Court File No.: CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

HALEX CAPITAL INC.

Applicant

- and -

NATURAL ENERGY SYSTEMS INC.

Respondent

APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

AFFIDAVIT OF DR. DRAGAN MATOVIC
(Sworn November 23, 2020)

I, Dr. Dragan Matovic, of the City of Niagara Falls, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am the Chairman and Chief Executive Officer of Halex Capital Inc. ("**Halex**"), a secured creditor of Natural Energy Systems Inc. (the "**NES**"). 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 swear this affidavit further to my affidavit sworn October 5, 2020 (the "**First Matovic Affidavit**") and in response to certain assertions contained within the affidavits of Dr. Douglas J. Hallett ("**DJH**") sworn November 6, 2020 (the "**First Hallett Affidavit**") and November 18, 2020 (the "**Second Hallett Affidavit**"). This affidavit should be read in conjunction with the First Matovic Affidavit. Capitalized terms not otherwise defined herein have the meaning ascribed to

them in the First Matovic Affidavit. A copy of the First Matovic Affidavit, without exhibits, is attached hereto as **Exhibit "A"**.

SCOPE OF REPLY

3. This affidavit is not intended to address every point raised in the First Hallett Affidavit or the Second Hallett Affidavit. Rather, it responds to matters germane to the relief sought on this Application. To the extent that I do not respond to certain assertions made in the First Hallett Affidavit or the Second Hallett Affidavit, that does not mean that I agree with or accept them nor does it mean that I agree that they are relevant to this Application or these proceedings (the "**Receivership Proceedings**").

BACKGROUND

4. On November 9, 2020, Halex brought an application (the "**Initial Application**") for an order (the "**Receivership Order**"), among other things, appointing Baigel Corp., licensed insolvency trustee ("**Baigel**"), as receiver (in such capacity, the "**Receiver**"), with security, over all of the present and after-acquired assets, undertakings, and properties of the Debtor (collectively, the "**Property**") pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act,* R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended.

5. The Initial Application was contested by DJH, the co-founder of NES. Specifically, DJH sought an adjournment to provide additional time to bring a motion to stay the Initial Application in favour of an ongoing arbitration (the "**Arbitration**") or until such a time as certain of the underlying issues in the Arbitration were resolved. Halex opposed DJH's request for an adjournment of the Initial Application on two grounds.

6. First and contrary to the assertions in paragraphs 51-54 of the First Hallett Affidavit, DJH had ample time to respond to the Initial Application or alternatively advise of the need for an adjournment before November 4, 2020 – five days prior to the Initial Application. To this end, I understand that the clerk's affidavit of Elizabeth Fimio sworn November 9, 2020 (the "**Fimio Affidavit**") was filed with the Court and served on the parties to the Receivership Proceedings to clarify the history of correspondence between Cunningham, Swan, Carty, Little & Bonham LLP,

counsel to DJH and, Bennett Jones LLP ("**Bennett Jones**"), counsel to Halex. A copy of the Fimio Affidavit without exhibits is attached hereto as **Exhibit "B"**.

7. Second and contrary to the suggestion at paragraph 18 of the Second Hallett Affidavit that there is likely no genuine urgency to the Receivership Proceedings, I understand that Bennett Jones apprised the Court on the Initial Application that NES had no funds to pay the estimated cost ($46,263.80) of maintaining approximately 39 of NES' internationally registered patents or the legal fees and disbursements associated with same. As recognized at paragraph 20 of the Second Hallett Affidavit, NES' intellectual property is its most valuable asset and as such, must be preserved. A copy of the costs associated with maintaining NES' internationally registered patents, as estimated by Bereskin & Parr LPP ("**Bereskin & Parr**"), NES' intellectual property counsel, is attached hereto as **Exhibit "C"**.

8. Recognizing the urgent need to preserve NES' most valuable asset, the Honourable Justice Koehnen granted a receivership order on an interim basis dated November 9, 2020 (the "**Interim Order**") and provided a corresponding email endorsement (the "**Endorsement**"). Among other things, the Interim Order appointed Baigel as Receiver, with security over the Property until and including December 3, 2020, directed the Receiver to take certain steps to preserve NES' intellectual property and authorized the Receiver to borrow monies up to the principal amount of $75,000. The Endorsement empowered the Receiver to pay NES' outstanding legal fees with Bereskin & Parr, the fees of Bereskin & Parr associated with preserving NES' patents, the fees of the Receiver's counsel, and the incidental fees of the Receiver. Copies of the Interim Order and the Endorsement are attached hereto as **Exhibit "D"** and **Exhibit "E"** respectively.

THE PROMISSORY NOTES PRESERVED NES & MAINTAINED ITS SOLVENCY

9. As detailed in the First Matovic Affidavit, Halex advanced the principal amount of $265,000 to NES pursuant to five promissory notes (the "**Promissory Notes**"), which matured on June 30, 2020. The single largest advance under the Promissory Notes of $175,000, reflecting more than half of the total funds provided by Halex to NES, was made on January 31, 2020. At the time the funds were advanced under the Promissory Notes, Halex was hopeful that NES would resolve the Arbitration in a timely manner, providing NES with the clarity required to attract new investments from third parties that would ultimately result in the repayment of the Promissory Notes.

10. Contrary to the assertion at paragraph 39 of the First Hallett Affidavit and paragraph 9 of the Second Hallett Affidavit, the funds advanced under the Promissory Notes did not precipitate NES' insolvency or the Receivership Proceedings nor were they designed to. Rather, the Promissory Notes prevented NES from making an assignment in bankruptcy or being petitioned into same and permitted it to meet its critical obligations, including maintaining its intellectual property. At the time of the advances under the Promissory Notes, NES had no operations, no revenue, insufficient funds to satisfy its critical obligations and no alternative source of financing immediately available. As such, the Promissory Notes permitted NES to meet its obligations as they became due and preserve its value while it sought to determine a viable path forward.

