

IN THE HIGH COURT OF JUSTICE  
THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES  
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF:

NORTEL NETWORKS (IRELAND) LIMITED

No. 541 of 2009 / CR-2009-000047

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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FOURTH WITNESS STATEMENT  
OF  
DAVID MARTIN HUGHES

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I, **DAVID MARTIN HUGHES** of Ernst & Young Chartered Accountants, Harcourt Centre, Harcourt Street, Dublin 2, Ireland, **DO STATE** as follows:

**INTRODUCTION**

1. I am a licensed insolvency practitioner and former partner in the firm of Ernst & Young ("**EY**"). I was appointed as a joint administrator of Nortel Networks (Ireland) Limited (the "**Company**") on 14 January 2009 together with Alan Robert Bloom of EY pursuant to the Order of Mr Justice Blackburne (the "**Joint Administrators**"). A copy of this Order is at **[1/1]** of DMH4.
2. The Company is also subject to a company voluntary arrangement ("**CVA**"). I was appointed as a supervisor of the Company's CVA, together with Mr Bloom (the "**Supervisors**"). Where I use the term "**Nominees**" I am referring collectively to myself and Mr Bloom during the period of time before the CVA was approved.
3. References to the "**Insolvency Act**" are to the Insolvency Act 1986 (as amended) and, unless otherwise stated, references to a "**Rule**" or "**Rules**" are to the Insolvency (England & Wales) Rules 2016.

4. This witness statement has been prepared over the telephone and by exchange of drafts by email with the assistance of Herbert Smith Freehills LLP (the Joint Administrators' English law legal advisers) ("**HSF**"), William Fry (the Joint Administrators' Irish law legal advisers) ("**WF**"), the relevant EY staff, and tax advisers. Save where I indicate to the contrary, the facts contained in this witness statement are within my own knowledge and are true. Where the facts stated are not within my own knowledge, I have identified my sources of information and/or belief. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.
5. Nothing in this witness statement is intended, nor should be taken, as a waiver of privilege in relation to matters dealt with in this witness statement.
6. There is now produced and shown to me an electronic bundle of documents marked "**DMH4**" to which I shall refer in this witness statement. References in this document to exhibits are in the form **[Tab/Page]**. The schedules to this statement (the "**Schedules**") set out the detail of the Joint Administrators' remuneration and Supervisors' remuneration for which the Court's approval is sought. The Schedules are explained in detail at Section O (*An explanation of the Schedules*) at paragraphs 117 to 127 below.

#### **STRUCTURE OF THIS WITNESS STATEMENT**

7. This witness statement is divided into the following sections:
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**A. OVERVIEW**

8. I am duly authorised to make this witness statement on behalf of the Joint Administrators in support of their application (the “**Application**”) for an Order in the form set out in the draft order, being that:
- 8.1 the appointment of the Joint Administrators in respect of the Company shall cease to have effect pursuant to paragraph 79(1) of Schedule B1 of the Insolvency Act from the time of the passing of a shareholder resolution of the Company to liquidate the Company in accordance with Irish law;
  - 8.2 the Joint Administrators be discharged from liability pursuant to paragraph 98 of Schedule B1 to the Insolvency Act with effect from 28 days after the date on which their appointment has been terminated in accordance with paragraph 8.1 above;
  - 8.3 if the shareholder resolution required to liquidate the Company (as referred to in paragraph 8.1 above) is not passed within 60 days of the date of the Order the matter be re-listed for hearing within 14 days;
  - 8.4 the Joint Administrators' remuneration in relation to the Administration for the periods from:
    - 8.4.1 30 June 2018, being the day after the date of the last approval by the Company's creditors' committee (the “**Committee**”), to 4 September 2020 (“**Period 1**”) be fixed by reference to time properly given by the Joint Administrators and their staff in the amount of £1,917,113.45; and
    - 8.4.2 5 September 2020 to the termination of the Joint Administrators' appointment (“**Period 2**”) be fixed by reference to forecast time costs of the Joint Administrators and their staff and subject to a cap of £167,863.75;
  - 8.5 the balance of the Supervisors' fees in respect of the CVA for the periods from:
    - 8.5.1 30 June 2018, being the day after the date of the last approval by the Committee, to 4 September 2020 (“**CVA Period 1**”) be approved and paid to the Supervisors in the amount of £498,863.56; and
    - 8.5.2 5 September 2020 to the termination of the CVA (“**CVA Period 2**”) be fixed by reference to forecast time costs of the Supervisors and their staff and subject to a cap of £178,990.00;

8.6 the Administration be extended pursuant to paragraph 76(2)(a) of Schedule B1 to the Insolvency Act for a period of three months so as to expire at 12:01pm on 13 April 2021; and

8.7 the costs of and incidental to the Application be paid as expenses of the administration of the Company.

9. The table below provides a summary of the quantum of the Joint Administrators' remuneration and the Supervisors' remuneration for which the Court's approval is sought in the present Application (including, insofar as the remuneration is concerned for Period 1 and CVA Period 1, as detailed in paragraphs 90 and 91 below, and insofar as the remuneration is concerned for Period 2 and CVA Period 2, both time costs which have already been incurred and time costs which are forecast to be incurred).

| Administration                                 |   | CVA  |   | Total         |
|--|---|--|---|---------------|
| Period 1<br>(30 June 2018 to 4 September 2020) | Period 2<br>(5 September 2020 to termination) | CVA Period 1<br>(30 June 2018 to 4 September 2020) | CVA Period 2<br>(5 September 2020 to termination) |               |
| £1,917,113.45                                  | £167,863.75                                   | £498,863.56  | £178,990.00                                       | £2,762,830.76 |

## B. BACKGROUND TO THE NORTEL GROUP INSOLVENCY

10. The Nortel group (the "**Group**") was a global supplier of networking solutions (i.e. telecommunications, computer networks and software) serving customers in Canada, the US, the Caribbean, Latin America, Asia and Europe, the Middle East and Africa ("**EMEA**").

11. In particular, the Company was involved in the research and development of networking solutions. The Company's involvement in research and development is one (albeit not the primary) basis on which the Joint Administrators were able to recover a significant refund from the double tax relief in relation, in part, to this prior research and development work as further detailed in paragraph 18 below.

12. On 14 January 2009 in a series of coordinated filings:

12.1 Nortel Networks Corporation (the ultimate holding company for the Nortel group) together with certain Canadian subsidiaries (collectively, the "**Canadian Debtors**"), sought protection under the Companies' Creditors Arrangement Act;

12.2 Nortel Networks Inc. (the primary US Nortel operating company) together with certain US subsidiaries (collectively, the "**US Debtors**"), filed voluntary petitions in the US Bankruptcy Court pursuant to Chapter 11 of the US Bankruptcy Code; and

12.3 the Company, Nortel Networks UK Limited ("**NNUK**") and a number of other companies in the Nortel EMEA group (collectively, the "**EMEA Debtors**") were placed into administration by Orders of Mr Justice Blackburne and the Joint Administrators were appointed. The administration of the Company (the "**Administration**") is a main insolvency proceeding as defined in Article 3(1) of the

Council Regulation (EC) on Insolvency Proceedings 2000 (No 1346/2000) (the “**EC Insolvency Regulation**”).

- 12.4 A simplified corporate structure chart of the Group is at [2/9] of DMH4.
- 12.5 Nortel Networks (Ireland) Limited is a wholly owned subsidiary of Nortel Networks Limited (a Canadian entity) (“**Nortel Canada**”).
- 13. The Joint Administrators set out their approach for achieving the statutory purpose of administration for the Company in their statement of proposals in February 2009 (the “**Statement of Proposals**”). This Statement of Proposals was approved by the Company’s creditors at a meeting held on 13 March 2009. A copy of the Statement of Proposals is at [3/10] of DMH4. As the Joint Administrators explained in the Statement of Proposals, the proposals were:
  - 13.1 to trade and continue to manage the Company’s businesses during the period of the administration whilst exploring possibilities for a global restructuring of the Nortel business and/or a global sale of all or part of the Nortel business;
  - 13.2 to determine if it was still possible to rescue the Company as a going concern and/or achieve a sale of all or part of the Company’s businesses; and
  - 13.3 failing a global restructuring and/or a global sale, to achieve a better result for the Company’s creditors as a whole than would be likely if the Company were wound up, by seeking to realise the best price for the business and/or assets of the Company as was obtainable in the circumstances, and then to take steps to enable the Company’s assets to be distributed to its creditors.

#### **Trading following the Joint Administrators’ appointment and business sales**

- 14. The Joint Administrators continued to trade the EMEA Debtors, including the Company, following their appointment. The continued trading helped to ensure that the assets of the EMEA Debtors were not unduly dissipated and to maximise the value of the business for the Company’s creditors.
- 15. To assist them in the continuation of trading, the Joint Administrators initially retained all employees of the EMEA Debtors. Some of these employees, particularly in the EMEA accounting function based primarily in England and the Republic of Ireland, have continued to assist in the Administration more generally following the sales of the Group’s business lines as part of the EMEA Debtors’ accounting and office functions, and with the building and maintaining of essential IT platforms, including the Nortel EMEA Administration proceedings website at <http://www.emeanortel.com> (the “**Nortel EMEA Website**”).
- 16. The Administration proceeded successfully and various sales of the Group’s business lines were concluded in 2010 in pursuit of the Joint Administrators’ proposal to achieve a better result for creditors of the Company as a whole than would be likely if the Company were wound up. The sales of the business lines and intellectual property resulted in total global realisations of approximately US\$7.3 billion (net of certain costs) (the “**Sale Proceeds**”).

