including providing the Monitor with instructions on the use of any computer or other system and providing the Monitor with any and all access codes, account names and account numbers that may be required to gain access to the information.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Debtors shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding \$10,000 in any one transaction or \$50,000 in the aggregate;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate;
- (c) disclaim, in whole or in part, with the prior consent of the Monitor or further Order of the Court, their arrangements or agreement of any nature whatsoever with whomsoever, whether oral or written, as the Debtors deem appropriate, in accordance with Section 32 of the CCAA; and
- (d) pursue all avenues of refinancing of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing,

all of the foregoing to permit the Debtors to proceed with an orderly restructuring of the Business (the "**Restructuring**").

14. **THIS COURT ORDERS** that the Debtors shall provide each of the relevant landlords with notice of the Debtors' 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 Debtors' 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 Debtors, or by further Order of this Court upon application by the Debtors on at least two (2) days notice to such landlord and any such secured creditors. If the Debtors disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in

Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Debtors' claim to the fixtures in dispute.

15. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Debtors and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Debtors in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

16. **THIS COURT ORDERS** that until and including September 11, 2019, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Debtors or the Monitor, or affecting the Business or the Property, except with the written consent of the Debtors and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Debtors or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Debtors and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, 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 Debtors, except with the written consent of the Debtors and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Debtors 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 Business or the Debtors, 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 Debtors, and that the Debtors shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Debtors in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and each of the Debtors and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Debtors. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any

of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Debtors, if one is filed, is sanctioned by this Court or is refused by the creditors of the Debtors or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

23. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$25,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38 and 40 herein.

24. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.

APPOINTMENT OF MONITOR

25. THIS COURT ORDERS that Zeifman is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Debtors with the powers and obligations set out in the CCAA or set forth herein and that the Debtors and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Debtors pursuant to this Order, and shall co-operate fully with the Monitor in the

exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

26. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor and control the Debtors' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) advise the Debtors in its development of the Plan and any amendments to the Plan;
- (d) assist the Debtors, to the extent required by the Debtors, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Debtors, to the extent that is necessary to adequately assess the Debtors' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (g) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (h) cause the Debtors, or any one of them to exercise the rights under paragraph 13 herein;
- (i) cause the Debtors to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Debtors in dealing with the Property and the Business;

- (j) cause the Debtors to administer the Property and Business as the Monitor considers necessary or desirable for the purposes of completing any transaction under any Court-approved sale and investor solicitation process;
- (k) apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Monitor, in the name of the Debtor;
- (l) meet with and direct management of the Debtors with respect to any of the foregoing including, without limitation, operational and restructuring matters; and
- (m) perform such other duties as are required by this Order or by this Court from time to time.

27. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

28. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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 *Canadian 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 Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

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

30. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

31. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Debtors as part of the costs of these proceedings. The Debtors are hereby authorized and directed to pay the accounts of the Monitor and counsel for the Monitor on a monthly basis.

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

33. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$150,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 38 and 40 hereof.

DIP FINANCING

34. **THIS COURT ORDERS** that the Debtors are hereby authorized and empowered to obtain and borrow under a credit facility from the Applicant (the “**DIP Lender**”) in order to finance the Debtors’ working capital requirements and other general corporate purposes,

provided that borrowings under such credit facility shall not exceed \$550,000 unless permitted by further Order of this Court.

35. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 38 and 40 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge;
- (b) upon the occurrence of an event of default under the DIP Lender’s Charge, the DIP Lender, upon five days’ notice to the Monitor, may exercise any and all of its rights and remedies against the Debtors or the Property under or pursuant to the DIP Lender’s Charge, including without limitation, to cease making advances to the Debtors and set off and/or consolidate any amounts owing by the DIP Lender to the Debtors against the obligations of the Debtors to the DIP Lender under the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Debtors and for the appointment of a trustee in bankruptcy of the Debtors; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Debtors or the Property.

37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the “**BIA**”), with respect to any advances made under the DIP Lender’s Charge.

VALIDITY AND PRIORITY OF THE ADMINISTRATIVE CHARGE AND THE DIP LENDER'S CHARGE

38. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$150,000);

Second – Directors' Charge (to the maximum amount of \$25,000); and

Third – DIP Lender's Charge.

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

40. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and such Administration Charge and Directors' Charge shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person served with notice of this Application, other than MBHD Holdings Ltd. and Ford Credit Canada Leasing to the extent they have priority over the Applicant's security.

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

42. **THIS COURT ORDERS** that the Administration Charge, the Directors' Charge, and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Administration Charge, the Directors' Charge, (the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any

way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Debtors, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Debtors of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Debtors pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that the Charges created by this Order over leases of real property in Canada, if any, shall only be a charge in the Debtors' interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in either the Globe and Mail or the National Post a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Debtors of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. **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: <https://www.zeifmans.ca/current-insolvency-files/gedex>.

46. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Debtors and the Monitor are 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 Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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.

GENERAL

47. **THIS COURT ORDERS** that the Debtors or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

48. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Debtors, the Business or the Property.

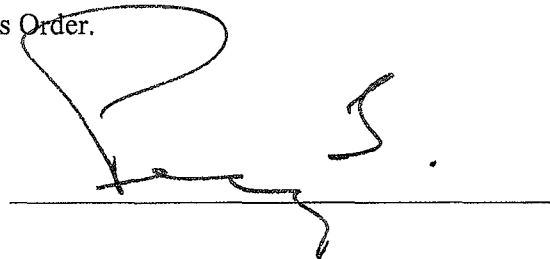
49. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtors, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby

respectfully requested to make such orders and to provide such assistance to the Debtors and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Debtors and the Monitor and their respective agents in carrying out the terms of this Order.

50. **THIS COURT ORDERS** that each of the Debtors and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.


51. **THIS COURT ORDERS** that any interested party (including the Debtors and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

52. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Daylight Time on the date of this Order.



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

AUG 12 2019

PER / PAR: 

Court File No: CV-19-625224-00CL

FCMI PARENT CO.

- and - **GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY
MINERALS CORPORATION, GEDEX EXPLORATION INC., and
GEDEX EARTH INC..**

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

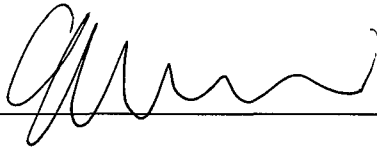
Kenneth Kraft (LSO# 31919P)
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Fax: 416 863-4592
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Mark Freake (LSO#63656H)
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mark.freake@dentons.com

Lawyers for the Applicant, FCMI Parent Co.