11. Halex is the single largest investor in NES and has been its primary source of financing recently. Absent the funds advanced under the Promissory Notes, I believe that NES would have been insolvent and forced to make an assignment in bankruptcy. Such an assignment would have been detrimental to all of NES' stakeholders, including Halex's $500,000 equity investment in NES. Halex is no longer willing to provide financing to NES outside of a court-supervised receivership process.

12. Absent additional third party financing or the granting of the Receivership Order, I believe that the board of directors of NES will be forced to assign NES into bankruptcy. Attached hereto as **Exhibit "F"** is a copy of NES' bank statements for the last three months, which indicate that as at October 30, 2020, NES had approximately $1,634.71 in its sole account maintained with the Toronto Dominion Bank.

13. Since being apprised of Halex's Demand made pursuant to subsection 244(1) of the BIA, I am not aware of any request from DJH to NES as to its wherewithal to satisfy the amounts owing under the Promissory Notes or to other creditors of NES.

HALEX IS NOT A PARTY TO THE ARBITRATION

14. Contrary to the suggestion in paragraphs 45-47 of the First Hallett Affidavit, Halex is not a party to the Arbitration and Halex and NES are distinct legal entities. However, given that I serve as a director of each of these distinct entities, I declared a conflict and recused myself from voting on the resolution to approve the Halex GSA Resolution.

15. Contrary to the assertion in paragraph 12 of the Second Hallett Affidavit, I did not express an intention to abandon the Arbitration – to which I am not personally a party – nor did I cause NES to do so. NES continues to be a party to the Arbitration and its involvement is guided by Paul Greenwood, another director of NES. The assertion that "Mr. Matovic announced his intention to abandon the arbitration process" in the Second Hallett Affidavit appears to conflate NES, Halex and I – a theme that runs throughout the First Hallett Affidavit and Second Hallett Affidavit. It does not however change the fact that Halex, as a separate entity not a party to the Arbitration, is entitled to assert its contractual rights under the Halex GSA and Promissory Notes. The assertions made in the First Hallett Affidavit and the Second Hallett Affidavit also suggest that DJH fails to appreciate that NES has exhausted all of its resources and no longer has funds sufficient to allow it to continue the Arbitration.

THE HALEX GSA IS NOT AT ISSUE IN NOR IS IT SUBJECT TO THE ARBITRATION

16. Contrary to the assertions made at paragraphs 28-29 of the First Hallett Affidavit, the First Matovic Affidavit did not disclose details of the Arbitration. In fact, the extent to which the Arbitration is referred to in the First Matovic Affidavit is as follows:

> 25. The Litigation was ultimately referred to arbitration, and at this time, remains unresolved. The Litigation and subsequent arbitration are between DJH and the Debtor. Halex is not a party to the Litigation or the arbitration.

17. The First Hallett Affidavit has overstated the extent to which the Arbitration has been brought into issue seemingly to obscure and expand the scope of the Receivership Proceedings. As discussed herein, Halex is not a party to the Arbitration, the Halex GSA is not at issue in the Arbitration and the Halex GSA and Promissory Notes are not subject to the USA or the Arbitration.

18. Contrary to paragraphs 29 and 35 of the First Hallett Affidavit and paragraph 22 of the Second Hallett Affidavit, the Halex GSA is not squarely in issue in the Arbitration nor have I suggested that it is. Attached as Exhibit "B" to the Second Hallett Affidavit is a copy of the Amended Statement of Defence and Counterclaim dated March 6, 2020 (the "**Arbitration Pleadings**"), which DJH has explained was adopted as his pleadings for the purpose of the Arbitration. I have reviewed the Arbitration Pleadings and note that: (i) Halex is not a named party; and (ii) no relief is sought in respect of the Halex GSA by counterclaim or otherwise. Rather, the Arbitration Pleadings appear to accept the validity of the Halex GSA, albeit while impugning NES'

conduct in granting it, to buttress an argument that the value of DJH's common and preferred shares has been diminished by NES:

> (v) the plaintiff has accumulated significant debts, including to Mr. Matovic and his company Halex Capital Inc., owing in part to its litigation against the defendant, which is being funded primarily through this debt.
>
> (vi) the plaintiff has granted security over its inventory, equipment, motor vehicle and other assets to Halex Capital Inc., without the defendant's consent, contrary to the provisions of the USA.
>
> […]
>
> 158.(b) In the result, the Fair Market Value of the defendant's significant investment and common shares in the plaintiff corporation has been reduced.

19. The above is emblematic of the Arbitration – it is a shareholder dispute that does not involve Halex. It does not suggest that Halex is not owed funds by NES. It does not suggest that Halex's PPSA registration is invalid. It does not suggest that the Halex GSA was never granted or that the funds under the Promissory Notes were never advanced. However, it does suggest that NES incurred a debt to Halex, the debt was secured by the Property and its effect was to reduce the value of DJH's shares.

20. Given the foregoing, the fact that the USA permits the granting of a security interest to shareholders does not, as paragraph 42 of the First Hallett Affidavit suggests, invariably make the Halex GSA subject to the Arbitration. Halex has initiated the Receivership Proceedings pursuant to the terms of the Halex GSA and the Promissory Notes. The Halex GSA and the Promissory Notes do not contain an arbitration provision, refer to the USA or incorporate by reference the dispute resolution clause contained at section 10.1 the USA. The GSA does however, contain an entire agreement clause, which provides in relevant part that, "[t]here are no understandings and agreements between the parties concerning the subject matter of this Agreement except as set forth in this Agreement [and the other Security Documents]".