## **Enterprise Sale**

17. The sales referred to in paragraph 16 above included the sale of the Company's "Enterprise" business in December 2009 (the "**Enterprise Sale**"), which was a milestone in the Administration of the Company. During the sale process, the purchaser of the Enterprise business indicated an initial wish to take on 17 employees from the Company in connection with the purchase. Following negotiations with the Joint Administrators, the purchaser sent representatives to Galway to review the Company's operations and software in action. Following this review, it became evident to the purchaser that the Galway operation was a key resource and that the software developed by staff was very advanced. This led to the purchaser agreeing to take on all staff who worked on the Enterprise business. This accounted for 270 employees out of a total of 353 employees at the Company. A total of 17 employees also transferred with other businesses once such businesses were sold. In connection with the transfer of the 270 employees with the Enterprise business, the purchaser also assumed substantial liabilities associated with these staff, which liabilities would otherwise have remained with the Company. The Joint Administrators would otherwise likely have had to make the vast majority, if not all, of these members of staff redundant shortly after the sale was completed. Substantial liabilities associated with transferring staff which were assumed by the purchaser included approximately €1.03 million in basic statutory redundancy payments (net of Government refunds), €1.31 million in payments in lieu of notice and approximately €13.37 million in extra-statutory redundancy payments to employees. In view of the large number of staff being retained by the purchaser of the Enterprise business the purchaser leased premises from the Company for a period of twelve months. In that time, the Joint Administrators negotiated with the purchaser to transfer the lease of the property, along with associated liabilities of approximately €8.1 million. The Enterprise Sale removed these aforementioned liabilities from the Company, making available to the Company approximately an additional €23.8 million for distribution to other creditors (following deduction of relevant costs).

## **Tax credits**

18. In another action benefiting creditors, the Joint Administrators obtained tax credits of €5,805,864 in aggregate from the Irish Revenue Commissioners (the "**Irish Revenue**") in 2011 in connection with, in part, research and development work carried out by the Company from 2004 to 2009. The Joint Administrators identified the clear potential for this relief early in the Administration in 2009 and prepared the relevant application to the Irish Revenue requesting this relief. There were many meetings with Irish Revenue officials in Galway who carried out an audit of the supporting documentation for the application. Relief was given by way of deduction from liabilities to corporation tax incurred between 2007 and 2008 in the amount of €896,123, a sum of €1,200,000 was refunded in 2011 and the balance of €3,709,741 was applied against liabilities for 2009 once these liabilities were ultimately

crystallised in the settlement reached with Irish Revenue in December 2019 (as further detailed in paragraph 28 below).

## **C. RECENT PROGRESS IN THE ADMINISTRATION**

### **Allocation Dispute and Global Settlement**

19. A dispute in relation to the Sale Proceeds between the EMEA Debtors, the US Debtors and the Canadian Debtors, among other creditor constituencies was the subject of proceedings before the US and Canadian Courts (the “**Allocation Dispute**”). On 12 October 2016, the various parties to the Allocation Dispute entered into a number of settlement agreements comprising the “**Global Settlement**” including: (a) the “**Settlement and Plans Support Agreement**” between (inter alia) the US Debtors, the Canadian Debtors and the Company (a copy of which is at [4/38] of DMH4); (b) the “**UKPI Settlement Deed**” between (inter alia) the Company and the UK Pension Interests – being the Pension Trustee of the NNUK Pension Scheme and the Board of the Pension Protection Fund (“**UKPI**”), a copy of which is at [5/183] of DMH4; and (c) the “**Deed of Release**” between (inter alia) the Company and the UK Pension Interests, a copy of which is at [6/241] of DMH4.
20. Mr Justice Snowden made an Order granting the Joint Administrators liberty to perform and to procure the Company to perform the Global Settlement on 3 November 2016 ([7/286] of DMH4). The judgment given by Mr Justice Snowden is provided at [8/289] of DMH4.
21. The Global Settlement became effective on 8 May 2017 and the Company received the allocation of Sale Proceeds agreed as part of the Global Settlement in May 2017. Ultimately, the EMEA Debtors recovered around US\$1.35 billion of Sale Proceeds for distribution to creditors. The Company received approximately US\$39.8 million, which, after deducting relevant costs and together with the residual cash and other assets held by the Company, was available for distribution to the Company’s creditors.

### **The CVA**

22. Having been granted liberty to promulgate a CVA in respect of the Company by the Order of Mr Justice Snowden dated 23 July 2015 (a copy of which is at [9/309] of DMH4), on 28 April 2017, the Joint Administrators proposed a CVA to the creditors of the Company. A copy of the proposals for the Company’s CVA is at [10/314] of DMH4.
23. At meetings held in Dublin on 2 June 2017, the proposed CVA was approved unanimously without modification by the Company’s creditors and sole member. I have provided a copy of the Chairman’s report and the Notice of Effective Date (which was sent to creditors and posted on the Nortel EMEA Website) at [11/469] and [12/476] of DMH4.
24. Creditors were required to submit claims to the Supervisors by 5 October 2017 to rank for payment under the terms of the CVA (the “**CVA Bar Date**”).

### **Distributions to expense creditors and tax**

25. On 9 June 2017, Mr Justice Snowden made an Order granting the Joint Administrators directions whereby the Joint Administrators were to inform potential claimants that any claims which were asserted to rank as administration expenses under English law must be notified to the Joint Administrators on a prescribed form (the “**Demand Form**”) on or before a specified date (the “**Expense Bar Date**”). The Expense Bar Date was set for 27 October 2017 in the case of the Company. A copy of the Order made by Mr Justice Snowden is provided at [13/477] of DMH4 and the judgment given by Mr Justice Snowden is provided at [14/487] of DMH4.
26. The Joint Administrators sent explanatory letters and Demand Forms in accordance with the terms of the Order.
27. From August 2017, the Joint Administrators and the Irish Revenue were engaged in discussions regarding a refund for an overpayment of corporation tax by the Company relating to the years 2009 to 2016. This followed the Company being able to resubmit its 2009 to 2016 corporate tax returns in July 2017 with details of the actual amount received from the Sale Proceeds, rather than the higher estimated figures which had been submitted previously and which had resulted in an overpayment of tax by the Company. The Irish Revenue raised a considerable number of queries in respect of the revised tax returns, to which the Joint Administrators provided detailed responses. The vast majority of the queries raised focussed on technical aspects of the computations but some queries dealt with the fundamental treatment of items for tax purposes. In order to respond to the queries, the Joint Administrators had to liaise closely with their tax and legal advisors in the US, the UK and the Republic of Ireland. Given the magnitude of the overpayment in question, the Joint Administrators understand that their responses were scrutinised at several senior levels within the Irish Revenue, which often led to follow-on queries from the Irish Revenue and ultimately prolonged the process. While in discussions with the Irish Revenue from August 2017 to December 2019, the Joint Administrators prepared detailed analysis of the potential scenarios for how the overpayment might be resolved and the impact of each scenario on the Administration, both for internal purposes and to update the Committee. This analysis covered alternatives available for the Joint Administrators should the Irish Revenue not agree to refund the overpayment, including pursuing an appeals process with the Irish Revenue.
28. The Joint Administrators' efforts resulted in an agreement being reached with the Irish Revenue and the Company received payment of €6,693,572.44 on 16 December 2019 from the Irish Revenue into a Euro bank account in the name of the Company (the “**Tax Refund**”). The Joint Administrators incurred approximately £700,000 in total costs to obtain the Tax Refund, and consider such costs in all respects proportionate given the ultimate quantum of the Tax Refund as received by the Company on 16 December 2019.
29. The Joint Administrators also incurred time costs in preparing and submitting tax returns relating to years 2017 and 2018. The Joint Administrators had to ensure that these tax



returns were aligned with the ongoing discussions with the Irish Revenue and filed by the requisite dates so as to avoid any interest or other penalties arising.

### **Distributions to creditors of the Company**

30. The recoveries made by the Joint Administrators early in the Administration, through the Global Settlement following the business and intellectual property sales and more recently from the Irish Revenue has allowed for all creditors to be paid in full together with a substantial element of interest at a rate of 5.2% per annum for the period since the start of the Administration under the terms of the CVA ("**Commercial Interest**").
31. All claims submitted to the Supervisors have been adjudicated and all creditors with unsecured claims whose claims have been admitted by the Supervisors as "**Allowed Claims**", have been paid the principal of their claims in full.
32. I now provide a summary of the claims received by the Supervisors and the distributions made to creditors of the Company.
33. The Supervisors adjudicated 145 claims received before the CVA Bar Date. The total value of claims received by the Supervisors amounted to £2,236,109,711.04 (including a significant contingent claim submitted by the UK Pension Regulator). Claims to the value of £62,697,852.56 have been admitted by the Supervisors and £2,173,411,858.48 rejected. The realisations made by the Joint Administrators were sufficient to make payment in full to creditors with Allowed Claims. The total entitlement of accrued Commercial Interest payable to creditors with Allowed Claims under the terms of the CVA was calculated to be £29,640,954.10.
34. An initial distribution of 90p in the pound was made on 16 March 2018, a second interim distribution of 10p in the pound was made on 17 August 2018, a third interim distribution of 16.6p in the pound of the accrued Commercial Interest was made on 21 March 2019 and a fourth interim distribution of 20p in the pound of the accrued Commercial Interest was made on 15 July 2020 in Sterling and (following modification of the CVA as detailed in paragraphs 36 and 37 below) 17 July 2020 in Euro.
35. The Supervisors paid a final distribution of 4.23p in the pound of the accrued Commercial Interest on 5 November 2020 in Euro. The Supervisors gave notice of the final distribution to creditors on 6 October 2020 (a copy of which is at [15/509] of DMH4) by way of the Nortel EMEA Website in accordance with clause 24.4 of the CVA. This final distribution brings the total value of Commercial Interest paid to creditors to 40.83p in the pound of the total entitlement to Commercial Interest amounting to £12,102,401.56, such that a theoretical amount of £17,538,552.54 of Commercial Interest would need to be paid before any return could be made to the Company's shareholder, Nortel Canada.

### **Modification of the CVA**

36. Clause 16 of the terms of the CVA provides that all distributions made by the Supervisors shall be paid in Sterling. Absent any modification of the terms of the CVA, the Supervisors would have been obliged to convert the Tax Refund into Sterling for distribution. This could potentially have created a tax liability that could have reduced the value of the Tax Refund available and could also have given rise to foreign currency exchange risk.
37. The Administrators used abilities granted to them under the terms of the CVA to modify the terms of the CVA to allow the Supervisors to make a fourth distribution and a final distribution in Euro without the risk of the assets of the Company being reduced by foreign exchange risk and/or tax risk. The modification provided that all distributions made by the Supervisors following the modification should be paid in Euro. A copy of the Notice of Modification of the CVA which includes the terms of the CVA as modified is at [16/510] of DMH4.