TAB B

This is Exhibit "B" referred to in the
Affidavit of Yakov Z. Friedman
affirmed this 27th day of August, 2019

A handwritten signature in black ink, appearing to read 'Elizabeth', is written over a horizontal line.

A commissioner for taking Affidavits, etc.

Elizabeth Anne McLellan,
a Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires April 21, 2020.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

MONDAY, THE 12TH

JUSTICE PENNY

)

DAY OF AUGUST, 2019

)

FCMI PARENT CO.

Applicant

- and -

GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY MINERALS
CORPORATION, GEDEX EXPLORATION INC., and GEDEX EARTH INC.

Respondents

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C 1985, c. C-36

SALES AND INVESTOR SOLICITATION PROCESS ORDER

THIS APPLICATION, made by FCMI Parent Co. ("**FCMI**"), a secured creditor of Gedex Systems Inc., Gedex Aviation Inc., Black Bay Minerals Corporation, Gedex Exploration Inc. and Gedex Earth Inc. (collectively, the "**Debtors**"), for an order approving a sale and investor solicitation process in respect of the property, assets and undertakings of the Debtors (the "**SISP**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Yakov Friedman affirmed August 9, 2019 (the "**Friedman Affidavit**") and the exhibits thereto and the pre-filing report of Zeifman Partners Inc. (the "**Monitor**"), in its capacity as proposed monitor of the Debtors dated August 9, 2019, and on hearing the submissions of counsel for FCMI and counsel for Zeifman, no one else appearing

although duly served as appears from the affidavit of service of Sandra Cooper sworn August 9, 2019, filed,

SERVICE

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

INTERPRETATION

2. **THIS COURT ORDERS** that any capitalized terms used but not defined in this Order shall have the meaning ascribed to them in the Initial Order of the Honourable Justice Penny in these proceedings dated August 12, 2019.

SALE AND INVESTMENT SOLICITATION PROCESS

3. **THIS COURT ORDERS** that the Debtors retain Robert (Bob) Benia (the “SISP Advisor”) on the basis of his existing compensation arrangement with FCMI and that the SISP Advisor is hereby authorized, directed and empowered to carry out the terms of the SISP pursuant to this Order.

4. **THIS COURT ORDERS** that the SISP and the proposed SISP timetable attached as Schedule “A” and Schedule “B”, respectively, to this Order are hereby approved, and SISP Advisor, the Debtors and the Monitor are authorized and directed to perform each of their obligations thereunder and to do all things reasonably necessary to perform their obligations thereunder.

5. **THIS COURT ORDERS** that each of SISP Advisor and the Monitor and its respective affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent such losses, claims, damages or liabilities result from the gross negligence or wilful misconduct of the SISP Advisor or the Monitor in performing their obligations under the SISP (as determined by this Court).

6. **THIS COURT ORDERS** that in connection with the SISP and pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada), the SISP Advisor, the Debtors and the Monitor are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a “**Transaction**”). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the SISP Advisor, the Debtors or the Monitor, as applicable; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. 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 Debtors, and shall return all other personal information to the SISP Advisor, the Debtors or the Monitor, as applicable, or ensure that other personal information is destroyed.

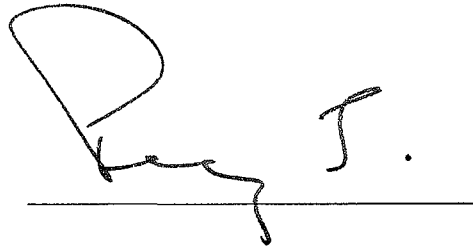
GENERAL

7. **THIS COURT ORDERS** that the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, including without limitation in connection with any matters relating to the SISP.

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

9. **THIS COURT ORDERS** that the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

10. **THIS COURT ORDERS** that any interested party (including the Debtors and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

AUG 12 2019

PER / PAR:



SCHEDULE "A"

GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY MINERALS CORPORATION, GEDEX EXPLORATION INC., and GEDEX EARTH INC.

(collectively, the "Debtors")

SALES AND INVESTOR SOLICITATION PROCESS

Recitals

- A. On August •, 2019, and on application by FCMI Parent Co. ("FCMI"), Gedex Systems Inc., Gedex Aviation Inc., Black Bay Minerals Corporation, Gedex Exploration Inc. and Gedex Earth Inc. (collectively, the "Debtors") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, (Canada) (the "CCAA") pursuant to the provisions of an order (as it may be amended, restated or supplemented from time to time, the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court").
- B. Pursuant to the Initial Order, Zeifman Partners Inc. was appointed as monitor (in such capacity and not in its personal capacity, the "Monitor") during the CCAA proceedings.
- C. Pursuant to an order of the Court dated August •, 2019 (the "SISP Approval Order"), the Court approved a sale and investor solicitation process to be conducted in respect of the Debtors, in accordance with the procedures, terms and conditions set out herein (as such process may be amended, restated or supplemented pursuant to the terms herein, the "SISP") and approved the appointment of Bob Benia to lead the SISP (in such capacity and not in his personal capacity, the "SISP Advisor") with the assistance of the Monitor.
- D. The property that is available for sale pursuant to the SISP (collectively, the "Property") is comprised of all property, assets and undertaking of the Debtors.
- E. Pursuant to the SISP, all Debtors and any part or thereof, are available for purchase or investment (the "Businesses"), as more particularly described in the Teaser Letter and Summary of Businesses (each as defined herein) that will be prepared by the SISP Advisor with the assistance of the Monitor.
- F. The SISP Approval Order, the SISP, and any other orders of the Court made in the CCAA proceedings relating to the SISP shall exclusively govern the process for soliciting and selecting bids for the sale of the Property or Businesses or investment in the Businesses. An investment in the Businesses may involve, among other things, a restructuring, recapitalization, or other form of reorganization of the business and affairs of the Businesses or any part thereof, and such investment may be consummated pursuant to a plan of compromise or arrangement (a "Plan") or otherwise.

- G. Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day (a “**Business Day**” is any day, other than a Saturday or Sunday, on which banks are ordinarily open for business in Toronto, Ontario).