THE RECEIVERSHIP PROCEEDINGS WERE COMMENCED TO PRESERVE NES' VALUE FOR ALL OF ITS STAKEHOLDERS AND DETERMINE STAKEHOLDER PRIORITIES – THERE IS NO PREDETERMINED OUTCOME TO THE RECEIVERSHIP PROCEEDINGS

21. Notwithstanding the assertions at paragraph 55 of the First Hallett Affidavit and paragraphs 9 and 22 of the Second Hallett Affidavit to the contrary, the Receivership Proceedings were commenced to preserve the Property, maximize stakeholder value and provide NES' creditors with the opportunity to recover amounts that may be owing to them. The Receivership Proceedings are not intended to circumvent the Arbitration.

22. The suggestion at paragraphs 10 and 20 of the Second Hallett Affidavit that the Receivership Proceedings are solely intended to remove the intellectual property from the company are unsupported and appear to presume the outcome of the Receivership Proceedings.

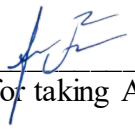
23. While DJH respectfully requests that the Court stay the Receivership Proceedings in favour of the Arbitration, I am not aware of any concomitant proposal by DJH (or any other party) to fund NES, which as I have discussed above, is insolvent. As a result, it seems that the natural conclusion of DJH's suggestion is that the Arbitration will not proceed and the debt owed to Halex and NES' other stakeholders will remain due and owing until NES is forced to assign itself or is petitioned into bankruptcy by its creditors.

SWORN BEFORE ME over videoconference on this 23rd day of November, 2020. The affiant was located in the City of Niagara Falls, in the Province of Ontario and the Commissioner was located in the City of Oakville, in the Province of Ontario. This affidavit was commissioned remotely as a result of COVID-19 and the declaration was administered in accordance with Ontario *Regulation 431/20*.

JOSHUA FOSTER
A Commissioner for Oaths in and for the Province of Ontario

DR. DRAGAN MATOVIC

THIS IS **EXHIBIT "A"** REFERRED TO IN THE
AFFIDAVIT OF DR. DRAGAN MATOVIC,
SWORN BEFORE ME THIS 23rd DAY OF NOVEMBER, 2020.



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A Commissioner for taking Affidavits, etc.

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APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

AFFIDAVIT OF DRAGAN MATOVIC
(Sworn October 5, 2020)

I, DRAGAN MATOVIC, of the City of Niagara Falls, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am the Chairman and Chief Executive Officer of Halex Capital Inc. ("**Halex**"), a secured creditor of Natural Energy Systems Inc. (the "**Debtor**"). 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. Unless otherwise stated herein, all monetary amounts referenced are in Canadian Dollars.

NATURE OF APPLICATION AND RELIEF SOUGHT

3. I swear this affidavit in support of the application by Halex for an order (the "**Order**"), among other things, appointing Baigel Corp., licensed insolvency trustee ("**Baigel**"), as receiver (in such capacity, the "**Receiver**"), with security, over all of the present and after-acquired assets, undertakings, and properties of the Debtor (collectively, the "**Property**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

OVERVIEW

4. According to the records maintained by the Ontario Ministry of Government Services (the "**Corporation Profile Report**"), the Debtor was incorporated pursuant to the *Canada Business Corporation Act*, R.S.C., 1985, c. C-44, on November 12, 2008. The Corporation Profile Report lists the registered head office of the Debtor as 6000 Marineland Pkwy., Niagara Falls, Ontario; however, this information is not up-to-date. The current address of the Debtor is 5311 John Lucas Drive, Unit 8, Burlington, ON L7L 6A8. Currently, and as indicated in the Corporation Profile Report for the Debtor, I and Paul Greenwood are the only two directors of the Debtor. Attached as **Exhibit "A"** is a true copy of the Corporation Profile Report with respect to the Debtor.

5. Halex is a Canadian private holding company with investments in several industry sectors.

6. The Debtor is a private Canadian corporation that owns proprietary and patented processes for converting organic materials, including organic waste, into a methane product gas with a high-energy content value (the "**Gas Phase Reduction Technology**"). The Debtor does not currently have active operations or employees, and its primary value is contained in patents related to the Gas Phase Reduction Technology.

7. Halex owns approximately 125,000 shares of the Debtor, which represents approximately five percent (5%) of the issued and outstanding shares of the Debtor. In 2012, Halex purchased those shares for $500,000 which, to date, is the single largest cash investment in the Debtor.

8. More recently, Halex loaned money to the Debtor to meet various critical financial obligations pursuant to the following secured promissory notes:

Date of Issue	Key Terms
January 31, 2020	Principal Amount: $175,000 Interest Rate: 8% per annum Maturity Date: June 30, 2020
March 24, 2020	Principal Amount:$35,000 Interest Rate: 8% per annum Maturity Date: June 30, 2020
April 28, 2020	Principal Amount: $15,000 Interest Rate: 8% per annum Maturity Date: June 30, 2020
May 25, 2020	Principal Amount: $15,000 Interest Rate: 8% per annum Maturity Date: June 30, 2020
June 26, 2020	Principal Amount: $25,000 Interest Rate: 8% per annum Maturity Date: June 30, 2020

(collectively, the "**Halex Promissory Notes**"). Copies of the Halex Promissory Notes are attached hereto as **Exhibit "B"**.

9. As security for all amounts owing from time to time by the Debtor to Halex pursuant to the Halex Promissory Notes, the Debtor granted to Halex security over its present and after-acquired personal property (the "**Collateral**") pursuant to a General Security Agreement dated January 31, 2020 (the "**Halex GSA**"). Subsection 6.1(b)(i) of the GSA provides that Halex may appoint a receiver over the Collateral upon default by the Debtor of any of its obligations to Halex. Attached hereto as **Exhibit "C"** is a copy of the Halex GSA.