### **Employees**

38. Four employees (the “**Remaining Employees**”) have been retained by the Company to provide assistance with the Administration, but are primarily assisting with the closure of other companies in the wider group with the associated costs being recharged to the relevant entity in the Nortel EMEA group. Costs associated with the Remaining Employees have included payroll, rent and utilities costs, which were covered by amounts drawn under the Funding Agreement (as detailed in paragraph 40 below).
39. The Remaining Employees had redundancy/ex gratia contingent claims into the Company, for which the quantum is calculated by reference to the length of service of the Remaining Employees. The Joint Administrators had agreed with the Remaining Employees that the employment of the Remaining Employees shall terminate on or before 31 December 2020 so that they can continue providing certain financial and administrative services. The Supervisors have adjudicated the claims of the Remaining Employees on the basis of the Remaining Employees becoming redundant, and have paid a final distribution to the Remaining Employees. As such, the Supervisors have paid the Remaining Employees amounts in respect of their ex gratia claims in advance of them actually becoming redundant.

### **Funding agreement with NNUK**

40. In the normal course and in line with clause 35.1.3 of the terms of the CVA, the Supervisors would have hoped to terminate the employment contracts of the Remaining Employees in July 2020 and sought to terminate the CVA and Administration shortly thereafter. However, as the employing entity to the Remaining Employees, it was requested by NNUK and other EMEA Debtors that the Company continue to provide certain financial and administration services for NNUK and other EMEA Debtors for a short period. Termination of the CVA and Administration was postponed for that short period so that the Company could provide these services while retaining the ability to deal with any claims and payments due to creditors under the CVA. In consideration for the Company providing these services, NNUK agreed to

fund administration expenses of the Company under a funding agreement dated 16 July 2020 (the “**Funding Agreement**”) such that the Company’s creditors were no worse off than if the employees had been made redundant earlier in 2020 and the CVA and Administration terminated thereafter. Pursuant to the Funding Agreement, the Company withheld an amount of €745,580 due to NNUK in the fourth distribution as a reserve for the purposes of meeting such administration expenses and agreed to pay the unutilised balance of the withheld amount to NNUK once the services were no longer required. The Funding Agreement is being used solely to fund operating overheads of the Company, including rent, payroll of the Remaining Employees, light and heat, and insurance costs. A copy of the Funding Agreement is at [17/560] of DMH4. The Joint Administrators will return any unutilised funds to NNUK as part of the withheld amount under the Funding Agreement.

#### **Termination of the CVA and work towards termination of the Administration**

41. The Company has no further claims to adjudicate and paid a final distribution to unsecured creditors on 5 November 2020 and, by way of a catch-up payment to the Remaining Employees, on 10 November 2020. With no further assets of the Company to distribute, the Supervisors intend to terminate the CVA as soon as possible, after allowing sufficient time for a small number of CVA Creditors to receive and cash cheques sent to them in the final distribution. A draft Notice of Termination is exhibited at [18/569] of DMH4. In the event that there are any surplus assets of the Company following the final distribution, then (provided the relief sought in this Application is granted) such surplus would be passed to liquidators to be dealt with as assets of the Company in accordance with Irish law.
42. Following consideration of Irish and English legal and tax advice, the Joint Administrators have determined that a liquidation of the Company in accordance with Irish law is the most appropriate solution to dissolve the Company and have taken steps to prepare for the same.

#### **Brexit**

43. The Administration shall remain the main proceedings, at least for so long as the EC Insolvency Regulation and the Regulation (EC) on Insolvency Proceedings 2015 (2015/848) (the “**Recast Regulation**”) remain in force in this jurisdiction.
44. On 29 March 2017, HM Government gave notice to the European Council of the United Kingdom's intention to withdraw from the European Union in accordance with Article 50(2) of the Treaty on European Union (the “**Treaty**”). In accordance with Article 50(3) of the Treaty, the Treaty and the Treaty on the Functioning of the European Union shall cease to apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years from the date of the notification.
45. On 19 October 2019, HM Government issued a draft withdrawal agreement between the United Kingdom and the European Union (the “**Draft Withdrawal Agreement**”). The Draft Withdrawal Agreement was ratified and entered into force on 31 January 2020 (the

**“Withdrawal Agreement”**) on which date the United Kingdom left the European Union. Article 126 of the Withdrawal Agreement provides for a transition period, from 31 January 2020 and expiring on 31 December 2020. During the transition period the United Kingdom and the European Union have continued with their existing relationship leaving existing laws to apply as before. Article 67(3)(c) of the Withdrawal Agreement sets out that the Recast Regulation shall apply to insolvency proceedings provided that the main proceedings were opened before the end of the transition period. Section 13 of the European Union (Withdrawal) Act 2018 requires that a final withdrawal agreement be approved by the House of Commons.

46. The Joint Administrators have been advised that the Administration of the Company had already been recognised in the Republic of Ireland pursuant to Article 16(1) of the EC Insolvency Regulation. Absent any new provision of EU or Irish law to remove recognition from proceedings commenced before 31 December 2020, the Administration should continue to be recognised in the Republic of Ireland without further formality for the short period in January 2021 before the Joint Administrators' appointment is terminated.
47. However, if after 31 December 2020 it becomes uncertain how the EC Insolvency Regulation will apply to the Administration and it becomes apparent that some form of recognition or other action is required to conclude the Administration then the Joint Administrators will seek such remedy from the Irish courts as is necessary to best coordinate the completion of the Administration. If necessary in such circumstances, the Joint Administrators will also apply for directions to this Court if it appears that the Administration cannot be terminated. The Joint Administrators are advised that any such application is extremely unlikely to be necessary.

#### **D. REPORTING**

##### **Reporting on the progress of the Administration**

48. Following their appointment, the Joint Administrators have periodically informed creditors of the progress of the Administration. The Joint Administrators have prepared progress reports for the Company on a six-monthly basis since the beginning of the Administration (the **“Progress Reports”**). Since my third witness statement in these proceedings, dated 21 November 2019 (**“DMH3”**) and made in support of the Joint Administrators' application to extend the Administration of the Company (**[19/570]** of DMH4), the Joint Administrators have prepared Progress Reports for the Company for the period 14 July 2019 to 13 January 2020 and 14 January 2020 to 13 July 2020, dated 11 February 2020 and 13 August 2020 respectively, copies of which are at **[20/573]** and **[20/592]** of DMH4.
49. Rule 3.57(1)(a) requires the Joint Administrators to provide the Court with a report on the progress of the Administration since the last Progress Report. Accordingly, for the purposes of the Application, the Joint Administrators have prepared an interim progress report

summarising the progress for the Company covering the period from 14 July 2020 to 12 November 2020 (the “**Supplemental Progress Report**”) (at [21/610] of DMH4). Owing to the complex nature of the EMEA Debtors’ internal accounting systems, production of receipts and payments accounts required by Rule 18.3(1)(e) is an expensive and time-consuming process. In light of this and to minimise expense to the Company, the receipts and payments accounts which accompany the Supplemental Progress Report are reproduced from the most recent Progress Report dated 13 August 2020.

#### **Reporting on the progress of the CVA**

50. The Supervisors periodically informed creditors of the progress of the CVA by way of annual progress reports (“**CVA Reports**”) in accordance with Rule 2.41(4) and, following the termination of the CVA, a final report (“**Final CVA Report**”) will be provided in accordance with Rule 2.44(2).
51. The Supervisors have prepared CVA Reports dated 1 August 2018 (at [22/619] of DMH4), 19 July 2019 (at [22/625] of DMH4), and 29 July 2020 (at [22/631] of DMH4).

#### **E. EXITING THE ADMINISTRATION**

##### **Achievement of the purpose of the Administration**

52. Having adjudicated all claims and paid a final distribution to creditors, being in the process of completing final administrative matters prior to terminating the CVA, and having taken steps to prepare for the liquidation of the Company, the Joint Administrators are of the view that the purposes of the Administration have been sufficiently achieved.
53. Overall, the Joint Administrators wish to record their satisfaction with the outcome of the Administration, which includes a period of successful trading, a number of unique and complex international business sales, and ultimately (and most importantly) the payment of principal in full and a substantial percentage (i.e. 40.83%) of Commercial Interest to all creditors. In addition, the Joint Administrators are satisfied that the Allocation Dispute was appropriately resolved by way of settlement and the Company’s tax and accounting positions finalised such that the Joint Administrators are now in a position to place the Company in liquidation in accordance with Irish law at the appropriate time.
54. The Joint Administrators have certain administrative tasks that they will need to attend to and prepare to hand over to the liquidators before the liquidation of the Company is commenced. These include filing final tax returns (including in respect of payroll, corporation tax and withholding tax) and matters relating to property, pensions, books and records, and insurance.

##### **The form of this Application**

55. I am advised that the joint administrators of a number of other EMEA Debtors have made very similar applications (the “**Discharge Applications**”) to the present application:

- 55.1 in August 2018, in respect of six EMEA Debtors (the “**Batch One Entities**”), supported by Stephen Harris’s eighth witness statement dated 8 August 2018, a copy of which is at [23/637] of DMH4;
  - 55.2 in April 2019, in respect of three other EMEA Debtors (the “**Batch Two Entities**”), supported by Mr Harris’s eleventh witness statement dated 15 April 2019, a copy of which is at [23/690] of DMH4;
  - 55.3 in August 2019 in respect of Nortel Networks France S.A.S. (“**NNF**”), supported by Mr Harris’s fourteenth witness statement dated 22 August 2019 (“**Harris 14**”) a copy of which is at [23/734] of DMH4;
  - 55.4 in April 2020 in respect of four other EMEA Debtors (the “**Batch Three Entities**”), supported by Mr Harris’s eighteenth and nineteenth witness statements dated 7 April 2020, copies of which are at [23/788] and [23/836] of DMH4; and
  - 55.5 in August 2020 in respect of Nortel Networks Sp. z o.o. (“**Nortel Poland**”) supported by Mr Harris’s twentieth witness statement dated 7 August 2020, a copy of which is at [23/865] of DMH4.
56. On all five occasions, Mr Justice Snowden granted Orders that the joint administrators’ appointments terminate on the commencement of the relevant local liquidation or dissolution process. Copies of the Orders and Mr Justice Snowden’s judgment (where available) are exhibited in DMH4, in respect of:
- 56.1 the Batch One Entities at [24/905], [24/908], [24/911], [24/914], [24/917], [24/920] and [24/923];
  - 56.2 the Batch Two Entities at [25/933], [25/935], [25/937] and [25/939];
  - 56.3 NNF at [26/951] and [26/955];
  - 56.4 the Batch Three Entities at [27/967], [27/969], [27/971] and [27/973]; and
  - 56.5 Nortel Poland at [28/975].
57. The Joint Administrators believe that the Discharge Application process has worked well and the transition from English law administrations to local law dissolution processes has been as smooth as could have been expected in the circumstances. Therefore, having taken Irish legal and tax advice as to the suitability of this approach for the Company, the Joint Administrators propose to take a similar approach.