Conduct of the SISP

1. **SISP Team**. The SISP will be carried out by the SISP Advisor, in consultation with the Monitor, FCMI and Rudi Fronk (the “**SISP Team**”). Unless otherwise provided for herein, the SISP Advisor, in consultation with the other members of the SISP Team, is fully and exclusively authorized, empowered and directed to take any and all actions and steps pursuant to the SISP.
2. **Advice and Directions**. The SISP Advisor or the Monitor may, at any time and notice to the Service List, apply to the Court for directions in connection with the implementation of the SISP.
3. **Consultation and Retention of Agents and Consultants**. At any time during the SISP, the SISP Advisor may from time to time (a) consult with the Monitor, FCMI or such other parties as the SISP Advisor considers appropriate in respect of the conduct of the SISP, (b) with the consent of the Monitor, or approval of the Court, retain such agents, consultants or brokers as they consider appropriate to assist them in the conduct of the SISP. Consent shall not be required for expenses the SISP Advisor incurs which are consistent with the cash flow projections submitted in support of the application for the Initial Order.
4. The SISP Advisor shall be primarily responsible to contacting Prospective Bidders, communicating with Prospective Bidders and Bidders and negotiating with Bidders as the case may be. This shall include, without limitation, facilitating the delivery of all communications, contacting Prospective Bidders and providing them with the Teaser Letter and the Summary of Businesses and coordinating the execution of the Confidentiality Agreements by Prospective Bidders, managing the process of answering all reasonable inquiries from Prospective Bidders and Bidders and arranging for visits, when applicable, by Prospective Bidders and Bidders (each term as defined herein).
5. The SISP Team shall review and consider Bids (as defined herein).

Sale and Investment Opportunities

6. **Opportunity to Submit a Bid**. Bidders will have the opportunity to submit a bid to purchase, some or all of the Property or Businesses or any part thereof (a “**Sale Proposal**”) or for an investment in the Businesses or any part thereof through a Plan sponsorship (a “**Plan Sponsorship Proposal**”). Sale Proposals and Plan Sponsorship Proposals may be in respect of only some of the Property or a part or parts of the Businesses, including specific divisions thereof, and any such proposal will not be precluded from consideration as an acceptable Bid or a Successful Bid.

“As is, Where Is”

7. "As is, Where is" Basis. Any Sale Proposal or Plan Sponsorship Proposal (either being a **"Proposal"**) shall be made on an "as is, where is" basis, without surviving representations or warranties of any kind or nature.
8. No Representations or Warranties. The SISP Team and the Debtors are not responsible for, and will have no liability with respect to, any information obtained by any Prospective Bidder, Bidder, or Successful Bidder in connection with the Businesses. The SISP Team and the Debtors and their advisors, if applicable, do not make any representations or warranties whatsoever as to the information or the materials provided through the due diligence process or otherwise made available to any Prospective Bidder, Bidder, or Successful Bidder, including any information contained in the Teaser Letter, Summary of Businesses or Data Room.

Solicitation of Interest

9. Solicitation Materials. The SISP Advisor, with the assistance of the SISP Team, has or will:
 - (a) compile a listing (the **"Contact List"**) of prospective purchasers and investors (collectively, **"Prospective Bidders"**). The SISP Advisor will use all reasonable commercial efforts to contact all parties identified in the list as well as any additional parties that the SISP Team identifies as prospective purchasers or investors;
 - (b) post of a copy of the Initial Order and SISP Order and this SISP on the Monitor's website;
 - (c) prepare the Summary of Businesses;
 - (d) determine the appropriate advertising to be directed at Prospective Bidders, which may include newspaper, trade publication, internet or other advertising directed at Prospective Bidders;
 - (e) send to each Prospective Bidder a solicitation letter summarizing the acquisition and investment opportunity with respect to the Property and Businesses (the **"Teaser Letter"**);
 - (f) set up, under the supervision of the Monitor, an electronic data room with confidential information in respect of the Property and the Businesses (the **"Data Room"**);
 - (g) send to each Prospective Bidder upon request a form of Confidentiality Agreement and written acknowledgement of receipt of a copy of the SISP Approval Order (including the SISP) wherein such Prospective Bidder agrees to accept and be bound by the provisions of the SISP Approval Order (the **"Written Acknowledgement"**). The Prospective Bidders will be required, among other things, to sign a Confidentiality Agreement in order to gain access to confidential information (including access to the Data Room). For greater certainty, only Prospective Bidders who submit an executed Confidentiality Agreement, which is in form and substance acceptable to the SISP Team, shall have

access to the Summary of Businesses, Data Room and other confidential information and management presentations, if available;

- (h) give access to the Data Room and coordinate the communication of information to each Prospective Bidder who has executed a Confidentiality Agreement; and
 - (i) prepare the form of a template asset purchase agreement (the “**Template APA**”) to be used by Prospective Bidders to submit a Sale Proposal and post same in the Data Room.
10. Restrictions on Access to Confidential Information. The SISP Team reserves the right to limit any Prospective Bidder’s or Bidder’s access to any confidential information (including any information in the Data Room) and to customers and suppliers of the Debtors, where, in the SISP Team’s discretion, such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, the Businesses or the value of the Property. Requests for additional information are to be made to the SISP Advisor.

Submission of Bids

11. Bid Deadline. Unless otherwise provided for herein, ordered by the Court or agreed to by the SISP Team, in order to participate in the SISP and be considered for qualification as a Bidder, a Bidder must deliver to the SISP Advisor so as to be received not later than 5:00 p.m. (Toronto time) on **October 28, 2019** (the “**Bid Deadline**”), the following:
- (a) an executed Confidentiality Agreement and Written Acknowledgment (to the extent these documents have not already been provided);
 - (b) a bid (a “**Bid**”) which specifies whether the Bidder is submitting a Sale Proposal or Plan Sponsorship Proposal (each, a “**Proposal**”) and which complies with the requirements of paragraph 12 and 13 below, as applicable; and
 - (c) a letter setting forth the identity of the Bidder, the contact information for such Bidder and for any business, financial or legal advisors retained or to be retained by it in connection with the contemplated transaction, and full disclosure of the direct and indirect owners of the Bidder and its principals.

