

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE CAVANAGH

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FRIDAY, THE 25TH
DAY OF AUGUST, 2023

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.,

Applicants

APPROVAL AND VESTING ORDER

THIS MOTION, made by Swarmio Media Holdings Inc. ("**Swarmio Media Holdings**"), Swarmio Inc. (the "**Company**"), and Swarmio Media Inc. ("**Swarmio Media**" and together with Swarmio Media Holdings and Swarmio Inc., collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), for an order, among other things: (i) approving the share purchase agreement, dated August 4, 2023 (the "**SPA**"), between the Company and Triaxcess Limited (the "**Purchaser**"), for the purchase and sale of the New Common Shares and the Retained Assets of the Company (each capitalized term as defined in the SPA); (ii) adding 15280362 Canada Inc. ("**ResidualCo**") as an Applicant to these CCAA proceedings in order to carry out the transactions contemplated by the SPA (collectively, the "**Transaction**"); (iii) transferring and vesting all of the Company's right, title and interest in and to the Excluded Liabilities, Excluded Assets, and Excluded Contracts to and in ResidualCo;

(iv) vesting all of the Company's right, title and interest in and to the New Common Shares in and to the Purchaser; was heard this day by Zoom video conference.

ON READING the affidavit of Vijai Karthigesu sworn August 14, 2023 and the exhibits thereto, the Second Report of Grant Thornton Limited in its capacity as the Monitor (the "**Monitor**"), and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and counsel for those other parties appearing as indicated by the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service, filed.

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the SPA.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

APPROVAL AND VESTING

3. **THIS COURT ORDERS** that the SPA and the Transaction be and are hereby approved and the execution of the SPA by the Company is hereby authorized and approved, with such minor amendments as the parties may deem necessary, with the approval of the Monitor. The Company is hereby authorized and directed to perform its obligations under the SPA and to take such

additional steps and execute such additional documents as may be necessary or desirable to effect the Transaction.

4. **THIS COURT ORDERS** that this Order shall constitute the only authorization required by the Applicants to proceed with the Transaction (including, for certainty, the Pre-Closing Reorganization) and that no shareholder or other approval shall be required in connection therewith.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a copy of the Monitor's certificate (the "**Monitor's Certificate**") to the Purchaser (the time of such delivery being referred to herein as the "**Effective Time**"), substantially in the form attached as **Schedule "A"** hereto, the following shall occur and shall be deemed to have occurred at the Effective Time in the following sequence:

- (a) first, all of the right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in ResidualCo, and all Claims and Encumbrances (each as defined below) shall continue to attach to the Excluded Assets and to the proceeds from the purchase price in accordance with paragraph 6 of this Order, in either case with the same nature and priority as they had immediately prior to the transfer;
- (b) second, all Excluded Liabilities (which for certainty includes all debts, liabilities, obligations, indebtedness, contracts, leases, agreements, and undertakings of any kind or nature whatsoever, whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, matured or unmatured or due or not yet due, in law or equity and whether based in statute or otherwise) of the

Company and Swarmio Media shall be transferred to, assumed by and vest absolutely and exclusively in ResidualCo such that the Excluded Liabilities shall become obligations of ResidualCo and shall no longer be obligations of the Company or Swarmio Media;

- (c) other than the New Common Shares, all options, conversion privileges, equity-based awards, warrants, securities, debentures, loans, notes or other rights, agreements or commitments of any character whatsoever that are held by any Person (as defined below) and are convertible or exchangeable for any securities of the Company or Swarmio Media, or which require the issuance, sale or transfer by the Company or Swarmio Media of any shares or other securities of the Company or Swarmio Media and/or the share capital of the Company or Swarmio Media or otherwise relating thereto, shall be deemed terminated and cancelled;
- (d) all of the right, title and interest in and to the New Common Shares shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypotecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Order or any other orders in these CCAA proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario) or any other

personal property registry systems; and (iii) those Claims listed on **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the New Common Shares are hereby expunged and discharged as against the New Common Shares; and

- (e) The Company and Swarmio Media shall be deemed to cease being Applicants in these CCAA proceedings, and shall be deemed to be released from the purview of the Initial Order and all other orders of this Court granted in respect of these CCAA proceedings, save and except for this Order, the provisions of which (as they relate to the Company, Swarmio Media and ResidualCo) shall continue to apply in all respects.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the New Common Shares and the Retained Assets (the “**Proceeds**”) shall stand in the place and stead of the New Common Shares and Retained Assets, and that from and after the delivery of the Monitor’s Certificate, all Claims and Encumbrances shall attach to the Proceeds and the Excluded Assets with the same priority as they had with respect to the New Common Shares and Retained Assets immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor’s Certificate, forthwith after delivery thereof in connection with the Transaction.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Company and the Purchaser regarding the fulfilment of conditions to closing under the SPA and shall have no liability with respect to delivery of the Monitor’s Certificate.