#### **Timeline to termination of the Administration**

58. The terms of the draft order provide that the termination of the Joint Administrators’ appointment is conditional on the Company’s shareholder resolving to place the Company into liquidation in accordance with Irish law. This is because the Joint Administrators do not consider it appropriate for the Company to be handed back to the control of the directors in circumstances where the only task is to place the Company into an Irish liquidation process. Having managed the business and affairs of the Company for over eleven years, the Joint

Administrators should, in all material respects, bear the responsibility of placing the Company into liquidation.

59. The Joint Administrators are mindful that the trigger for the termination of their appointment should be satisfied within a specified time. Given the relative simplicity of the liquidation process, the Joint Administrators consider that a period of 60 days is appropriate. Should the liquidation of the Company not have commenced within the period specified, the draft order requires that the Joint Administrators return to this Court for further directions.
60. The Joint Administrators' terms of office expire at 12:01pm on 13 January 2021, pursuant to an Order of Mr Justice Snowden dated 17 December 2019, a copy of which is at [29/977] of DMH4. Although the Joint Administrators anticipate that the Administration will be terminated prior to 12:01pm on 13 January 2021 pursuant to the relief sought by the Application (should that relief be granted), so as to allow for any unanticipated circumstance which might result in delay in the passing of the shareholder resolution to place the Company in liquidation or delay otherwise in the termination of the Administration (for example, as a result of recognition issues following the end of the Brexit transitional period), the Joint Administrators consider it prudent to request a short extension for a period of three months for the Administration.

#### **F. NOTICE OF THE APPLICATION**

61. I confirm that, in accordance with Rule 3.57(2), all admitted creditors of the Company were given notice on 5 November 2020, by way of the Nortel EMEA Website, of the Application by the Joint Administrators to exit the Administration and to be discharged from their liability. A copy of this notice is provided at [30/979] of DMH4. Noting the public health emergency created by the COVID-19 pandemic, the Joint Administrators informed creditors that the hearing of the Application would be conducted remotely and that the Joint Administrators would provide further details of the hearing in due course, including details for how to attend the hearing remotely.
62. Further, and in accordance with Rule 3.57(2), the directors of the Company, being the persons who made the administration application in 2009, were given notice by email on 5 November 2020, a copy of which is at [31/981] of DMH4.
63. Following the appointment of the Joint Administrators, the Committee was established for the Company. Following the payment to the members of the Committee of the principal amount of their claims in full in August 2019, the Committee ceased to be quorate in accordance with Rule 17.1(e). The former members of the Committee have, however, had a continued economic interest in the Administration following the Committee ceasing to be quorate given the potential and actuality of further Commercial Interest being paid.
64. The Joint Administrators have continued to provide information to the former members of the Committee. A notice to the former members of the Committee to inform them of the intention

to make this Application was sent by email on 5 November 2020, a copy of which is at **[32/982]** of DMH4.

65. As at the date of this statement, the Joint Administrators have received no response to the notices detailed above in paragraphs 61, 62 and 64. Notice of the making and hearing of the Application is also to be given to all creditors of the Company immediately following the filing of the Application by way of the Nortel EMEA Website. An update on any responses received by the Joint Administrators in connection therewith will be given to the Court at or before the hearing of the Application.

#### **G. DETAILS OF SUBSEQUENT LIQUIDATION**

66. The Joint Administrators have needed to take legal and tax advice regarding the most efficient process available under Irish law to have the Company removed from the Irish register of companies once the Administration has concluded. The directors of the Company have been involved in the planning of this process.
67. Provided that the Court is minded to grant the relief sought, the Joint Administrators currently anticipate completing the steps necessary to commence the Irish liquidation proceedings on or before 8 January 2021.
68. I set out below a brief summary of the Irish liquidation process currently envisaged by the Joint Administrators in relation to the Company.
69. The Joint Administrators have been advised that a liquidation of the Company requires a shareholder resolution of the sole shareholder of the Company, Nortel Canada. The Joint Administrators have obtained assurances from Nortel Canada that, upon an Order being granted for the termination of the Administration further to this Application, Nortel Canada would resolve to place the Company into liquidation. Once this shareholder resolution is obtained, the Joint Administrators have made arrangements that Luke Charleton and Colin Farquharson of Ernst & Young Chartered Accountants ("**EY Dublin**") will be appointed as liquidators of the Company once this shareholder resolution is passed. I am advised that there are no issues from an English or Irish law perspective with Mr Charleton and Mr Farquharson of EY Dublin being appointed as officeholders.
70. Notwithstanding the Joint Administrators' work, it is expected that the liquidation of the Company will be completed in a period of approximately four months from its commencement, principally due to the time required for the liquidators to complete the Irish statutory requirements in a liquidation.

#### **H. DISCHARGE OF LIABILITY**

71. Paragraph 98 of Schedule B1 to the Insolvency Act provides that the Joint Administrators will only be discharged from their liability in respect of any action as joint administrators with effect from a time specified by the Court. The Joint Administrators respectfully request that



this discharge of liability be granted and take effect 28 days after the date on which their appointment has been terminated in the manner set out above. This would give any person becoming aware of any facts or matters which might give rise to a claim, and seeking to bring such a claim against the Joint Administrators, sufficient time to do so.

72. The Joint Administrators are not aware of any claims made against the Joint Administrators which have not been dealt with during the course of the Administration and none of the Joint Administrators are aware of any facts which would give rise to any such claim.
73. Throughout the Allocation Dispute and the pension dispute with the UKPI, certain claims have been intimated or asserted against the Joint Administrators by, among others, the US Debtors, the Canadian Debtors and the UKPI. However, such claims were released pursuant to the terms of the Global Settlement. Section 8 of the Settlement and Plans Support Agreement provides that all parties release all claims against each other and covenant not to commence any litigation or file any further claims between entities in the Group and others, provided that rights are reserved to enforce settlement and subject to certain intra-EMEA claims being carved out. During 2016 the Joint Administrators brought an application which application, supported by Alan Robert Bloom's sixteenth witness statement ("**Bloom 16**"), was made pursuant to paragraph 63 of Schedule B1 of the Insolvency Act in which the Court was asked for directions on the Settlement and Plans Support Agreement and the Deed of Release. The Joint Administrators provided the Court with the full details of the terms of the Settlement and Plans Support Agreement and the Deed of Release in Bloom 16, in particular paragraphs 118.8 to 118.19, 207 and 210 thereof (at **[33/1015]** to **[33/1018]** and **[33/1035]** to **[33/1037]** of DMH4). In addition, the terms of the CVA include releases by each creditor of the Joint Administrators. Clause 33 of the CVA provides that each creditor of the Company irrevocably and unconditionally discharges the Joint Administrators from any liability in connection with their acts, omissions or default as Joint Administrators. The relevant clause in the CVA may be found at **[10/373]** of DMH4.
74. On the basis of the advice the Joint Administrators have received regarding recognition of the Administration proceedings in the Republic of Ireland described in paragraph 46 above, the Joint Administrators consider that the discharge from liability (and, indeed, the termination of their appointment) will be recognised and effective in the Republic of Ireland even where the Brexit transitional period ends on 31 December 2020 without a deal agreed between the EU and the United Kingdom.

## **I. THE REASONS FOR THE REMUNERATION APPLICATION**

### **Application in respect of remuneration for the Company**

75. The Joint Administrators have made this Application to the Court for an Order that:
- 75.1 their remuneration be fixed by reference to time properly given by the Joint Administrators for the periods:

- (1) from 30 June 2018 to 4 September 2020, being the last practicable date prior to the filing of the application up to which the Joint Administrators are able to provide a full breakdown in respect of their remuneration (i.e. Period 1); and
  - (2) from 5 September 2020 to the termination of the Joint Administrators' appointment, subject to a cap (i.e. Period 2); and
- 75.2 the remuneration of the Supervisors be approved for the periods:
  - (1) from 30 June 2018 to 4 September 2020 (i.e. CVA Period 1); and
  - (2) from 5 September 2020 to the termination of the CVA, subject to a cap (i.e. CVA Period 2).
- 76. As the creditors of the Company have had sole economic interest due to their entitlement to Commercial Interest, but have lacked capacity under the Rules to satisfactorily approve remuneration for the Company, the former members of the Committee following the Committee becoming inquorate (as detailed in paragraphs 82 and 86 below) have informally considered and approved the remuneration referred to in paragraph 75 above as set out in the fee packs detailed in paragraphs 84 and 88 below.
- 77. Neither NNUK, as a significant creditor of the Company, nor any of NNUK's creditors, nor any of their advisers on their behalf has ever raised any issues regarding the remuneration of the Joint Administrators or Supervisors, or ever sought to involve themselves in the approval of the remuneration of the Joint Administrators or Supervisors. The remuneration in respect of the Company has always been carefully considered and approved by the Committee and, following the Committee becoming inquorate, the former members of the Committee.
- 78. The Joint Administrators respectfully request that the Court approves the remuneration set out in paragraph 75 on the basis of the comprehensive information in this Application, provided in accordance with the relevant legislative requirements. The actions of the former members of the Committee in approving this remuneration does not supplant the role of the Court in formally approving the remuneration (as requested in this Application), but nevertheless provides substantive, additional support for this Application, which the Court should consider when making its determination. The Committee have not only unanimously approved the remuneration for which approval is requested in this Application but have been proactive in doing so and have carefully considered the remuneration before providing their informal approval.
- 79. Both the Joint Administrators and Supervisors have been in close and regular contact with the former members of the Committee to ensure that the former members of the Committee carefully review the remuneration of the Joint Administrators and Supervisors as set out in the fee packs for Period 1 and Period 2, and CVA Period 1 and CVA Period 2 (which fee packs are further described in paragraphs 84 and 88 below). The Joint Administrators and Supervisors held meetings with the former members of the Committee to discuss these fee

packs on 5 June and 21 October 2020. Minutes of these meetings are at [34/1067] and [35/1070] of DMH4. The Joint Administrators and Supervisors responded to specific questions from the former members of the Committee on the fee packs at these meetings, which questions demonstrate that the former members of the Committee have considered the fee packs in detail, and, in turn, the remuneration of the Joint Administrators and Supervisors. The Joint Administrators and Supervisors have otherwise obtained assurances orally (including at the aforementioned meetings) and in writing from the former members of the Committee that they have carefully considered the fee packs and remuneration of the Joint Administrators and Supervisors. Such assurances were most recently provided in writing in the resolutions of the former members of the Committee approving remuneration for Period 2 and CVA Period 2 (at [36/1074] of DMH4) following virtual meetings at which these fees were considered.