Requirements for Bid

12. Requirements for Bids. A Bid will be considered only if it (i) is submitted by a Bidder on or before the applicable Bid Deadline, and (ii) complies with the following requirements:
- (a) In the case of Sale Proposals, the Bid must include:
 - (i) a binding asset purchase agreement together with a mark up outlining highlighting all proposed changes from the Template APA pertaining to the Sale Proposal;

- (ii) a detailed listing and description of the Property to be included in the Sale Proposal or a detailed listing of the Property to be excluded from the Sale Proposal;
 - (iii) the proposed purchase price for such Sale Proposal, the proposed allocation of purchase price among the applicable Property and/or Businesses and an explanation of what contingencies and variables may influence the final purchase;
 - (iv) a list of the key material contracts and leases, if any, the Bidder wishes to acquire and the Bidder's proposed treatment of any related "cure costs";
- (b) In the case of a Plan Sponsorship Proposal, the Bid must include:
- (i) a description of the structure of Plan sponsorship transaction, including which Businesses will be the target of such transaction;
 - (ii) a description of the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of each of the applicable Debtors;
 - (iii) the structure and financing of the transaction, including a sources and uses analysis;
- (c) in the case of all Proposals, the Bid must include:
- (i) an acknowledgment that the Bid is made on an "as is, where is" basis;
 - (ii) the proposed treatment of the Debtors' stakeholders, including lenders, employees, trade creditors and clients;
 - (iii) any anticipated regulatory and other approvals required to close the proposed transaction and the anticipated time frame and any anticipated impediments for obtaining any such approvals;
 - (iv) the proposed target closing date and a timeline to closing with critical milestones;
 - (v) any other terms and conditions which the Bidder believes are material to the transaction; and

13. A Bid will not be considered unless:

- (a) it fully discloses the identity of each person or entity that will be sponsoring or participating in the Proposal, including the identification of the Bidder's direct and indirect owners and their principals, and the complete terms of such participation;

- (b) it contains evidence of authorization and approval from the Bidder's board of directors, investment committee, credit committee or comparable governing body, as applicable, with respect to the submission, execution, delivery and closing of the transaction contemplated by the Proposal;
 - (c) it includes a letter confirming that the Proposal is a binding offer capable of acceptance by the SISP Team, irrevocable and open for acceptance until at least 11:59 p.m. (Toronto Time) on the Business Day after the closing of a Successful Bid relating to the same Property and/or Businesses that is/are subject to the Proposal;
 - (d) it includes a cash deposit in an amount equal to ^(ten) percent (10%) of the purchase price or investment contemplated therein, as the case may be, payable by wire transfer of immediately available funds (to a bank account specified by the Monitor) payable to the order of the Monitor, in trust, which will be dealt with in accordance with paragraphs 26 to 28, or such other form of deposit or amount as is acceptable to the applicable the SISP Team (each, a "Deposit");
 - (e) it includes either written evidence of a firm, irrevocable commitment for all required funding and/or financing from a credit worthy bank or financial institution, or other evidence of financial ability to close the transaction satisfactory to the SISP Team, that will allow the SISP Team to make a reasonable determination as to the Bidder's (and its direct and indirect owners') financial and other capabilities to consummate the transaction contemplated by the Proposal;
 - (f) it includes the anticipated time frame and any anticipated impediments for obtaining any regulatory or other approvals indicated in the purchase agreement as conditions to closing;
 - (g) it does not request or entitle the Bidder to any break-fee, termination fee, expense reimbursement or other type of compensation or payment; and
 - (h) it contains such other information reasonably requested by the SISP Team.
14. Portion Bids. For greater certainty, Proposals may be in respect of only a part or parts of the Property or Businesses and such proposal shall constitute a Bid if it satisfies the requirements in paragraph 12 and 13 hereof, in respect of any Property or Businesses subject to such Proposal, and in such case, such bidder shall constitute a Bidder.

Assessment of Bids

15. Review of Bids. Promptly following the Bid Deadline, the SISP Team will review and assess the Bids and in making such assessment will consider, among other things, the following (the "Bid Criteria"):
- (a) In the case of a Sale Proposal,

- (i) the purchase price and net value (including all assumed liabilities and other obligations to be performed by the Bidder) provided by such Bid and the proposed allocation of the purchase price among the applicable Property and Businesses;
 - (ii) the firm, irrevocable commitment for financing the transaction or other evidence of financial ability to consummate the Sale Proposal;
 - (iii) the assets included in or excluded from the Sale Proposal and the transaction costs and risks associated with closing multiple transactions versus a single sale transaction for all or substantially all of the applicable Property or Businesses or any part thereof;
 - (b) In the case of a Plan Sponsorship Proposal
 - (i) the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of each of the applicable Debtors and the planned treatment of such persons under the proposed Plan Sponsorship Proposal;
 - (ii) the cost, risks and timing associated with obtaining the approval of the requisite majority of creditors and approval of the Court in respect of the Plan; and
 - (c) the planned treatment of the Debtors' stakeholders, including lenders, employees, trade creditors and clients; and
 - (d) other factors affecting the speed, certainty and value of the Proposal (including any regulatory approvals and other conditions required to close the Sale Proposal by the applicable closing date), including the likelihood of closing the Sale Proposal on or before the applicable closing date.
16. Clarifications, Extensions and Waivers of Bids. For greater certainty, the SISP Team shall be entitled either prior to or following the applicable Bid Deadline, to seek to clarify the terms of a Bid and may accept a revised, clarified Bid, provided that the initial Bid was received prior to the applicable Bid Deadline. The SISP Team, in its sole discretion acting reasonably may grant extensions to the Bid Deadline with respect to any Property or Businesses and in such a case, the Monitor shall post the extended Bid Deadline on the Monitor's website and in the Data Room. The Debtors shall comply with any other extensions of the Bid Deadline as may be granted by the SISP Team or as may be ordered by the Court. The SISP Team may waive compliance with any one or more of the requirements specified in paragraphs 12 and 13 and deem any non-compliant bid to be a Bid.
17. Identification of Suitable Bids. The SISP Team shall apply the Bid Criteria and consider each Bid upon its submission and determine whether it will be in the best interests of the Debtors and FCMI to pursue a transaction on the terms set out in the applicable Bid. This determination by the

SISP Team will be made as promptly as practicable after the applicable Bid Deadline and any clarifications that may be sought by the SISF Team pursuant to paragraph 16.