9. **THIS COURT ORDERS** that pursuant to section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Applicants or the Monitor, as the case may be, are authorized, permitted and directed to, at the Effective Time, disclose to the Purchaser all human resources and payroll information in the records of the Company and Swarmio Media pertaining to past and current employees of the Company and Swarmio Media. The Purchaser shall maintain and protect the privacy of such information in accordance with applicable law and shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Company and Swarmio Media.

10. **THIS COURT ORDERS AND DECLARES** that, at the Effective Time and without limiting the provisions of paragraph 5 hereof, the Purchaser, the Company and Swarmio Media shall be deemed released from any and all claims, liabilities (direct, indirect, absolute or contingent) or obligations with respect to any taxes (including penalties and interest thereon) of, or that relate to, the Applicants (provided as it relates to the Company and Swarmio Media, such release shall not apply to taxes in respect of the business and operations conducted by the Company and Swarmio Media after the Effective Time), including, without limiting the generality of the foregoing, all taxes that could be assessed against the Purchaser, the Company or Swarmio Media (including any predecessor corporations) pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), or any provincial equivalent, in connection with the Applicants, or to the Administrative Charge established under the Initial Order.

11. **THIS COURT ORDERS** that except to the extent expressly contemplated by the SPA, all contracts to which the Applicants are parties upon delivery of the Monitor's Certificate will be

and remain in full force and effect upon and following delivery of the Monitor's Certificate and no individual, firm, corporation, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") who is a party to any such arrangement may accelerate, terminate, rescind, refuse to perform or otherwise repudiate its obligations thereunder or enforce or exercise any right (including any right of set-off, dilution or other remedy) or make any demand under or in respect of any such arrangement and no automatic termination will have any validity or effect, by reason of:

- (a) any event that occurred on or prior to the delivery of the Monitor's Certificate and is not continuing that would have entitled such Person to enforce those rights or remedies (including defaults or events of default arising as a result of the insolvency of any Applicant);
- (b) the insolvency of any Applicant or the fact that the Applicants sought or obtained relief under the CCAA;
- (c) any compromises, releases, discharges, cancellations, transactions, arrangements, reorganizations or other steps taken or effected pursuant to the SPA, the Transaction or the provisions of this Order, or any other Order of the Court in these proceedings; or
- (d) any transfer or assignment, or any change of control of the Company or Swarmio Media arising from the implementation of the SPA, the Transaction or the provisions of this Order.

12. **THIS COURT ORDERS** that from and after the Effective Time, all Persons shall be deemed to have waived any and all defaults of the Company and Swarmio Media then existing or previously committed by any of the Applicants, or caused by the Applicants, directly or indirectly,

or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any Contract existing between such Person and the Company or Swarmio Media arising directly or indirectly from the filing of the Company or Swarmio Media under the CCAA and the implementation of the Transaction, including without limitation any of the matters or events listed in paragraph 11 hereof and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under a contract shall be deemed to have been rescinded and of no further force or effect, provided that nothing herein shall be deemed to excuse the Company from performing its obligations under the SPA or be a waiver of defaults by the Company under the SPA or related documents.

13. **THIS COURT ORDERS** that from and after the Effective Time, any and all Persons shall be and are hereby forever barred, estopped, stayed and enjoined from commencing, taking, applying for or issuing or continuing any and all steps or proceedings, whether directly, derivatively or otherwise, and including without limitation, administrative hearings and orders, declarations and assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Company or Swarmio Media relating in any way to or in respect of any Excluded Assets, Excluded Liabilities or Excluded Contracts and any other claims, obligations and other matters that are waived, released, expunged or discharged pursuant to this Order.