80. The former members of the Committee consist of Storm Technology Ltd, SSL Logistics and the Nortel Ireland Pension Fund. The former members of the Committee have claims representing approximately 15.46% of the total approved claims in the CVA. The former members of the Committee are all commercially sophisticated entities that have been represented in their engagement with the Administration and the CVA by senior, experienced members of staff. The Joint Administrators and Supervisors are confident that the former members of the Committee have scrutinised the relevant fee packs to a sufficient degree before informally approving the remuneration of the Joint Administrators and Supervisors.
81. The Joint Administrators consider that any overpayment of the Joint Administrators' remuneration or Supervisors' remuneration would, on any calculation, only impact unsecured creditors in the amount they might receive as accrued Commercial Interest in accordance with the terms of the CVA. There would not be any impact on Nortel Canada as the parent company of the Company entitled to any surplus. As set out at paragraph 35 above, any overpayment would need to exceed the balance of Commercial Interest that could be paid (being £17,538,552.54) before Nortel Canada could assert it had any economic interest in the Company. Accordingly, the Joint Administrators have not considered it necessary or appropriate to consult with or seek approval from Nortel Canada in respect of the Joint Administrators' remuneration or the Supervisors' remuneration.

#### **Reporting of the Joint Administrators' remuneration**

82. During the course of the Administration, the Joint Administrators have prepared detailed fee packs which have been provided to the Committee and the former members of the Committee following the Committee becoming inquorate. These fee packs are in a similar form as provided in the Schedules and set out the detail of work undertaken and remuneration sought. A copy of the most recent formally approved fee pack prepared prior to the final payment of principal to the creditors (for the period 3 September 2016 to 29 June 2018), dated 2 August 2018 and approved on 8 August 2018, is at [37/1077] of DMH4.

83. A copy of the resolutions approving the Joint Administrators' remuneration as set out in this fee pack is at **[38/1101]** of DMH4.
84. Following the fee pack dated 2 August 2018, the Joint Administrators have prepared two further fee packs. These two further fee packs covered Period 1 and Period 2 and are referred to in paragraph 79 above. The first of these fee packs was for the period 30 June 2018 to 13 March 2020 dated 29 May 2020 and informally approved on 5 June 2020, and is at **[39/1107]** of DMH4. A copy of the resolutions informally approving the Joint Administrators' remuneration as set out in this fee pack is at **[40/1129]** of DMH4. The second of these fee packs was for the period 14 March 2020 to 4 September 2020 and included an estimate of fees for the period 5 September 2020 to the termination of the Administration, was dated 14 October 2020 and was informally approved on 21 October 2020, and is at **[41/1132]** of DMH4. A copy of the resolutions informally approving the Joint Administrators' remuneration as set out in this fee pack is at **[36/1074]** of DMH4.
85. In accordance with Rule 2.47(1) of the Insolvency Rules 1986 and subsequently Rule 18.3, the details of the remuneration drawn have been included in each Progress Report.

#### **Reporting of Supervisors' remuneration**

86. As in the Administration, the Supervisors have prepared detailed fee packs, which have previously been provided to the Committee and the former members of the Committee following the Committee becoming inquorate. The fee packs are in a similar form as the fee packs prepared by the Joint Administrators. In addition to their remuneration as Supervisors, the initial fee pack also included remuneration of the Joint Administrators in respect of their time spent as Nominees of the CVA. A copy of the most recent approved fee pack setting out remuneration of the Supervisors (for the period 3 September 2016 to 29 June 2018), dated 2 August 2018 and approved on 8 August 2018, is provided at **[42/1157]** of DMH4.
87. A copy of the resolutions approving the Supervisors' remuneration set out in this fee pack is at **[43/1175]** of DMH4.
88. Following the fee pack dated 2 August 2018, the Supervisors have prepared two further fee packs. These two further fee packs covered CVA Period 1 and CVA Period 2 and are referred to in paragraph 79 above. The first of these fee packs was for the period 30 June 2018 to 13 March 2020 dated 29 May 2020 and informally approved on 5 June 2020, and is at **[44/1178]** of DMH4. A copy of the resolutions informally approving the Supervisors' remuneration as set out in this fee pack is at **[45/1192]** of DMH4. The second of these fee packs was for the period 14 March 2020 to 4 September 2020 and included an estimate of fees for the period 5 September 2020 to the termination of the CVA, was dated 14 October 2020 and was informally approved on 21 October 2020, and is at **[46/1195]** of DMH4. A copy of the resolutions informally approving the Supervisors' remuneration as set out in this fee pack is at **[36/1074]** of DMH4.

### Catch-up costs

89. The Joint Administrators draw the Court's attention to the catch-up costs of the Joint Administrators and the Supervisors, which are set out in the Administration fee pack for period 30 June 2018 to 13 March 2020 and CVA fee packs for periods 30 June 2018 to 13 March 2020 and 14 March to 4 September 2020 (which are at **[39/1107]**, **[44/1178]** and **[46/1195]** of DMH4).
90. The Administration catch-up costs are incurred in a prior fee pack period but are only presented in a fee pack relating to a following period and then subsequently approved. The Administration catch-up costs therefore represent the difference between costs that have thus far been approved and costs that have actually been incurred for that relevant prior period. The Administration catch-up costs result from the late submission of timesheets to the financial systems of the Joint Administrators and those timesheets subsequently not being captured in the relevant fee pack. Details of the Administration catch-up costs are included in **Schedule 1.7**, including a breakdown of amount incurred per member of staff and a narrative summary for the relevant work incurred. The Joint Administrators have successfully been seeking approval for Administration catch-up costs in this way and for these reasons in previous fee packs over the course of the Administration. An example of previously approved catch-up costs can be seen in the fee pack for the period 3 September 2016 to 29 June 2018 dated 2 August 2018 and approved on 13 August 2018, which is at **[42/1157]** of DMH4. As such, the former members of the Committee that have approved fee packs for periods prior to Period 1 are now familiar with this and would have been familiar with the Administration catch-up costs in the fee pack for the period 30 June 2018 to 13 March 2020. For the avoidance of doubt, the Administration catch-up costs of £75,353.14 as detailed above are included in the costs to be approved by the Court for Period 1, as summarised in paragraph 9 above.
91. The Supervisors also included CVA catch-up costs in the fee packs for periods 30 June 2018 to 13 March 2020 and 14 March to 4 September 2020 (which are at **[44/1178]** and **[46/1195]** of DMH4). The CVA catch-up costs are also incurred in a prior fee pack period but are reported and presented for approval later, although for different reasons to the Administration catch-up costs. The CVA catch-up costs result from incorrect charge-out rates (i.e. which are too low) being applied for certain individual members of staff when the time costs of a fee pack period are being calculated. Incorrect rates were incorrectly applied in this way for time costs incurred by Niall Coveney (an average of £527.91 instead of £671.75), Gregg Jacob (£222.35 instead of £381), Barry MacManus (an average of £434.43 instead of £547.62) and myself (an average of £525.21 instead of £672.20). The work giving rise to the CVA catch-up costs has already been fully reported in previous fee packs, and it is only the quantum of such costs that needs to be corrected. For the avoidance of doubt, the CVA catch-up costs of £91,307.43 as detailed above are included in the costs to be approved by the Court for CVA Period 1, as summarised in paragraph 9 above.

**J. NOTICE OF REMUNERATION APPLICATION AND ENGAGEMENT WITH CREDITORS**

92. I confirm that by notice on the Nortel EMEA Website all creditors of the Company were given notice of the Joint Administrators' intention to issue an application in respect of their remuneration on 5 November 2020. The former members of the Committee were given specific notice of the same by email, in addition to their long-standing active engagement. Details of these notices are set out at paragraphs 61 and 64 above. To date, the Joint Administrators have received no response to these notices from the creditors.
93. Further, and in accordance with Rule 18.28(6), notice of the making and hearing of this Application will be given to all creditors at least 14 days before the earliest date for a hearing of this Application, being 15 November 2020, together with access to a copy of this statement by way of the Nortel EMEA Website, with a statement that the exhibit is available on request. The former members of the Committee will also be given specific notice of the same by email. An update on any responses received by the Joint Administrators in connection therewith will be given to the Court at or before the hearing of the Application.

**K. COMMON ASPECTS AND CONTROL PROCESSES APPLIED TO REMUNERATION**

94. The Joint Administrators make reference to the Discharge Applications made to this Court, and the previous witness statements made by Mr Harris in support of those applications, Harris 8, Harris 11, Harris 18, Harris 19 and Harris 20. The Court will be familiar with those common aspects including recording, monitoring and the treatment of expenses applied to the Joint Administrators' remuneration and the Supervisors' remuneration. These common aspects apply to the Company in the same way as they applied to the Batch One Entities, the Batch Two Entities, NNF, the Batch Three Entities and Nortel Poland. As such, detailed information on these aspects is set out in **Schedule A** to this statement.
95. In contrast to the majority of the EMEA Debtors, a large proportion of the work in the Administration has been undertaken by my team in EY Dublin. While the EY Dublin team have relied heavily on our colleagues in EY London for administrative matters in the Administration and to benefit from centralised processes undertaken for the benefit of all EMEA Debtors, the strategic elements of the Administration, asset realisation and creditor engagement has been led by EY Dublin.
96. I set out in this statement and in **Schedule A** the ways in which the Joint Administrators ensure that the remuneration incurred by the Joint Administrators is fair, reasonable and commensurate with the nature and extent of the work properly undertaken. As a general note and by virtue of the control mechanisms applied by them, the Joint Administrators are confident that work in relation to the Administration and CVA has been carried out in a timely and cost-effective manner. I can confirm that the Joint Administrators and Supervisors have carefully considered each task that has needed to be done and whether it is necessary. I

have had core involvement since my appointment and have been assisted by senior, experienced members of EY's restructuring and insolvency team.