18. Floor Price: After the Bid Deadline, in the event that the SISF Advisor, in consultation with the Monitor and FCMI, determines that neither (i) a Bid; or (ii) a combination of non-overlapping Bids is received would permit the repayment in full of (i) FCMI's secured claim against the Debtors; and (ii) all applicable prior ranking secured claims, FCMI shall be entitled but not required to submit a bid, up to the maximum amount of its secured claim, to purchase all or part of the Property and/or the Businesses by way of a credit bid transaction, which addresses all applicable prior ranking secured claims in a manner satisfactory to such prior ranking secured creditors, if any.
19. Advice and Directions if no Suitable Bids. If at any point before or after the applicable Bid Deadline, the SISF Team determines that there are or will be no Bids with respect to a particular Business, or that it is appropriate to reject all Bids received because none are in the best interests of the Debtors' stakeholders or that it will not be in their best interests to continue with the SISF with respect to the Businesses, the Monitor shall as soon as reasonably practicable file a motion with the Court on notice to the Service List to seek advice and directions with respect to the modification, suspension or termination of the SISF.
20. Selection of Bid. Subject to paragraph 18, if any Bid that is in the best interests of the Debtors' stakeholders, the SISF Advisor, with consent of the Monitor and FCMI, may elect to accept any such Bid (in which case, such Bid shall be a "Successful Bid" and the Bidder making the Successful Bid shall be a "Successful Bidder") and take such steps as are necessary to finalize and complete an agreement for the Successful Bid with the Successful Bidder. For greater certainty, the SISF Team may accept a combination of non-overlapping Bids to create one "Successful Bid" and in such case, each of the applicable Bidders will become "Successful Bidders".
21. Discretion of the SISF Team. Subject to paragraph 18, the SISF Team may at any time, (a) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the CCAA, the SISF or any orders of the Court applicable to the Debtors, or (iii) contrary to the best interests of the Debtors stakeholders; (b) in accordance with the terms hereof, accept bids not in conformity with the SISF in the event the SISF Team determines, in their reasonable business judgment, that doing so would benefit the Debtors' stakeholders; (c) in accordance with the terms hereof, extend the Bid Deadline; (d) reject all bids; and/or (e) terminate the SISF, before or after the Bid Deadline. For greater certainty, the SISF Team shall be under no obligation to accept the highest or best offer and the selection of the Successful Bid shall be entirely in the discretion of the SISF Team.

Approval Motion

22. Application to Court. After a definitive agreement(s) in respect of a Successful Bid has been finalized in accordance with the SISF, if such Successful Bid relates to the Business of one or more Debtors, the Monitor shall apply to the Court as soon as reasonably practicable for an order

approving such Successful Bid and authorizing the SISP Advisor, on behalf of the applicable Debtors, to enter into any and all necessary agreements with respect to such Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to such Successful Bid, including for the approval of any Plan(s) pursuant to the CCAA, as applicable (an "Approval Motion").

23. Scheduling of Approval Motion. An Approval Motion will be held on a date to be scheduled by the Court and to be heard as soon as possible. The SISP Team reserves its right, as may be necessary or appropriate, to seek to proceed on an expedited basis and abridge any notice period provided for in the Initial Order and SISP Order. An Approval Motion may be adjourned or rescheduled by the Monitor by an announcement of the adjourned date at an Approval Motion or by notice to the Service List and no further notice shall be required.
24. Deemed Rejection. All Bids (other than the Successful Bid(s)) will be deemed rejected at 11:59 p.m. (Toronto Time) on the Business Day after the closing of a Successful Bid relating to the same Property and/or Businesses.
25. Statutory Approvals. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

Treatment of Deposit

26. Application of Deposit. If there is a Successful Bid, the Deposit (plus accrued interest) paid by a Successful Bidder whose bid is approved by the Court will be released by the Monitor and applied to the purchase price to be paid, or investment to be made, by such Successful Bidder upon closing of the approved transaction or as otherwise set out in the definitive agreement.
27. Return of Deposits. The Deposits of Bidders not selected as a Successful Bidder, will be returned to such Bidders within ten (10) Business Days of the date of closing of the Successful Bid. If there is no Successful Bid with respect to a Business, subject to the following paragraph 28, all Deposits with respect to such Business will be returned to all Bidders with respect to that Business, within ten (10) Business Days of the date on which the SISP with respect to that Business is terminated in accordance with the SISP.
28. Forfeit of Deposit. If (i) a Successful Bidder breaches any of its obligations under the terms of the SISP or any definitive transaction documentation; (ii) a Bidder fails to complete the transaction contemplated by its Bid if required by the SISP Team to complete such transaction; or (iii) a Bidder fails to provide proof of its ability to complete the transaction to the SISP Advisor (other than with respect to conditions specifically provided in its Bid), within five (5) Business Days of a request to that effect from the SISP Advisor, then, in each case, such Bidder's Deposit will be forfeited to the Debtors as liquidated damages and not as a penalty. The Debtors shall apply and use their share of any forfeited Deposit in a manner agreed upon by the SISP Team, or subject to further order of the Court.

Reservation of Rights and Conduct of the SISP

29. No Binding Agreement. The SISP does not, and will not be interpreted to, create any contractual or other legal relationship between any party to the SISP Team and any Prospective Bidder or Bidder, other than as specifically set forth in a definitive agreement that any such Bidder may enter into with the applicable Debtors.
30. Extension of Time Limits. The Monitor may from time to time extend any of the time limits set out in the SISP, as it determines appropriate, for a period of up to ten (10) days, provided that the Bid Deadline shall not be extended by more than fourteen (14) days without FCMI's consent, or further order of the Court.

No Amendment

31. Amendments to SISP. Except as otherwise set out herein, there will be no amendments to the SISP without the approval of the Court on notice to the Service List, subject to such non-material amendments as may be agreed to by the SISP Team.
32. Consent to Jurisdiction of the Court. Each Bidder, upon being declared as such under the SISP, shall be deemed to have irrevocably and unconditionally attorned and submitted to the jurisdiction of the Court in respect of any action, proceeding or dispute in relation to the conduct or any aspect of the SISP.

SCHEDULE "B"

PROPOSED SISP TIMELINE

	Event	Timing
1.	The SISP Advisor to compile Contact List of Prospective Bidders and sending those parties the Teaser Letter and the Summary of Businesses.	Within 10 Business Days of issuance of the SISP Approval Order.
2.	Information pertaining to the SISP to be posted on the Monitor's website and any advertising determined appropriate by the SISP Advisor in newspaper(s) or other trade publications as it deems appropriate.	Within 10 Business Days of issuance of the SISP Approval Order.
3.	Prospective Bidders expressing an interest in participating in the SISP will be required to execute the Confidentiality Agreement and Written Acknowledgement, upon which Prospective Bidders to be given access to the Data Room. Prospective Bidders that wish to undertake further due diligence will be provided with an opportunity to conduct site visits and review further additional information not available from the virtual data room.	Through to no later than 5:00 p.m. (Toronto Time) on October 10, 2019.
4.	Prospective Bidders will have until the Bid Deadline to submit a Proposal, which Proposal must be made using the Template APA and must include a Deposit.	On or before 5:00 p.m. (Toronto Time) on October 28, 2019.
5.	Following the Bid Deadline, the SISP Team will review and assess all Proposals received, if any, and determine the Successful Bid or Successful Bidders, as applicable.	As soon as reasonably practicable following the Bid Deadline.
7.	Schedule Approval Motion with the Court.	As soon as reasonably practical following execution and delivery of a definitive agreement(s) in respect of a Successful Bid.
8.	Close sale(s) to Successful Bidder(s).	First Business Day after Approval Motion or such other Business Day as may be agreed to by the Monitor and the Successful Bidder(s).
9.	Return of Deposits of Bidders not selected as a Successful Bidder.	Within 10 Business Days following the closing of the Successful Bid.