14. **THIS COURT ORDERS** that from and after the Effective Time:

- (a) the nature of the Assumed Liabilities retained by the Company or Swarmio Media, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of the Transaction or this Order;
- (b) the nature of the Excluded Liabilities, including, without limitation, their amount and their secured or unsecured status, shall not be affected or altered as a result of their transfer to ResidualCo;
- (c) any Person that prior to the Effective Time had a valid right or claim against the Company or Swarmio Media under or in respect of any Excluded Contract or Excluded Liability (each an “**Excluded Liability Claim**”) shall no longer have such right or claim against the Company or Swarmio Media but will have an equivalent Excluded Liability Claim against ResidualCo in respect of the Excluded Contract or Excluded Liability from and after the Effective Time in its place and stead, and nothing in this Order limits, lessens or extinguishes the Excluded Liability Claim of any Person as against ResidualCo; and
- (d) the Excluded Liability Claim of any Person against ResidualCo following the Effective Time shall have the same rights, priority and entitlement as such Excluded Liability Claim had against the Company or Swarmio Media prior to the Effective Time.

15. **THIS COURT ORDERS AND DECLARES** that, as of the Effective Time:

- (a) ResidualCo shall be a company to which the CCAA applies; and
- (b) ResidualCo shall be added as an Applicant in these CCAA proceedings and all references in any Order of this Court in respect of these CCAA proceedings to (i) an “Applicant” or the “Applicants” shall refer to and include ResidualCo, and (ii) “Property” shall include the current and future assets, licenses, undertakings and

properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, of ResidualCo (the “**ResidualCo Property**”), and, for greater certainty, each of the Charges (as defined in the Initial Order dated June 21, 2023, as amended and restated from time to time), shall constitute a charge on the ResidualCo Property.

16. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C 195, c. B-3, as amended (the “**BIA**”), in respect of the Applicants and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Applicants;

the SPA and the implementation of the Transaction (including without limitation the transfer and vesting of the Excluded Assets, Excluded Contracts and Excluded Liabilities in and to ResidualCo and the transfer and vesting of the New Common Shares and Retained Assets in and to the Purchaser) and any payments by or to the Purchaser, the Applicants or the Monitor authorized herein shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and/or ResidualCo and shall not be void or voidable by creditors of the Applicants or ResidualCo, as applicable, nor shall they constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the CCAA, the BIA or any other applicable federal or provincial legislation, nor shall they

constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

WAGE EARNER PROTECTION PROGRAM ACT

17. **THIS COURT ORDERS AND DECLARES** that pursuant to section 5(5) of the *Wage Earner Protection Program Act* (Canada), SC 2005, c 47, s 1 (“**WEPPA**”), the Applicants and their collective former employees meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and are individuals to whom the WEPPA applies as of the date of the Initial Order.

MONITOR’S ENHANCED POWERS

18. **THIS COURT ORDERS** that in addition to the powers and duties of the Monitor set out in the Amended and Restated Initial Order or any other Order of this Court in this CCAA proceeding, and without altering in any way the limitations and obligations of ResidualCo as a result of these proceedings, the Monitor be and is hereby authorized and empowered, but not required to:

- (a) take any and all actions and steps, and execute all documents and writings, on behalf of, and in the name of ResidualCo in order to facilitate the performance of any ongoing obligations of ResidualCo, including with respect to any Excluded Liability Claim, and to carry out the Monitor’s duties under this Order or any other Order of this Court in the within CCAA proceeding;

- (b) exercise any powers which may be properly exercised by a board of directors of ResidualCo;
- (c) cause ResidualCo to retain the services of any person as an employee, consultant, or other similar capacity all under the supervision and direction of the Monitor and on the terms as agreed with the Monitor;
- (d) open one or more new accounts (the “**ResidualCo Accounts**”) into which all funds, monies, cheques, instruments and other forms of payment payable to ResidualCo shall be deposited from and after the making of this Order from any source whatsoever and to operate and control, as applicable, on behalf of ResidualCo, the ResidualCo Accounts in such manner as the Monitor, in its sole discretion, deems necessary or appropriate to assist with the exercise of the Monitor’s powers and duties;
- (e) cause ResidualCo to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down of ResidualCo or the distribution of the proceeds of the ResidualCo Property or any other related activities, including in connection with bringing the within CCAA proceeding to an end;
- (f) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of ResidualCo in the name of or on behalf of ResidualCo;
- (g) claim or cause ResidualCo to claim any and all insurance refunds or tax refunds, including refunds of harmonized sales taxes, to which ResidualCo is entitled;

- (h) have access to all books and records that are the property of ResidualCo in ResidualCo's possession or control in addition to the Applicant's books and records in accordance with the terms of the SPA;
- (i) assign ResidualCo, or cause ResidualCo to be assigned, into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof; and
- (j) apply to this Court for advice and directions or any orders necessary or advisable to carry out its powers and obligations under this Order or any other Order granted by this Court including for advice and directions with respect to any matter.