#### **L. CHARGE OUT RATES**

97. Charge out rates applied by staff based in EY Dublin are set out in the Schedules to this statement (**Schedules 1 and 2** (at [47/1217] and [48/1242] of DMH4) in the case of the Administration and **Schedules 4 and 5** (at [50/1248] and [51/1257] of DMH4) in the case of the CVA). EY Dublin determines its own hourly charge out rates in Euro. Time costs are submitted by EY Dublin to the Joint Administrators on a weekly basis and are converted into Sterling at the average exchange rate for that week.
98. Professional skill and commercial judgement are applied when determining EY's restructuring and insolvency staff charge out rates. This ensures that fair and reasonable staff charge out rates are set for the financial year. When applying professional skill and commercial judgement to the determination of annual staff charge out rates, the following factors are taken into account:
- 98.1 overall market pressure on the level of staff charge out rates;
  - 98.2 the general level of inflation;
  - 98.3 proposed salary increases for staff in EY's restructuring and insolvency business unit; and
  - 98.4 specific increases in the level of overheads.
99. The Joint Administrators and Supervisors have disclosed the average hourly rates of their staff in each Progress Report and CVA Report (in relation to the most recent Progress Report, this may be seen at [20/606] of DMH4, and in relation to the most recent CVA Report, this may be seen at [22/635] of DMH4). The Joint Administrators and Supervisors have also provided additional detail on the charge out rates in each fee pack. In relation to the most recent fee packs dated 14 October 2020, the detail is provided at [41/1134] and [46/1202] of DMH4.
100. Each EY staff member has specific hourly rates according to their level of seniority. The details of the charge out rate bands for each of the different grades of seniority are set out in **Schedules 1 and 2** (at [47/1217] and [48/1242] of DMH4) in the case of the Administration and **Schedules 4 and 5** (at [50/1248] and [51/1257] of DMH4) in the case of the CVA.

#### **M. SUMMARY OF REMUNERATION AND COMPARISONS**

##### **Summary**

101. The total remuneration sought for approval in this Application is £2,762,830.76 in respect of the Administration and CVA. This remuneration covers the period from 30 June 2018 to 12 January 2021 and includes the Administration and CVA catch-up costs detailed in paragraphs 89 to 91 above. Following the second distribution on 17 August 2018 and

creditors being paid the principal of their admitted claims in full, the creditors of the Company have not been able to formally approve this remuneration. However, the former members of the Committee have met regularly since 30 June 2018 to consider and informally approve this remuneration. The figure of £2,762,830.76 reflects the significant work that has been carried out by the Joint Administrators and Supervisors as detailed in this statement. This work has secured substantial, additional value for creditors of the Company. In particular, the Joint Administrators successfully obtained the Tax Refund (of €6,693,572.44) on 16 December 2019, as detailed in paragraph 28 above. While there has not been any distribution to the shareholder of the Company, the work of the Joint Administrators and Supervisors has led to a far greater distribution to the creditors of the Company in respect of their entitlement to Commercial Interest than might otherwise have been the case.

102. The total remuneration of the Joint Administrators and Supervisors (including that for which approval is sought in this Application) is £15,995,648.37, whereas claims to the value of £62,697,852.56 were admitted by the Supervisors and £2,173,411,858.48 rejected.
103. The majority of the remuneration for which approval is sought relates to work undertaken and led by EY Dublin staff, while EY London staff have, generally speaking, supported on workstreams shared with other EMEA Debtors.
104. In summary, the key workstreams undertaken by the Joint Administrators in Period 1 and Period 2 have been the recovery of the Tax Refund from the Irish Revenue, and the preparation for the exit of the Company from the Administration and migration to liquidation. The key workstreams undertaken by the Supervisors in CVA Period 1 and CVA Period 2 have been the adjudication of claims, and the making of distributions.
105. The time periods for which remuneration is to be fixed by reference to time properly given by the Joint Administrators are:
  - 105.1 from 30 June 2018 to 4 September 2020 (i.e. Period 1), 4 September 2020 being the last practicable date prior to the filing of the Application up to which the Joint Administrators are able to provide a full breakdown in respect of their remuneration; and
  - 105.2 for the period from 5 September 2020 to the termination of the Joint Administrators' appointment (i.e. Period 2), subject to a cap. This Period 2 includes time costs incurred for work undertaken after 4 September 2020 but before the making of this Application. It also includes estimated time costs for the period from the date of the Application to 12 January 2021, being the anticipated end of the Administration. Should the remuneration actually incurred be in excess of that amount for unforeseen reasons, the Joint Administrators would consider whether to return to Court for directions prior to the termination of their appointment. Where the remuneration actually incurred is less than the capped amount, any surplus would be passed to the liquidators to be dealt with as an asset of the Company in accordance with Irish law.



106. In addition to their Application for remuneration as Joint Administrators, the Joint Administrators also make an Application for approval of the Supervisors' remuneration. The Court's approval is sought for:

106.1 payment of remuneration from the last approval by the Committee in accordance with the terms of the CVA, from 30 June 2018 to 4 September 2020 (i.e. CVA Period 1); and

106.2 for the period from 5 September 2020 to the termination of the CVA (i.e. CVA Period 2), subject to a cap.

#### **Comparison with remuneration previously approved by the Committee**

107. For context and comparison, the Committee has previously approved the Joint Administrators', Nominees' and Supervisors' remuneration amounting to £13,232,817.61. The remuneration for which the Joint Administrators seek the Court's approval is £2,762,830.76, representing approximately 17% of the total remuneration since 2009 (including remuneration of the Joint Administrators, Nominees and Supervisors) until 12 January 2021, being the anticipated end of the Administration.

108. The remuneration for which approval is sought is broadly commensurate with prior periods.

|                | Remuneration for which the Court's approval is sought to the end of the Administration/CVA |                | Total remuneration since commencement (including that for which approval is sought) |              | Percentage of total |          |
|----------------|--|----------------|---|--------------|---------------------|----------|
|                | Quantum  | Duration       | Quantum   | Duration     | Quantum             | Duration |
| Administration | £2,084,977.20  | c.30.25 months | £14,723,879.09  | c.144 months | c.14%               | c.21%    |
| CVA            | £677,853.56  | c.29 months    | £1,271,769.28   | c.51 months  | c.53%               | c.57%    |
| Total          | £2,762,830.76  |                | £15,995,648.37  |              | c.17%               |          |

109. A direct comparison between Period 1 and CVA Period 1, Period 2 and CVA Period 2, and the prior period for which remuneration was most recently approved by the Committee of the Company is set out below.

| Period Description                   | Period Dates   | Months         | Total time costs (£) | Run rate per month (£) |
|--------------------------------------|--|----------------|----------------------|------------------------|
| Prior period                         | 3 September 2016 to 29 June 2018   | c.21.75 months | 1,967,747.23         | c.90,471.14            |
| Period 1 and CVA Period 1 time costs | 30 June 2018 to 4 September 2020   | c.26 months    | 2,415,977.01         | c.92,922.19            |
| Period 2 and CVA Period 2 time costs | 5 September 2020 to 12 January 2021 (the anticipated date for termination of the Administration) | c.4.25 months  | 346,853.75           | c.81,612.65            |

110. **Appendix 1** to the Schedules (at [54/1267] of DMH4) illustrates the run rate of Administration and CVA time costs for the period prior to Period 1 and Period 1 as a graph. It shows a higher run rate in the earlier years of the Administration during stabilisation and trading. The increase in the run rate after 2016 reflects the work of the Joint Administrators and the Supervisors (as applicable) in recovering other assets for distribution (including the Tax Refund), planning and implementing the CVA and the Expense Bar Date, adjudicating claims and making distributions to creditors.

#### **Comparisons with remuneration approved for other EMEA Debtors**

111. The first page in **Appendix 2** to the Schedules at [55/1269] includes a table of the Joint Administrators' total time costs for the period from 14 January 2009. As the Joint Administrators would expect given the Company's trading history and creditor profiles, the Company sits in the upper middle band of EMEA Debtors.
112. The second page in **Appendix 2** to the Schedules at [55/1270] sets out a similar table in respect only of the Nominees' and Supervisors' remuneration. The CVA sits in the upper band of the EMEA Debtors, owing largely due to extensive work undertaken in respect of the making of distributions.
113. While it is difficult to make direct comparisons between EMEA Debtors, I understand from the information available to me that the time costs incurred by the Joint Administrators or Supervisors is within the range of time costs incurred in respect of other entities in the EMEA group of similar size and complexity.

#### **N. DETAIL OF REMUNERATION**

##### **Categories of time costs**

114. The Joint Administrators' and Supervisors' time costs are classified into three categories across (respectively) both Period 1 and Period 2, and both CVA Period 1 and CVA Period 2. The three main categories are: "**Direct Time Costs**", "**Reallocated Time Costs**" and "**Transaction Time Costs**".
- 114.1 Direct Time Costs, also referred to in fee packs as Administration Time Costs, are entity specific and have, therefore, been incurred solely in respect of one EMEA Debtor.
- 114.2 Reallocated Time Costs, also referred to in fee packs as General Time Costs, are not entity specific but benefit all EMEA Debtors. Each EMEA Debtor is allocated an equitable portion of costs depending on the Joint Administrators' view of the benefit received by that EMEA Debtor. Further information on how the allocation is determined is set out at paragraph 5 of **Schedule A**.

114.3 Transaction Time Costs relate to specific costs of the business sales and elements of the Allocation Dispute that followed. No Transaction Time Costs were incurred in the periods for which approval for remuneration is sought and so are not covered in any further detail.

115. A summary of the remuneration for which the Court's approval is sought for the Administration and CVA, split into the Direct Time Costs and Reallocated Time Costs, is set out in the table below.

| Cost Category                                 | Administration (£) |            | CVA (£)      |              | Total Cost (£) |
|---|--------------------|------------|--------------|--------------|----------------|
|   | Period 1           | Period 2   | CVA Period 1 | CVA Period 2 |                |
| Direct Time Costs                             | 1,281,577.89       | 167,863.75 | 498,863.56   | 178,990.00   | 2,127,295.20   |
| Reallocated Time Costs                        | 635,535.56         | 0          | 0            | 0            | 635,535.56     |
| <b>Total remuneration sought for approval</b> | 1,917,113.45       | 167,863.75 | 498,863.56   | 178,990.00   | 2,762,830.76   |

#### Time costs by grade of Joint Administrators' staff

116. For the purposes of this Application the Joint Administrators have classified Assistant Directors and above as "**Senior Staff**", whilst Managers and below have been classified as "**Junior Staff**".