FCMI PARENT CO.

- and - GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK
BAY MINERALS CORPORATION, GEDEX EXPLORATION
INC., and GEDEX EARTH INC.

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**SALES AND INVESTOR SOLICITATION
PROCESS ORDER**

DENTONS CANADA LLP

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Lawyers for the Applicant, FCMI Parent Co.

TAB C

This is Exhibit "C" referred to in the
Affidavit of Yakov Z. Friedman
affirmed this 27th day of August, 2019

A handwritten signature in black ink, appearing to read 'E. McLellan', written over a horizontal line.

A commissioner for taking Affidavits, etc.

Elizabeth Anne McLellan,
a Commissioner, etc., **Province of**
Ontario, while a Student-at-Law.
Expires April 21, 2020.

Court File No.

CV-19-625224-00CL

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

BETWEEN

FCMI PARENT CO.

Applicant

- and -

**GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY MINERALS
CORPORATION, GEDEX EXPLORATION INC., and GEDEX EARTH INC.**

Respondents

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C 1985, c. C-36**

**AFFIDAVIT OF YAKOV Z. FRIEDMAN
(Affirmed August 9, 2019)**

I, Yakov Z. Friedman, of the City of Toronto , in the Province of Ontario, **SOLEMNLY AFFIRM AND SAY AS FOLLOWS:**

1. I am an employee of FCMI Parent Co. ("FCMI"), the Applicant herein. FCMI is a company incorporated pursuant to the laws of Nova Scotia. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. I affirm this affidavit in support of FCMI's application for an order granting protection to the Respondents under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended ("CCAA"), appointing Zeifman Partners Inc. ("Zeifman") as monitor over all of the

assets, undertakings and properties (the “**Property**”) of each of the Respondents and approving a sales and investment process (“**SISP**”).

3. As will be explained in further detail, the Respondents owe the Applicant in excess of US\$10 million in secured debt. FCMI has a first ranking security interest in the Property, other than an aircraft and a Ford motor vehicle that one Respondent owns. The maturity date for the debt passed several months ago. The Respondents are insolvent and are no longer operating their business.

4. The main intent of this application is to allow a SISP to be conducted in a court supervised framework to see if there can be a transaction that will create value for stakeholders. There are significant tax losses available to the Respondents, and they have developed proprietary technology that may have value, such that someone may be willing to make an offer that is both acceptable to FCMI and potentially generate some recovery for the Respondents’ unsecured creditors. Existing contractual arrangements, including technology licenses, will be preserved during the stay period so that prospective purchasers can determine their value, if any and allow a statutory framework for those contracts to be assigned if necessary.

THE RESPONDENTS

5. The Respondents are primarily engaged in the development of technologies for use in airborne and ground based resource discovery systems. Attached as Exhibit “1” is a corporate organization chart that, to the best of my knowledge, is current.

6. The Respondents’ operated out of premises located at 403-407 Matheson Boulevard East, Mississauga, Ontario (“**Premises**”).

7. Gedex Systems Inc. ("**Gedex**") is the parent company. Although originally incorporated in Ontario as Gedex Inc., on October 21, 2015, Gedex filed a corporate continuance to change from an Ontario corporation to a British Columbia corporation and, at the same time, adopted the present name. A copy of the Articles of Incorporation of Gedex is attached as Exhibit "2".

8. On January 1, 2018, Gedex amalgamated with its subsidiary, Gedex Technologies Inc. ("**Technologies**"). The amalgamated company continued as Gedex.

9. Gedex was developing a high definition airborne gravity gradiometer (HD-AGG[®]) system. The aim was to discover and develop underground resources and to assist the mineral and oil and gas industries better manage their holdings. Gedex was responsible for all corporate support services including finance, human resources, corporate development, research and development, technology development, and data processing.

10. The system in part relies on technology that Gedex operates under an exclusive license from the University of Maryland. Preserving this license is critical to value being generated in the SISP.

11. Gedex Exploration Inc. ("**Exploration**") is an Ontario corporation incorporated on December 15, 2017. Exploration was responsible for all global surveying operations and is also responsible for contractual relationships of the Respondents' with aircraft operating companies. Exploration is a wholly-owned subsidiary of Gedex.

12. Gedex Earth Inc. ("**Earth**") is an Ontario corporation originally incorporated on May 22, 2014, as Gedex GP Inc. Effective January 1, 2018, this company changed its name to its current

name. Earth is responsible for marketing, sales and client management services, including negotiating and signing client contracts. Earth is a wholly-owned subsidiary of Gedex.

13. Gedex Aviation Inc. (“**Aviation**”) is an Alberta corporation originally registered on July 23, 2012. Aviation was intended to be a future aircraft operating company for the Gedex group. At present, I understand that it is not operating. Aviation is a wholly owned subsidiary of Gedex.

14. Black Bay Minerals Corp. (“**Black Bay**”) is an Ontario corporation originally incorporated federally on February 3, 2010, as 7325098 Canada Inc. Black Bay changed to its present name and continued in Ontario on September 22, 2011. I understand from information that Mr. David Diwik, CEO of Gedex provided, that Black Bay was primarily focused on exploring opportunities related to the Ring of Fire in northwestern Ontario. At present, I understand that Black Bay is not currently operating. Gedex owns 81% of Black Bay (Mr. Diwik advises that about 20 shareholders own the balance of Black Bay’s equity).

15. The Respondents have been in considerable financial difficulties and have recently laid off all their remaining employees. As at December 31, 2018, the Respondents had incurred a loss of over US\$5.2 million, an operating deficit in excess of US\$91.8 million, and a working capital deficiency of over US\$9.5 million. A copy of the consolidated audited financial statements for the year ending December 31, 2018, prepared by KPMG LLP, and dated May 1, 2019 (“**Audited Financial Statements**”), are attached as Exhibit “3”.

16. On any basis the Respondents are insolvent. They owe over US\$10 million to FCMI alone as explained in the next section of this affidavit.

17. FCMI is also the principal shareholder of Gedex owning around 60% of the capital.

THE LOANS

18. FCMI, acting both as lender and as agent for the other lenders, first advanced funds to Gedex in 2013. The original principal amount of the loan was US \$5 million and was repayable at any time and was interest free. A first charge on all the assets of Gedex, other than the aircraft as explained below, secured the loan. FCMI was lead lender and agent for the other lenders.