10. The board of directors of the Debtor (the "**Board**") approved the issuance of the Halex GSA pursuant to a resolution dated January 30, 2020 (the "**Halex GSA Resolution**"). A copy of the Halex GSA Resolution is attached hereto as **Exhibit "D"**. Section 4.11 of the Debtor's By-Law No. 1 effective November 12, 2008 (the "**By-Law**") requires that a director or officer not vote on any resolution to approve a contract or transaction where a conflict of interest could exist.

Accordingly, I recused myself from voting on the Halex GSA Resolution to approve the Halex GSA. A copy of the By-Law is attached hereto as **Exhibit "E"**.

DEFAULT BY THE DEBTOR AND ENFORCEMENT STEPS AFTER DEFAULT

11. The obligations owing by the Debtor to Halex under the Halex Promissory Notes matured on June 30, 2020 (the "**Maturity Date**"). As at the Maturity Date, $265,000 was owing by the Debtor to Halex, plus accrued interest and costs. Those amounts owing to Halex by the Debtor have not been repaid to date.

12. On July 2, 2020, former counsel to Halex issued a demand for payment and a notice of intention to enforce the Halex GSA pursuant to subsection 244(1) of the BIA (the "**Demand**"). A copy of the Demand is attached hereto as **Exhibit "F"**.

13. Among other things, the Demand advised the Debtor that:

(a) the loans made by Halex to the Debtor pursuant to the Halex Promissory Notes were due and payable June 30, 2020; and

(b) Halex was making a formal demand for payment of $265,000 on account of the principal outstanding under the Halex Promissory Notes as of July 1, 2020, together with additional accrued and unpaid interest, fees and costs and all other amounts payable under or in connection with the Halex Promissory Notes.

14. On August 7, 2020, the Debtor sent a letter (the "**August 7 Letter**") to me advising, among other things, that:

(a) the Debtor had received the Demand; and

(b) the Debtor did not dispute the Halex Promissory Notes or the Halex GSA.

15. In the August 7 Letter, the Board also confirmed that I had followed proper corporate governance practices in connection with the Halex Promissory Notes and the Halex GSA and that, consistent with the By-Law, I had properly declared and submitted written documents recusing myself from any representation of the Debtor during the entire process of arranging the Halex

Promissory Notes and the Halex GSA. A copy of the August 7 Letter is attached hereto as **Exhibit "G"**.

OTHER PPSA REGISTRATIONS AND ADDITONAL BACKGROUND INFORMATION

Other PPSA Registrations

16. On August 27, 2020, counsel for Halex obtained a (Ontario) *Personal Property Security Act*, R.S.O. 1990 P. 10 (the "**PPSA**") search against the Debtor (the "**PPSA Search Results**"). A copy of the PPSA Search Results are attached hereto as **Exhibit "H".**

17. The PPSA Search Results indicate that two parties have active registered security interests against the Property of the Debtor: (i) Halex (first registered on January 23, 2020); and (ii) Douglas J. Hallett ("**DJH**") (first registered on March 19, 2014 and subsequently renewed on March 19, 2019).

18. Notwithstanding that DJH appears to have a registered security interest, which ranks in priority to Halex, there are legal and factual issues which render the DJH security invalid and/or significantly diminish the quantum of amounts purportedly secured by the DJH GSA (as defined below).

Additional Background Information

19. The Debtor was founded by DJH in 2008 along with Paul Greenwood and Craig McEwan (since deceased). DJH is currently a shareholder of the Debtor and was previously a member of the Board and an executive officer of the Debtor. In 2015, a majority of shareholders removed DJH from the Debtor's Board, and he has not been employed by the Debtor in any capacity since then.

20. The Debtor is currently governed by a Shareholders' Agreement effective November 12, 2008 (the "**Debtor's Shareholders' Agreement**"). A copy of the Debtor's Shareholders' Agreement is attached hereto as **Exhibit "I".**

21. On March 15, 2014, DJH, on behalf of both himself and the Debtor and in favour of himself, executed a General Security Agreement which purported to secure amounts owing by the Debtor to DJH (the "**DJH GSA**"). DJH did not declare a conflict of interest regarding the DJH

GSA as required by the By-Law, nor was there a resolution passed by the Debtor's Board. Paul Greenwood, the only other board member of the Debtor at the time, was not notified by DJH or the Debtor's legal counsel regarding the DJH GSA.

22. The validity of the DJH GSA and amounts secured pursuant to it have been the subject of dispute between the Debtor and DJH for over three years. In addition, the Debtor also suspended DJH's rights under the Debtor's Shareholders' Agreement in 2015 as a result of DJH's attempt to sell certain of his shares of the Debtor to seven different parties in contravention of the terms of the Debtor's Shareholders' Agreement.

23. DJH has also alleged that the Board has been improperly constituted since 2015 and that the Board did not have authority to take a number of actions, including suspending his rights under the Debtor's Shareholders' Agreement and the granting of the Halex GSA. Each of Halex and the Debtor deny any such allegations made by DJH.

24. On February 28, 2017, the Debtor issued a statement of claim bearing Court File No.: CV-17-570515 against DJH seeking, *inter alia* (the "**Litigation**"):

(a) the payment of $120,000 in funds wrongfully or improperly appropriated by DJH from the Debtor;

(b) an order and declaration canceling all securities issued or purportedly issued by the Debtor to DJH, including but not limited to, the DJH GSA and any common and special or preference shares held by the defendant; and

(c) declarations to the effect that the DJH GSA and any financing or verification statement registered in respect of the DJH GSA are null and void *ab initio*.

25. The Litigation was ultimately referred to arbitration, and at this time, remains unresolved. The Litigation and subsequent arbitration are between DJH and the Debtor. Halex is not a party to the Litigation or the arbitration.