116.1 While the average hourly charge out rates vary between the categories of time costs, the average hourly rates incurred by the EY teams in the Administration during the period 30 June 2018 to 13 March 2020 are £423.36 and £302.62 in respect of the Direct Time Costs and Reallocated Time Costs respectively and during the period 13 March to 4 September 2020 £358.76 in respect of the Direct Time Costs. The average hourly rate incurred by the EY teams in the CVA during the period 30 June 2018 to 13 March 2020 is £368.52 and during the period 13 March to 4 September 2020 £360.04.

116.2 As noted in paragraph 97 above, the charge out rates of EY Dublin staff have not remained constant throughout the Administration and have been subject to annual increases approved by the Committee. EY Dublin's Senior Staff currently incur average hourly charge out rates of £710.44, while EY Dublin's Junior Staff currently incur average hourly charge out rates of £131.73. Further details of charge out rates of EY Dublin staff are in **Schedules 1, 2, 4 and 5** (at [47/1217], [48/1242], [50/1248] and [51/1257] of DMH4).

116.3 On the other hand, in the Administration, EY London Senior Staff incur average hourly charge out rates of £593.52, while Junior Staff usually incur average hourly

charge out rates of £139.83. Details of the staff grades and charge out rates in the Administration are in **Schedules 1 and 2** (at **[47/1217]** and **[48/1242]** of DMH4). In the CVA, EY London Senior Staff incur average hourly charge out rates of £575.51, while Junior Staff usually incur average hourly charge out rates of £250.27. Details of the staff grades and charge out rates in the CVA are in **Schedules 4 and 5** (at **[50/1248]** and **[51/1257]** of DMH4).

## O. AN EXPLANATION OF THE SCHEDULES

117. Set out in the Schedules to this statement are the details of the remuneration for which the Court's approval is sought in accordance with Rule 18.24(b) and 18.28(2)(b) and the Practice Direction: Insolvency Proceedings 2018, as supplemented by the Temporary Insolvency Practice Direction which came into force on 2 October 2020 (the "**Practice Direction**").
118. It is noted that the Schedules to this statement are based on the fee packs for Period 1 and Period 2, and CVA Period 1 and CVA Period 2, which have been informally approved by the former members of the Committee.

### Administration time costs

119. **Schedule 1** (*Period 1 – 30 June 2018 to 4 September 2020*), sets out the detail of the Joint Administrators' remuneration for Period 1 and comprises:
  - 119.1 a table headed "*Schedule 1.1 Administration time (direct): analysis by person, by workstream and by grade*", which contains a complete listing of all the members of the EY Dublin, EY London and GDS teams and their grades, together with the time they have recorded against each individual workstream and (based on their hourly rate, also listed) the corresponding Direct Time Costs charged (and for ease these Direct Time Costs for Period 1 are highlighted in yellow);
  - 119.2 a table headed "*Schedule 1.2 Administration time (direct): Analysis by grade and workstream*", which groups the team members in their different grades rather than listing the team members individually. The hourly rate listed for each grade is an average arrived at by dividing the total time costs by the total number of hours;
  - 119.3 a narrative summary headed "*Schedule 1.3 Administration time (direct): Summary of work completed*" which contains a detailed description of the tasks undertaken by the Joint Administrators and their staff in Period 1 directly attributable to the Company. The heading for each workstream narrative contains the total time costs incurred in respect of that workstream, corresponding to those set out in the preceding **Schedules 1.1 and 1.2**;
  - 119.4 a table headed "*Schedule 1.4 Total Administration time (reallocated) for all EMEA entities: analysis by grade and by workstream*", setting out the total costs recorded centrally for all EMEA Debtors during the period by workstream;

- 119.5 a table headed “*Schedule 1.5 Administration time (reallocated) for the Company: analysis by workstream*”, setting out the allocation and resulting amount of time cost borne by the Company in respect of work undertaken centrally for all EMEA Debtors during Period 1; and
  - 119.6 a narrative summary headed “*Schedule 1.6 Administration time (reallocated): summary of work completed*” contains a detailed narrative description of the central tasks undertaken in Period 1, the costs of which have been reallocated to the Company.
  - 119.7 a table headed “*Schedule 1.7 Administration catch-up costs*”, which contains in respect of the Administration catch-up costs a complete listing of all the members of the EY Dublin, EY London and GDS teams and their grades, together with the time they have recorded against each individual workstream and (based on their hourly rate, also listed) the corresponding Direct Time Costs charged. Below the table is a detailed description of the tasks undertaken per workstream in this time by the Joint Administrators and their staff.
120. **Schedule 2** (*Period 2 – 5 September 2020 to termination*), sets out the detail of the Joint Administrators' estimated remuneration for Period 2. Period 2 includes time costs incurred by the Joint Administrators for work undertaken after 4 September 2020, being the last practicable date prior to the filing of the Application up to which the Joint Administrators are able to provide information in respect of their remuneration, but before the making of this Application. It also includes estimated time costs for the period from the date of this Application to the date of exit from the Administration, being the date by which the Joint Administrators would hope to have commenced the Irish liquidation process. Should the remuneration actually incurred be in excess of that amount, the Joint Administrators would consider whether to return to the Court for directions. The Joint Administrators also note that they expect to be able to complete the formalities associated with placing of the Company into liquidation in the coming weeks. This Schedule comprises:
- 120.1 a table headed “*Schedule 2.1 Administration time (direct): analysis by grade and by workstream*”, which sets out the estimated Direct Time Costs to the Company by workstream and groups the team members in their different grades. A complete listing of all the members of the EY Dublin, EY London and GDS teams is not provided as it is not possible to say with certainty which members of the engagement team will undertake the work in question; and
  - 120.2 a narrative summary headed “*Schedule 2.2 Administration time (direct): Summary of work to be completed*”, which contains the detailed description of the tasks to be undertaken in Period 2 and charged directly to the Company.
121. **Schedule 3** (*Administration General*), sets out data showing the time costs incurred over the duration of the Administration as well as the details of certain expenses incurred during

Period 1 or expected to be incurred in Period 2 and certain adjustments. This Schedule comprises:

- 121.1 a graph headed "*Schedule 3.1 Weekly time costs for the administration to end of Period 1*", showing the weekly time costs in respect of the Joint Administrators from the date of their appointment to the end of Period 1. The graph illustrates, as I would expect to see, intensive time costs during the early part of the Administration while the team worked to stabilise the business and undertake the asset sales, followed by a decline in the weekly fees as this work was completed. Time costs then remained broadly consistent, in line with the operations having stabilised and as the Joint Administrators focused on the Allocation Dispute, until the commencement of the CVA. Increased costs in Period 1 are the result of the Joint Administrators' efforts to bring the Administration to a close and finalise the affairs of the Company; and
- 121.2 a list of those expenses incurred in relation to the Administration during Period 1 is set out below a heading "*Schedule 3.2 Expenses in Administration (Category 2)*". The Joint Administrators do not expect to charge any Category 2 expenses during Period 2. Legal fees for Period 1 and estimated legal fees for Period 2 for both English law and Irish law advisors are also included.

#### **CVA time costs**

- 122. **Schedule 4** (CVA Period 1 – 30 June 2018 to 4 September 2020), relates to the payment of costs to the Supervisors for CVA Period 1 and for which the Court's approval is sought and follows a similar form to **Schedule 1** described at paragraph 119 above. This Schedule comprises:
  - 122.1 a table headed "*Schedule 4.1 Supervisors' direct time costs: by person, by grade and by workstream*", which contains a complete listing of all the members of the EY Dublin, EY London and GDS teams and their grades, together with the time they have recorded against each individual workstream and (based on their hourly rate, also listed), the corresponding direct CVA time costs charged to the Company;
  - 122.2 a table headed "*Schedule 4.2 Supervisors' direct time costs: by grade and by workstream*", which groups the team members in their different grades rather than listing the team members individually. The hourly rate listed for each grade is an average arrived at by dividing the total time costs by the total number of hours; and
  - 122.3 a narrative summary headed "*Schedule 4.3 Supervisors' direct time costs: summary of work completed*", which contains a detailed description of the tasks undertaken by the Supervisors and their staff in CVA Period 1 directly attributable to the Company. The heading for each workstream narrative contains the total time costs incurred in respect of that workstream, corresponding to those set out in the preceding **Schedules 4.1** and **4.2**.

123. **Schedule 5** (*CVA Period 2 – 5 September 2020 to termination*), sets out the detail of the Supervisors' estimated remuneration for CVA Period 2. CVA Period 2 includes time costs incurred by the Supervisors for work undertaken after 4 September 2020, being the last practicable date prior to the filing of the Application up to which the Supervisors are able to provide information in respect of their remuneration, but before the making of this Application. It also includes estimated time costs for the period from the date of this Application to the date of termination of the CVA. Should the remuneration actually incurred be in excess of that amount, the Supervisors would consider whether to return to the Court for directions, and should it be less, any surplus would be passed to the liquidators to be dealt with as an asset of the Company in accordance with Irish law. This Schedule comprises:
- 123.1 a table headed "*Schedule 5.1 CVA time (direct): analysis by grade and by workstream*", which sets out the estimated Direct Time Costs to the Company by workstream and groups the team members in their different grades. A complete listing of all the members of the EY Dublin, EY London and GDS teams is not provided as it is not possible to say with certainty which members of the engagement team will undertake the work in question; and
- 123.2 a narrative summary headed "*Schedule 5.2 CVA time (direct): Summary of work to be completed*", which contains the detailed description of the tasks to be undertaken in CVA Period 2 and charged directly to the Company.
124. **Schedule 6** (*CVA General*), sets out data for the Supervisors' fees, showing the time costs incurred over the duration of the CVA. This Schedule comprises a graph headed "*Schedule 6.1 Weekly time costs over the duration of the CVA*", showing the weekly time costs in respect of the Company from the date of their appointment to the end of CVA Period 1. The graph illustrates that time costs initially accrued at a very low level while claims were submitted to the Supervisors, and rose following the occurrence of the bar date at which point claims began to be adjudicated. Time costs then remained broadly consistent with occasional increases reflecting the work required to effect distributions to creditors and terminate the CVA.