19. The arrangements were amended and restated pursuant to an amended and restated loan agreement ("**Loan and Security Agreement**"), dated December 14, 2015, between Gedex, Technologies, Aviation, and Black Bay (collectively, the "**Original Debtor Parties**") whereby the loan was increased to US \$9 million. A copy of the Loan and Security Agreement is attached as Exhibit "4".

20. There were ten amending agreements entered into subsequent to the date of the Loan Agreement, on November 28, 2016, January 25, 2017, March 24, 2017, May 25, 2017, December 31, 2017, May 25, 2018, July 31, 2018, September 30, 2018, November 30, 2018, and February 15, 2019 (the last one being the "**Tenth Amending Agreement**"). The amending agreements, beginning with the sixth amending agreement, principally dealt with granting extensions of the maturity date for the amounts advanced. Copies of the amending agreements are attached as Exhibits "5", "6", "7", "8", "9", "10", "11", "12", "13", and "14", respectively.

21. The Tenth Amending Agreement, between FCMI, the Original Debtor Parties (including amalgamated Technology and Systems), along with Exploration and Earth (which together with the Original Debtor Parties are, collectively, the "**Debtor Parties**") extended the maturity date of

the loans to a date no later than April 1, 2019. This was the final extension. The amount outstanding as of that date, the full amount of which remains outstanding today, is US\$10,280,464.02 ("**Secured Debt**").

22. Of the Secured Debt, FCMI has advanced 89.53% directly, and acts as agent for the balance of lenders that are owed the remaining 10.47% of the Secured Debt (the remaining lenders are mostly individuals who either were connected to Gedex or to FCMI). Under the Loan and Security Agreement, FCMI, as a lender, alone has the requisite authority to direct FCMI, as agent, to take steps necessary after default to protect the lenders collectively.

23. In support of the Secured Debt, each of the other Respondents provided FCMI with guarantees and general security agreements.

24. Aviation provided a guarantee ("**Aviation Guarantee**") and general security agreement ("**Aviation GSA**"), both dated November 14, 2013. Copies of the Aviation Guarantee and the Aviation GSA are attached as Exhibits "15", and "16", respectively.

25. Black Bay provided a guarantee ("**Black Bay Guarantee**") and general security agreement ("**Black Bay GSA**"), both dated November 14, 2013. Copies of the Black Bay Guarantee and the Black Bay GSA are attached as Exhibits "17", and "18", respectively.

26. Earth provided a guarantee ("**Earth Guarantee**") and general security agreement ("**Earth GSA**"), both dated December 31, 2017. Copies of the Earth Guarantee and the Earth GSA are attached as Exhibits "19", and "20", respectively.

27. Exploration provided a guarantee ("**Exploration Guarantee**") and general security agreement ("**Exploration GSA**"), both dated December 31, 2017. Copies of the Exploration Guarantee and the Exploration GSA are attached as Exhibits "21", and "22", respectively.

28. Certified *Personal Property Security Act* (Ontario) printouts, each with a file currency date of July 28, 2019, show registration of the security interest in favour of FCMI as against, Gedex, Aviation, Black Bay, Earth, and Exploration, are attached as Exhibits "23", "24", "25", "26", and "27", respectively. FCMI is the only secured creditor registered against all the Respondents other than Gedex.

29. As of today's date, the Secured Debt have not been repaid and remain due and owing.

30. In addition to the Secured Debt, FCMI has provided additional funding over the years to Gedex that has taken the form of equity. FCMI has invested over \$10,000,000 to date in addition to the Secured Debt.

OTHER SIGNIFICANT CREDITORS

31. Although FCMI is generally the first ranking secured creditor on the Respondents' assets, in the case of Gedex, there is a Cessna aircraft ("**Aircraft**"), to which MBHD Holdings Ltd. ("**MBHD**") has priority over FCMI as it relates to the Aircraft. FCMI does not take issue with MBHD's priority to the Aircraft and is not generally seeking any priority over that security to the extent of any funding that FCMI provides in this process. However, to the extent there are expenses specifically related to protecting the Aircraft (e.g. insurance), FCMI reserves the right to assert that such specific Aircraft related expenses are entitled to priority over MBHD. Based on the

Audited Financial Statements there was just over US\$421,000 owing to MBHD as at the end of 2018. FCMI believes that the Aircraft is worth substantially more than US\$421,000.

32. The only other registered secured creditor as against Gedex is Ford Credit Canada Leasing in respect to a 2018 Ford Model 150. Although registered under the PPSA subsequent in time to FCMI, should this be a valid purchase money security interest claim then FCMI does not intend to seek priority over Ford's interest (but reserves its rights in terms of general priority as against Ford).

33. The most significant unsecured creditor is the Federal Economic Development Agency for Southern Ontario ("**FedDev**"). FedDev entered into a contribution agreement with Gedex that provided funding to a maximum amount of CAD\$6.85 million. The FedDev loans were to start being repaid in 60 monthly installments commencing on January 1, 2019. As at that date, according to the audited financials, over CAD\$6.59 million was owed to FedDev. I am not aware that Gedex ever made any payments to FedDev. The FedDev loan is unsecured.

34. Gedex is in default under the lease for the Premises due to non-payment of rent. The landlord, Matheson Woods Limited Partnership ("**Landlord**"), issued a notice of default for non-payment of rent, on August 2, 2019 ("**Lease Default Notice**"). The Lease Default Notice gives Gedex until noon on Monday, August 12th to cure the default failing which the Landlord will take steps to exercise remedies available to it which could include terminating the lease. A copy of the Lease Default Notice is attached as Exhibit "28".

DEMANDS AND NITES

35. Due to the failure to repay the Loans, by letter dated August 6, 2019 (the “**Demand Letter**”), FCMI demanded repayment of the Loans. The Demand Letter included Notices of Intention to Enforce Security (the “**NITES**”) addressed to Gedex and the other Respondents pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). Copies of the Demand Letter and NITES are attached hereto as Exhibit “29”.

36. Although the ten (10) day notice period prescribed by section 244 of the BIA will not expire until August 17, 2019, the Lease Default Notice obliges the Applicant to take steps sooner to protect the interests of all stakeholders.

APPOINTMENT OF MONITOR AND CONSULTANT FOR SALE AND INVESTMENT PROCESS

37. The Respondents are insolvent. They have insufficient cash from operations to meet their obligations as they fall due and have, in fact, ceased operating.