NEED FOR THE APPOINTMENT OF A RECEIVER

26. The appointment of the Receiver is necessary and appropriate as a result of the following:

(a) the Demand has not been withdrawn by Halex and the Debtor has had ample opportunity to satisfy the Demands;

(b) the Debtor does not currently have an active business or revenue and Halex has recently been its primary source of funding. It is highly unlikely that the Debtor will be able to repay or refinance amounts owing to Halex (or any of its other creditors) or sell its assets in an effort to satisfy the obligations owing to Halex outside of a court-supervised receivership process;

(c) the Receiver can provide this Court with an unbiased and impartial security opinion in respect of the validity and priority of the security granted by the Debtor pursuant to the Halex GSA and the DJH GSA and advise as to what amounts are properly secured by the Halex GSA and the DJH GSA (if any, in the case of the latter); and

(d) the appointment of the Receiver is just and convenient in the circumstances.

27. The proposed Order appointing the Receiver permits the Receiver to borrow funds from Halex for the purpose of undertaking the receivership process and making payment of necessary expenses of the receivership process, including payment of the fees and disbursements of the Receiver and its legal counsel. These borrowings are intended to be secured against the Property and receive court-ordered priority over amounts owing to all other creditors of the Debtor. This funding arrangement is necessary as the Debtor does not have any cash on-hand to fund a receivership process and Halex is not willing to provide additional funding to the Debtor unless it receives a court-ordered priority charge over the Debtor's assets for funding provided to the Receiver.

28. In addition, the proposed Order, among other things, permits the receiver to take possession and exercise control over the Property and market any or all of the Property, including advertising and soliciting offers in respect of the Property. Further, the proposed Order authorizes the Receiver to sell, convey, lease or assign the Property out of the ordinary course of business, without court approval in respect of any transaction not exceeding $25,000, provided that the aggregate consideration for all such transactions does not exceed $100,000. Where the purchase price or the aggregate purchase price, as applicable, exceeds these amounts, the Order provides that the Receiver must seek court approval in respect of such transaction.

29. It is proposed that Baigel be appointed as Receiver. Baigel has agreed to accept the appointment, and I understand that a copy of its consent to act will be included in Halex's Application Record to be filed.

30. Baigel is a trustee within the meaning of subsection 2(1) of the BIA and, as such, is permitted to be appointed Receiver over the Property. I understand that Baigel has extensive experience in the context of court-supervised insolvency proceedings.

31. This affidavit is made in support of the within application for the appointment of Baigel as Receiver and for no other or improper purpose whatsoever.

SWORN BEFORE ME over videoconference on this 5th of October, 2020. The affiant was located in the City of Niagara Falls, in the Province of Ontario and the Commissioner was located in the City of Oakville,in the Province of Ontario. This affidavit was commissioned remotely as a result of COVID-19 in accordance with Ontario *Reg. 431/20*.

JO SHUA FO STER
A Commissioner, Etc.

DRAGAN MATOVIC

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

HALEX CAPITAL INC.	and	**NATURAL ENERGY SYSTEMS INC.**	
Applicant		Respondent	Court File No.:CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

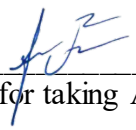
AFFIDAVIT OF DRAGAN MATOVIC
(Sworn October 5, 2020)

BENNETT JONES LLP
Barristers and Solicitors
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Mark Laugesen (LSO#: 32937W)
Mike Shakra (LSO#: 64604K)
Joshua Foster (LSO#: 79447K)

Lawyers for the Applicant

THIS IS **EXHIBIT "B"** REFERRED TO IN THE
AFFIDAVIT OF DR. DRAGAN MATOVIC,
SWORN BEFORE ME THIS 23rd DAY OF NOVEMBER, 2020.



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A Commissioner for taking Affidavits, etc.

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AFFIDAVIT OF ELIZABETH FIMIO
(Sworn November 9, 2020)

I, Elizabeth Fimio, of the City of Burlington, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS**:

1. I am a law clerk with the firm of Bennett Jones LLP ("**Bennett Jones**"), counsel for Halex Capital Inc. (the "**Applicant**"). As such, I have personal knowledge of the matters to which I hereinafter depose. The facts stated herein are within my knowledge or determined from the face of the documents attached hereto as exhibits and from the information provided to me by Mike Shakra and Joshua Foster, associates at Bennett Jones. 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. Attached hereto as **Exhibit "A"** is a copy of an email from Mr. Shakra to Kurt Pearson of Cunningham, Swan, Carty, Little & Bonham LLP ("**Cunningham Swan**"), counsel to Douglas J.

Hallett (the founder of Natural Energy Systems Inc.), dated September 2, 2020, wherein Mr. Shakra advised that materials were being prepared on behalf of the Applicant in connection with a receivership application (the "**Application**"), proposed a without prejudice discussion, and inquired whether a hearing date of October 5, 2020 for the Application would be amenable to Mr. Pearson's schedule, and if necessary what dates Mr. Hallett would be available for cross-examinations.

3. Attached hereto as **Exhibit "B"** is a copy of an email from Mr. Pearson to Mr. Shakra dated September 2, 2020, wherein Mr. Pearson advised Mr. Shakra that he was not confident that he could commit to the proposed hearing date of October 5, 2020 and a reasonable timetable for responding materials, cross-examinations or facta.

4. Attached hereto as **Exhibit "C"** is a copy of an email sent by Mr. Foster to the service list established for the above-captioned proceedings (the "**Service List**") dated October 13, 2020, wherein Mr. Foster served the Applicant's Application Record (the "**Application Record**") on the Service List in respect of a receivership application to be brought on a date to be determined.

5. Attached hereto as **Exhibit "D"** is a copy of an email sent by Mr. Shakra to Mr. Pearson dated October 13, 2020, wherein Mr. Shakra, among other things, advised Mr. Pearson that the Applicant would like to book a hearing date for the proposed Application as soon as possible, and to the extent Mr. Hallett intended to object to the Application and serve a responding affidavit, counsel should have a discussion to determine an appropriate schedule for doing so.