GENERAL

19. **THIS COURT ORDERS** that, following the Effective Time, the Purchaser and its representatives shall be authorized to take all steps as may be necessary to effect the discharge of the Claims and Encumbrances as against the New Common Shares and the Retained Assets.

20. **THIS COURT ORDERS** Swarmio Media Holdings to change its legal name to a numbered company prior to the Effective Time.

21. **THIS COURT ORDERS** that, following the Effective Time, neither Swarmio Media Holdings nor ResidualCo shall be entitled to use the name "Swarmio".

22. **THIS COURT ORDERS** that, following the Effective Time, the title of these proceedings is hereby changed to:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
1283332 B.C. LTD, AND 15280362 CANADA INC.

SEALING ORDER

23. **THIS COURT ORDERS** that the Confidential Appendices to the Monitor's Second Report shall be kept sealed and confidential and shall not form part of the public record, until closing of the Transaction or until further order of the Court.

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Applicants, 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 Applicants 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 Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that each of the Applicants 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.

26. **THIS COURT ORDERS** that this Order is effective from the date that it is made and is enforceable without any need for entry and filing.

SCHEDULE “A” – FORM OF MONITOR’S CERTIFICATE

IN THE MATTER OF THE *COMPANIES’ CREDITORS ARRANGEMENT ACT*,
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Applicants

RECITALS

A. Pursuant to the Amended and Restated Initial Order of the Honourable Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List), dated June 30, 2023, as (the **“Amended and Restated Initial Order”**) the Applicants were granted protection from their creditors pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Grant Thornton Limited was appointed as the monitor (**“Monitor”**) of the Applicants.

B. Pursuant to the Approval and Vesting Order of the Court, dated August 25, 2023 (the **“Order”**), the court approved the transaction (the **“Transaction”**) contemplated by the Share Purchase Agreement dated August 4, 2023 (the **“SPA”**), between Swarmio Inc. (the **“Company”**), and Triaxcess Limited (the **“Purchaser”**) and ordered, *inter alia*, that (i) all of the Company’s and Swarmio Media Inc.’s (**“Swarmio Media”**) right, title and interest in and to the Excluded Assets shall vest absolutely and exclusively in 15280362 Canada Inc. (**“ResidualCo”**); (ii) all of the Excluded Contracts and Excluded Liabilities shall be transferred to and assumed by and vest in ResidualCo; (iii) all of the right, title and interest in and to the New Common Shares and the Retained Assets shall vest absolutely and exclusively in the Purchaser, which vesting is, in each

case, to be effective upon the delivery by the Monitor to the Purchaser of a certificate confirming that the Monitor has received written confirmation in the form and substance satisfactory to the Monitor from the Purchaser and the Company that all conditions to closing have been satisfied or waived by the parties to the SPA.

C. Capitalized terms not defined herein shall have the meaning given to them in the Order.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Purchaser and from the Company, in form and substance satisfactory to the Monitor, that all conditions to closing have been satisfied or waived by the parties to the SPA.
2. This Monitor's certificate was delivered by the Monitor at _____ on _____, 2023.

**Grant Thornton Limited, in its capacity as
Monitor of the Applicants, and not in its personal
capacity.**

Per: _____
Name:
Title:

SCHEDULE “B”

ENCUMBRANCES

1. Business Development Bank of Canada
Registration Number: 27424787
Renewal: 28545358
Amendment: 33912635
File number: 123168
2. Royal Bank of Canada
Registration Number: 20151009 1954 1531 8865
File number: 710776998

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SWARMIO MEDIA HOLDINGS INC., SWARMIO INC., AND SWARMIO MEDIA INC.**

Court File No.: CV-23-00701377-00CL

Applicants

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

Proceeding commenced at TORONTO

APPROVAL AND VESTING ORDER

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