38. The HD-AGG[®] system is believed to have significant value and could be of interest to a number of parties. There are also over US\$37 million in tax loss carry forwards that expire between 2026 and 2038. A CCAA proceeding preserves the losses and may encourage an offer that would generate a recovery for creditors beyond the Secured Debt. Therefore FCMI would like to see a SISP instituted.

39. Zeifman is a licensed insolvency trustee and has consented to act as monitor (“**Monitor**”) of the Respondents if this Honourable Court is prepared to appoint them to that role. One of the principals of Zeifman is Allan Rutman, an experienced insolvency professional. For the sake of

full disclosure, Mr. Rutman did advise me that some relatives of his (a nephew and a niece) are minority shareholders in Gedex, owning about 2.5% of the equity in Gedex (and less than 1% on a fully diluted basis). He does not believe this creates any conflict.

40. In addition to the proposed appointment of Zeifman as Monitor, FCMI is proposing that the actual sale process be conducted on behalf of the Respondents by Mr. Robert Benia. Mr. Benia has over 30 years of management, operations, and restructuring experience.

41. Mr. Benia joined Texas Instruments' Consumer Products Group software development team in Lubbock following which he was assigned to identify new business opportunities in the semiconductor and connector system. He returned to Toronto as a management consultant with The Canada Consulting Group, which provided strategic planning for Canada's leading corporations and government agencies.

42. Prior to creating a data driven oil and gas exploration company, Mr. Benia managed the successful asset sale for FCMI GHANA, a privately held gold mining operation in Ghana, West Africa, where he found buyers for its heavy mining equipment, processing equipment, parts and supplies.

43. At FCMI's request, Mr. Benia has been serving as a consultant to Gedex. FCMI believes that the SISP can be best managed by Mr. Benia with appropriate oversight by the Monitor. He is aware of the recent efforts of the Respondents to attract new investment and has the industry connections to find potential interested parties. As indicated above, the SISP will be conducted under the overall supervision of the Monitor.

44. Given that the Respondents' have ceased operating, it is proposed that the Monitor be given enhanced powers to supervise the business while the SISP process is being conducted.

45. It is proposed that the SISP would run for 60 days for offers to be submitted. FCMI would reserve the right to credit bid its debt if there was no acceptable bid forthcoming by the bid expiry date. With Mr. Benia's involvement, prospective bidders will have the ability to deal with an individual who is connected to FCMI which will facilitate structuring of offers that may be acceptable to FCMI. FCMI does not want to discourage any party from stepping forward and making an offer either for the assets or to fund a plan (or a combination of the two).

46. The reason for a relatively truncated process is that the Respondents have spent the last 18 months or so canvassing the market in an effort to locate potential suitors but none of the efforts came to fruition. These parties would be approached as part of the SISP to see if the present context would allow for a transaction of some type to be pursued.

DIP FUNDING

47. Along with the proposed Monitor, FCMI has reviewed the proposed cash flows during the CCAA process. FCMI is prepared to provide the necessary funding to support the process provided that any such funds advanced are secured against the Respondents' assets. FCMI does not seek priority over MBDH (or Ford Credit to the extent it has priority) but does seek to have any advances secured by the same security that already exists in its favour in relation to the Secured Debt.

48. The proposed order would provide priority ("**DIP Charge**") ahead of the Secured Debt for any advances that FCMI advanced. The proposed order would also provide an administration

charge (“**Administrative Charge**”) in favour of the proposed Monitor and its counsel which would have priority over the DIP Charge. As the Respondents are not operating and do not have any employees the proposed Administrative Charge does not cover any counsel for the Respondents.

CONCLUSION

49. This Affidavit is made in support of the within application, and for no other or improper purpose.

AFFIRMED before me in the City of Toronto, in the Province of Ontario, this 9th day of August, 2019.

A Commissioner, etc.

Kenneth Kraft

Yakov Z. Friedman
YAKOV Z. FRIEDMAN

FCMI PARENT CO.

- and - **GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK
BAY MINERALS CORPORATION, GEDEX EXPLORATION
INC., and GEDEX EARTH INC.**

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF YAKOV Z. FRIEDMAN
(Affirmed August 27, 2019)**

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Lawyers for FCMI Parent Co.

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	TUESDAY, THE 3RD
)	
JUSTICE PENNY)	DAY OF SEPTEMBER, 2019

BETWEEN:

FCMI PARENT CO.

Applicant

- and -

**GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK BAY MINERALS
CORPORATION, GEDEX EXPLORATION INC., and GEDEX EARTH INC.**

Respondents

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C 1985, c. C-36**

ORDER

THIS MOTION made by FCMI Parent Co. ("**FCMI**"), a secured creditor of the Respondents, Gedex Systems Inc., Gedex Aviation Inc., Black Bay Minerals Corporation, Gedex Exploration Inc. and Gedex Earth Inc. (collectively, the "**Debtors**"), for an Order extending the Stay Period (as defined in the Initial Order of the Honorable Mr. Justice Penny dated August 12, 2019) and granting related relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Yakov Friedman, affirmed August 27, 2019, and the First Report of Zeifman Partners Inc., in its capacity as Monitor (the "**Monitor**") of the Debtors, dated August ●, 2019 (the "**First Report**"), and on hearing the submissions of counsel for FCMI and the Monitor, no other party appearing although duly served as appears from the Affidavit of Service of ●, sworn August ●, 2019, filed:

SERVICE

1. **THIS COURT ORDERS** that the timing and method of service of the Notice of Motion and Motion Record be and is hereby abridged and validated and this Motion is properly returnable today.

EXTENSION OF STAY

2. **THIS COURT ORDERS** that the Stay Period, as defined in paragraph 16 of the August 12, 2019 initial order (“**Initial Order**”) made in this proceeding, be and is hereby extended until December 10, 2019.

DIP FINANCING INCREASE

3. **THIS COURT ORDERS** that the borrowing amount as set out in paragraph 34 of the Initial Order be and it is hereby increased from \$550,000 to \$1,000,000.

GENERAL

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

5. **THIS COURT ORDERS** that each of the Debtors and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

FCMI PARENT CO.

- and - **GEDEX SYSTEMS INC., GEDEX AVIATION INC., BLACK
BAY MINERALS CORPORATION, GEDEX EXPLORATION
INC., and GEDEX EARTH INC.**

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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FCMI PARENT CO

Applicant

- and -

**GEDEX SYSTEMS INC., GEDEX AVIATION
INC., BLACK BAY MINERALS CORPORATION,
GEDEX EXPLORATION INC., and GEDEX
EARTH INC.v**

Respondents

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

**MOTION RECORD
(Returnable September 3, 2019)**

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