6. Attached hereto as **Exhibit "E"** is a copy of an email dated October 20, 2020, sent by Mr. Foster to the Service List advising same that the proposed Application had been scheduled to be heard before the Honourable Justice Koehnen on November 9, 2020 at 2:30 p.m.

7. Attached hereto as **Exhibit "F"** is a copy of a delivery slip prepared by Bennett Jones illustrating proof of delivery of the Application Record to Cunningham Swan at the attention of Mr. Pearson and the address of Mr. Hallett last known to the Applicant.

8. Attached hereto as **Exhibit "G"** is a copy of an email dated November 2, 2020, sent by Mr. Foster to the Service List, wherein Mr. Foster served the Applicant's Factum (the "**Factum**") in respect of the proposed Application on the Service List.

9. Attached hereto as **Exhibit "H"** is a copy of a delivery slip prepared by Bennett Jones illustrating proof of delivery of the Factum as of November 2, 2020, to Cunningham Swan at the attention of Mr. Pearson and the address of Mr. Hallett last known to the Applicant.

10. Attached hereto as **Exhibit "I"** is a letter (the "**Letter**") from Mr. Pearson to Bennett Jones and Baigel Corp., in its capacity as the proposed receiver, dated November 4, 2020, stating, among other things, that:

> [t]his matter is scheduled to be spoken to on November 9, 2020. I understand that Halex [the Applicant] now intends to proceed with the hearing of its Application in full on that date. […] If we cannot agree to a timetable, we will appear on November 9 in order to request an adjournment and timetable on reasonable terms.

11. The Letter was served on the Service List on November 4, 2020 via email (the "**Service Email**"). A copy of the Service Email is attached hereto as **Exhibit "J"**.

12. Attached hereto as **Exhibit "K"** is a copy of an email from Mr. Shakra to the Service List dated November 4, 2020, confirming receipt of the Letter and explaining why the Applicant intended to proceed with the proposed Application on November 9, 2020.

SWORN BEFORE ME over videoconference on this 9th day of November, 2020. The affiant was located in the City of Burlington, in the Province of Ontario and the Commissioner was located in the City of Oakville, in the Province of Ontario. This Affidavit was commissioned remotely as a result of COVID-19 and was commissioned in accordance with *Ontario Regulation 431/20*.

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JOSHUA FOSTER
A Commissioner for Oaths in and for the Province of Ontario

ELIZABETH FIMIO

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

HALEX CAPITAL INC.	and	**NATURAL ENERGY SYSTEMS INC.**	
Applicant		Respondent	Court File No.: 20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

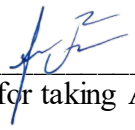
AFFIDAVIT OF ELIZABETH FIMIO
(Sworn November 9, 2020)

BENNETT JONES LLP
Barristers and Solicitors
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Mark Laugesen (LSO#: 32937W)
Mike Shakra (LSO#: 64604K)
Jason Berall (LSO# 68011F)
Joshua Foster (LSO#: 79447K)

Lawyers for the Applicant

THIS IS **EXHIBIT "C"** REFERRED TO IN THE
AFFIDAVIT OF DR. DRAGAN MATOVIC,
SWORN BEFORE ME THIS 23rd DAY OF NOVEMBER, 2020.



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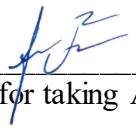
A Commissioner for taking Affidavits, etc.

Client No.	Matter No.	Case Type	Country	Application No.	Registration No.	Client Matter Name	Due Date Text	Due Date	Est. Fee	Instructions
21282	P36444NZ01	P	New Zealand	618710	618710	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 10, 2021	$1,005.00	
21282	P36444LT00	P	Lithuania	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 10, 2021	$1,245.00	
21282	P36444CY00	P	Republic of Cyprus	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 10, 2021	$1,100.00	
21282	P36444CA00	P	Canada	2690884	2690884	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - pay maintenance fee	Feb. 11, 2021	$548.80	
21282	P36444AU00	P	Australia	2010213320	2010213320	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,200.00	
21282	P36444IN00	P	India	6881/DELNP/2011	309807	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,190.00	
21282	P36444AT00	P	Austria	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,915.00	
21282	P36444BE00	P	Belgium	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$980.00	
21282	P36444BG00	P	Bulgaria	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,390.00	
21282	P36444HR00	P	Croatia	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,125.00	
21282	P36444CZ00	P	Czech Republic	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,240.00	
21282	P36444DK00	P	Denmark	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,240.00	
21282	P36444FI00	P	Finland	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,475.00	

21282	P36444FR00	P	France	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,095.00	
21282	P36444DE00	P	Germany	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,705.00	
21282	P36444GR00	P	Greece	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,140.00	
21282	P36444HU00	P	Hungary	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,500.00	
21282	P36444IS00	P	Iceland	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,100.00	
21282	P36444IE00	P	Ireland	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,030.00	
21282	P36444IT00	P	Italy	10740872.6	2396089 / 502017000126578	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,340.00	
21282	P36444LV00	P	Latvia	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,255.00	
21282	P36444LU00	P	Luxembourg	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$840.00	
21282	P36444MK00	P	Macedonia	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$820.00	
21282	P36444MT00	P	Malta	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$940.00	
21282	P36444MC00	P	Monaco	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$990.00	
21282	P36444NL00	P	Netherlands	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,665.00	
21282	P36444NO00	P	Norway	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,185.00	

21282	P36444PL00	P	Poland	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,245.00	
21282	P36444PT00	P	Portugal	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,420.00	
21282	P36444RO00	P	Romania	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,305.00	
21282	P36444SM00	P	San Marino	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,175.00	
21282	P36444SK00	P	Slovakia	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,115.00	
21282	P36444SI00	P	Slovenia	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,040.00	
21282	P36444ES00	P	Spain	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,175.00	
21282	P36444SE00	P	Sweden	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,210.00	
21282	P36444CH00	P	Switzerland	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,125.00	
21282	P36444TR00	P	Turkey	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,035.00	
21282	P36444GB00	P	United Kingdom	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$980.00	
21282	P36444EE00	P	Estonia	10740872.6	2396089	PROCESS FOR THE CONVERSION OF ORGANIC MATERIAL TO METHANE RICH FUEL GAS	Deadline - patent renewal	Feb. 11, 2021	$1,180.00	
						Approximate total			$46,263.80	

THIS IS **EXHIBIT "D"** REFERRED TO IN THE
AFFIDAVIT OF DR. DRAGAN MATOVIC,
SWORN BEFORE ME THIS 23rd DAY OF NOVEMBER, 2020.



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A Commissioner for taking Affidavits, etc.

Court File No.: CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	MONDAY, THE 9th
	)	
JUSTICE KOEHNEN	)	DAY OF NOVEMBER, 2020

HALEX CAPITAL INC.

Applicant

NATURAL ENERGY SYSTEMS INC.

Respondent

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

INTERIM ORDER
(APPOINTING RECEIVER)

THIS APPLICATION made by the Applicant for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Baigel Corp. ("**Baigel**") as receiver (in such capacity, the "**Receiver**") with security, of all of the assets, undertakings and properties of Natural Energy Systems Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Dragan Matovic sworn October 5, 2020 and the Exhibits thereto, the affidavit of Douglas J. Hallett sworn November 6, 2020 and the Exhibits thereto, the affidavit of Elizabeth Fimio sworn November 9, 2020 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, counsel for Douglas J. Hallett, counsel for the

Debtor and counsel for the Receiver, no other parties appearing although duly served as appears from the affidavit of service of Joshua Foster sworn October 13, 2020, the affidavit of service of Joshua Foster sworn November 3, 2020, the affidavit of service of Joshua Foster sworn November 9, 2020, and on reading the consent of Baigel to act as the Receiver,

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.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, Baigel is hereby appointed Receiver, with security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), until and including December 3, 2020. For greater certainty, the Property includes, without limitation, any and all intellectual property and patents of the Debtor or used in relation to a business carried on by the Debtor and all proceeds thereof (collectively, the "**Intellectual Property**").

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Intellectual Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

(a) to take possession of and exercise control over the Intellectual Property and any and all proceeds, receipts and disbursements arising out of or from the Intellectual Property;

(b) to receive, preserve, and protect the Intellectual Property, or any part or parts thereof, including, but not limited to, the changing of security codes,

the engaging of independent security personnel, and the placement of such insurance coverage as may be necessary or desirable;

(c) to enter into any agreements and incur any obligations in order to preserve the value of the Intellectual Property;

(d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

(e) to settle or extend any indebtedness owing to the Debtor in connection with the Intellectual Property or ancillary thereto;

(f) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Intellectual Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

(g) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Intellectual Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(h) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor solely in connection with the Intellectual Property or matters ancillary thereto;

(i) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have as necessary to allow the Receiver to fulfill its

duties and obligations under this Order to preserve the Intellectual Property; and

(j) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court, without prejudice to the right of Douglas Hallett to bring a motion in this proceeding to oppose the Receiver's appointment beyond December 3, 2020.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment to which the Debtor is subject, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into

existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

15. **THIS COURT ORDERS** that the Receiver 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, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

19. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $75,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures (the "**Receiver's Borrowings**"). The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the Receiver's Borrowings, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

23. **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 https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial 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.

24. **THIS COURT ORDERS** that the Debtor, the Receiver, the Applicants and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

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

GENERAL

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

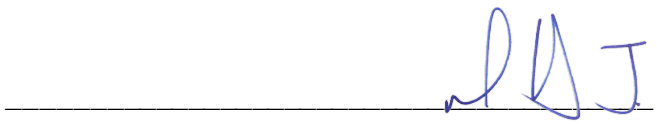
27. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, in the United States or Europe to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of

this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT $_____

1. **THIS IS TO CERTIFY** that Baigel, the receiver (the "**Receiver**") of the assets, undertakings and properties of Natural Energy Systems Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 9th day of November, 2020 (the "**Order**") made in an action having Court file number CV-20-00649326-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of $_____, being part of the total principal sum of $_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

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

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

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

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

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

DATED the _____ day of _____, 2020.

Baigel Corp., solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

Per: _____

Name:

Title:

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

HALEX CAPITAL CORPORATION	and	**NATURAL ENERGY SYSTEMS INC.**	
Applicant		Respondent	Court File No.: CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

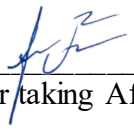
ORDER
(APPOINTING RECEIVER)

BENNETT JONES LLP
Barristers and Solicitors
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Mark Laugesen (LSO#: 32937W)
Mike Shakra (LSO#: 64604K)
Jason Berall (LSO# 68011F)
Joshua Foster (LSO#: 79447K)

Lawyers for the Applicant

THIS IS **EXHIBIT "E"** REFERRED TO IN THE
AFFIDAVIT OF DR. DRAGAN MATOVIC,
SWORN BEFORE ME THIS 23rd DAY OF NOVEMBER, 2020.



_____

A Commissioner for taking Affidavits, etc.

From:	Koehnen, Mr. Justice Markus (SCJ)
To:	Joshua Foster; Mark Laugesen; Mike Shakra; Gustavo Camelino; "Baigel Corp"; Mario Forte
Cc:	JUS-G-MAG-CSD-Toronto-SCJ Commercial List
Subject:	Re: Application of Halex Capital Inc. for an Order Appointing a Receiver of the Property of Natural Energy Systems Inc. CV-20-00649326-00CL (Returnable November 9, 2020 at 2:30 p.m.)
Date:	Monday, November 9, 2020 6:50:18 PM

This email constitutes my endorsement arising out of today's hearing and should be placed into the court file.

The applicant Halex seeks a receivership order against Natural Energy Systems. Mr. Hallet, one of the principal shareholders of Natural Energy Systems, seeks an adjournment.

The parties have agreed to an adjournment on the following terms:

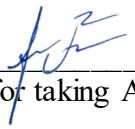
1. The matter will be adjourned to December 3, 2020 at 11 AM before Justice Dietrich.
2. An order will go appointing an interim receiver until December 3, 2020. The receiver will be empowered to pay:

    1. outstanding legal fees that Natural Energy Systems has incurred with Bereskin Parr;
    2. fees of Bereskin Parr for such work as is necessary to preserve the patents of Natural Energy Systems;
    3. fees of the receiver's counsel; and
    4. incidental fees of the receiver.

The parties may send me an order directly for signature by email. If the parties have difficulty arriving at an order they may write to to arrange a case conference to settle the order.

Justice Markus Koehnen
Ontario Superior Court of Justice
361 University Ave.
Toronto, Ont.
M5G 1T3
416-327-5284

THIS IS **EXHIBIT "F"** REFERRED TO IN THE
AFFIDAVIT OF DR. DRAGAN MATOVIC,
SWORN BEFORE ME THIS 23rd DAY OF NOVEMBER, 2020.



_____
A Commissioner for taking Affidavits, etc.

OAKVILLE MAIN
282 LAKESHORE RD EAST
OAKVILLE, ON L6J 5B2

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_5318011_002 E D 00063 03526

NATURAL ENERGY SYSTEMS INC.
5311 JOHN LUCAS DRIVE UNIT 8
BURLINGTON ON L7L 6A8

Statement of Account	
Branch No.	Account No.
0063	0063-5236911

Account Type
BUSINESS CHEQUING ACCOUNT - CAD EVERY DAY A

Statement From - To
JUL 31/20 - AUG 31/20
Page 1 of 1

DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			JUL31	1,691.71
MONTHLY PLAN FEE	19.00		AUG31	1,672.71

0 CHQS ENCLOSED NEXT STATEMENT DATE IS SEP 30/20
MONTHLY AVER. CR. BAL. $1,691.09
MONTHLY MIN. BAL. $1,672.71
DEP CONTENT- CASH 0 ITEMS 0 UNC BATCH 0

	No.	Amount
Credits	0	0.00
Debits	1	19.00

-
-
-

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: **THE TORONTO-DOMINION BANK**

JCA5691299-0007051-03526-0001-0001-00-

552208R (022011)

OAKVILLE MAIN
282 LAKESHORE RD EAST
OAKVILLE, ON L6J 5B2

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_5969889_002 E D 00063 03481

NATURAL ENERGY SYSTEMS INC.
5311 JOHN LUCAS DRIVE UNIT 8
BURLINGTON ON L7L 6A8

Statement of Account		Account Type	Statement From - To
Branch No.	Account No.	BUSINESS CHEQUING ACCOUNT - CAD EVERY DAY A	AUG 31/20 - SEP 30/20
0063	0063-5236911		Page 1 of 1

DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			AUG31	1,672.71
MONTHLY PLAN FEE	19.00		SEP30	1,653.71

0 CHQS ENCLOSED NEXT STATEMENT DATE IS OCT 30/20
MONTHLY AVER. CR. BAL. $1,672.07
MONTHLY MIN. BAL. $1,653.71
DEP CONTENT- CASH 0 ITEMS 0 UNC BATCH 0

	No.	Amount
Credits	0	0.00
Debits	1	19.00

-
-
-

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: **THE TORONTO-DOMINION BANK**

JCA5783658-0006961-03481-0001-0001-00-

OAKVILLE MAIN
282 LAKESHORE RD EAST
OAKVILLE, ON L6J 5B2

TD Canada Trust

Tel: 1-866-222-3456
TTY: 1-800-361-1180

TDCDA11100_6666404_002 E D 00063 03424

NATURAL ENERGY SYSTEMS INC.
5311 JOHN LUCAS DRIVE UNIT 8
BURLINGTON ON L7L 6A8

Statement of Account	
Branch No.	Account No.
0063	0063-5236911

Account Type
BUSINESS CHEQUING ACCOUNT - CAD EVERY DAY A

Statement From - To
SEP 30/20 - OCT 30/20
Page 1 of 1

DESCRIPTION	CHEQUE/DEBIT	DEPOSIT/CREDIT	DATE	BALANCE
BALANCE FORWARD			SEP30	1,653.71
MONTHLY PLAN FEE	19.00		OCT30	1,634.71

0 CHQS ENCLOSED NEXT STATEMENT DATE IS NOV 30/20
MONTHLY AVER. CR. BAL. $1,652.48
MONTHLY MIN. BAL. $1,634.71
DEP CONTENT- CASH 0 ITEMS 0 UNC BATCH 0

	No.	Amount
Credits	0	0.00
Debits	1	19.00

-
-
-

Please ensure that you report in writing any errors or irregularities found within this statement within 30 days of the statement date. If you do not, the statement of account shall be conclusively deemed correct except for any amount credited to the account in error.

Accounts issued by: **THE TORONTO-DOMINION BANK**

JCA5879662-0006847-03424-0001-0001-00-

552208R (022011)

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT,* R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*

HALEX CAPITAL INC.	and	**NATURAL ENERGY SYSTEMS INC.**	
Applicant		Respondent	Court File No.: CV-20-00649326-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

AFFIDAVIT OF DR. DRAGAN MATOVIC
(Sworn November 23, 2020)

BENNETT JONES LLP
Barristers and Solicitors
3400 One First Canadian Place
P.O. Box 130
Toronto, ON M5X 1A4

Mark Laugesen (LSO#: 32937W)
Mike Shakra (LSO#: 64604K)
Joshua Foster (LSO#: 79447K)

Lawyers for the Applicant