### Receipts & Payments

125. In accordance with paragraph 21.7(a) of the Practice Direction, the Joint Administrators' most recent receipts and payments accounts ("**R&P**") for the Company in the Administration period to 13 July 2020, being the period covered in the latest Progress Report, are in **Schedule 7.1** to this statement (at **[53/1262]** of DMH4).
126. In addition, the Supervisors' most recent R&P for the Company in respect of the 12-month period to 1 June 2020, being the period covered in the latest CVA Report, are at **Schedule 7.2** to this statement (at **[53/1265]** of DMH4).
127. The R&Ps are statements of cash received and cash paid out as at their date of issue and do not reflect costs incurred during the period but paid after that date. Since 1 June 2020 the

Joint Supervisors have paid two further distributions to creditors which will be reflected in the R&P to be included in the Final CVA Report.

**P. DETAIL OF THE REMUNERATION FOR THE COMPANY**

128. The Joint Administrators seek Orders that their remuneration in relation to the Administration for:
- 128.1 Period 1, being the period 30 June 2018 to 4 September 2020, be fixed at £1,917,113.45;
  - 128.2 Period 2, being the period from 5 September 2020 to the termination of the Joint Administrators' appointment, be fixed by reference to time properly given by the Joint Administrators and their staff but not to exceed £167,863.75;
  - 128.3 the approval for the payment of the balance of the Supervisors' fees in accordance with the terms of the CVA for CVA Period 1, being the period from 30 June 2018 to 4 September 2020, in an amount of £498,863.56; and
  - 128.4 the remuneration in respect of the CVA for CVA Period 2, being the period from 5 September 2020 to the termination of the CVA, be fixed by reference to forecast time costs of the Supervisors and their staff and subject to a cap of £178,990.00.

**Administration Direct Time Costs over Period 1: £1,281,577.89**

129. The overall Direct Time Costs incurred in the Administration during Period 1 aggregates to £1,281,577.89. The supporting information for these Direct Time Costs is set out in **Schedule 1** (at [47/1217] of DMH4) and the importance of some the key workstreams is described below. A detailed explanation of the tasks undertaken can be found at **Schedule 1** (at [47/1222] of DMH4).
130. The key workstreams for Direct Time Costs in the Administration in Period 1 are *Tax, Strategy, Fees, Creditors, Finance, accounting and administration, Estimated Outcome Statement* and *Statutory*, which account for over 90 percent of all Direct Time Costs in Period 1. Additionally, there are also sundry Direct Time Costs in the Administration in Period 1 relating to property, cash forecasting, employees, legal services and pensions in the aggregate amount of £47,400.76 and catch-up costs of £75,353.14.
- Tax - £586,550.73*

- 130.1 The *Tax* workstream mainly comprised work regarding corporation tax and VAT. As detailed in paragraph 27 above, the Joint Administrators undertook considerable work to obtain a refund from the Irish Revenue for an overpayment of corporation tax. This included the preparation and submission of revised tax returns, and liaising with the Irish Revenue and Irish tax advisors regarding related queries from the Irish Revenue. The Joint Administrators also undertook general monthly VAT compliance, prepared and filed VAT returns, implemented steps to close out the Company's VAT exposure, and otherwise made preparations for the



liquidation and VAT deregistration of the Company. Further, the Joint Administrators reviewed and managed the tax implications of CVA interest payments, which included the withholding tax position on the assignment of CVA interest receivable balances owed to a number of creditors such as Nortel Networks AB (and to be assigned to Nortel Networks International Finance & Holding B.V.).

*Strategy - £254,877.97*

- 130.2 As noted in paragraph 27 above, the Joint Administrators worked on preparing a detailed scenario analysis to assist with the recovery of the overpayment to the Irish Revenue and investigated alternative methods of recovery. The workstream also involved exploring the most appropriate way to deal with the current employees of the Company. The Joint Administrators undertook work in respect of the exit from Administration, including liaising with English and Irish legal and tax advisors regarding possible exit routes, developing a plan and timetable for exit, preparing for the Application and otherwise making arrangements for the transition from the Administration to liquidation.

*Fees - £120,943.28*

- 130.3 The *Fees* workstream included time spent on regular monitoring and analysis of fees in accordance with Statement of Insolvency Practice 9. The Joint Administrators also prepared two fee packs, Progress Reports, forecasts of costs to closure and other budgets.

*Creditors - £64,527.49*

- 130.4 The Joint Administrators responded to creditors' queries regarding the Administration process and otherwise managed creditors' claims, including by compiling master creditor lists and liaising with creditors and creditor representatives or solicitors to settle complex and disputed claims. This workstream also involved the distribution of fee packs to and arranging for approval of the fee packs from the former members of the Committee (including facilitating meetings of the former members of the Committee).

*Finance, accounting and administration - £49,571.22*

- 130.5 This work comprised of the preparation and review of receipts and payments accounts, review of payment approval controls, and provision of financial analysis to support strategic decision making. The Joint Administrators also monitored weekly cash reports, cash collection/recovery and unusual transactions, and reviewed existing payment arrangements and guarantees with a view to releasing cash where possible.

*Estimated Outcome Statement - £47,945.39*

130.6 The *Estimated Outcome Statement* workstream included time spent determining the anticipated distributable amounts to creditors of the Company, and reviewing and developing distribution and payment models.

*Statutory* - £34,407.91

130.7 The Joint Administrators prepared Progress Reports, performed six-monthly case and bonding reviews and maintained case files.

#### **Administration Reallocated Time Costs over Period 1: £635,535.56**

131. The key workstreams for Reallocated Time Costs in the Administration in Period 1 are *Exit Strategy*, *Finance, accounting and administration*, *EMEA billing*, *EMEA tax and VAT advisory*, and *Progress Reports*, and comprise over 91 percent of the total Reallocated Time Costs in Period 1. Additionally, there are also sundry time costs relating to *Debtors* (£21,506.83), *Estimated Outcome Statement* (£19,798.45), *Creditors* (£9,097.29), *IT* (£1,221.21), and *Trading* (£182.30). The more detailed summary of work completed is at **Schedule 1** (at [47/1232] of DMH4).

*Exit Strategy* - £244,447.58

131.1 This involved practical consideration of the most effective administration and CVA exit routes and closures across the remaining EMEA Debtors, identifying practical considerations such as cancellation of EMEA cashbooks and storage of books and records, and preparing for the winding down of the critical IT infrastructure of the Group.

*Finance, accounting and administration* - £176,683.66

131.2 Work undertaken included preparing and reviewing financial information to support decision making, reviewing treasury cash reports, monitoring the movement of cash between accounts, and ensuring accurate books and records were maintained.

*EMEA billing* - £87,179.08

131.3 This workstream comprised the bi-monthly review of time costs incurred, the monthly review of the billing model, monitoring apportionment rates, reviewing and updating financial and billing models, and settling invoices.

*EMEA tax & VAT advisory* - £45,350.34

131.4 This included time spent on dealing with general tax aspects of the Group across EMEA, and progressing and evaluating common issues of compliance with EMEA tax authorities.

*Progress Reports* - £30,068.82

131.5 Work undertaken included preparing the Joint Administrators' Progress Reports for the periods 14 January 2018 to 13 July 2018, 14 July 2018 to 13 January 2019, 14 January 2019 to 13 July 2019, 14 July 2019 to 13 January 2020 and 14 January 2020 to 13 July 2020.

#### **CVA time costs over CVA Period 1: £498,863.56**

132. An analysis and further details of the Supervisors' Direct Time Costs in CVA Period 1 are set out in **Schedule 4** (at [50/1248] of DMH4) in a very similar format as presented for Administration time costs, with narrative for the tasks undertaken by the Supervisors in **Schedule 4** (at [50/1252] of DMH4).
133. The Supervisors' work and approximate total CVA costs of £1,092,779.28 (of which £498,863.56 relates to the CVA Period 1) have facilitated distributions to non-subordinated, unsecured creditors of the Company of approximately £74,734,842.05 (after set-offs). The Supervisors' work in the CVA Period 1 has included managing the Nortel EMEA Website, attending meetings with creditors, creditor claim adjudication (including investigating and assessing certain complex claims), and the making of distributions to creditors (including facilitating the same by modifying the CVA to allow for a distribution in Euro rather than Sterling). In addition, it has been necessary to prepare and circulate annual reports required by Rule 2.41 (*Supervisor's accounts and reports*).
134. **Schedule 6** (at [52/1261] of DMH4) illustrates the run rate of the Supervisors' time costs for the CVA from 2 June 2017, being the date on which the CVA was approved by the Company's creditors, to 4 September 2020. The graph illustrates an increase in the weekly run rate following the passing of the CVA Bar Date in October 2017, as claims were determined, and similar increases in advance of the distributions made by the Supervisors in March 2018, August 2018, March 2019 and July 2020, which July 2020 distribution required a modification of the CVA as detailed in paragraphs 36 and 37 above. The Supervisors incurred costs of £129,493.27 in making the distribution in July 2020 of an amount equivalent to £5,928,190.82 to creditors in respect of Commercial Interest.

#### **Administration Direct Time Costs over Period 2: £167,863.75**

135. The total time costs for Period 2 for which approval is sought are £167,863.75, all of which are Direct Time Costs.
136. This Application requests the approval of remuneration for the period from 5 September 2020 up to the date of the termination of the Administration. This relatively early date was the day after the last practicable date prior to launching of the Application up to which the Joint Administrators could provide a full and detailed description for their time costs both to the Court and to various parties in advance of making the Application.
137. Subsequent to 4 September 2020, the Joint Administrators have already incurred Direct Time Costs of £129,212.97 up to 6 November 2020. These time costs relate to the preparation of this Application, preparing and reviewing documents necessary to implement the dissolution, final preparation work in advance of the dissolution, obtaining clarity and clearance in respect of tax and completing certain statutory and reporting tasks required at the closure of the Administration. Detail of the full Period 2 forecast is at **Schedule 2** (at [48/1243] of DMH4).

**CVA time costs over CVA Period 2: £178,990.00**

138. The total time costs for CVA Period 2 for which approval is sought are £178,990.00, all of which are Direct Time Costs.
139. This Application requests the approval of remuneration for the period from 5 September 2020 up to the date of the termination of the CVA. This relatively early date was the day after the last practicable date prior to launching the Application up to which the Supervisors could provide a full and detailed description for their time costs both to the Court and to various parties in advance of making the Application.
140. Subsequent to 4 September 2020, the Supervisors have already incurred time costs of £124,587.00 up to 6 November 2020. These time costs relate to facilitating a final distribution to creditors and preparing for the termination of the CVA. Detail of the full CVA Period 2 forecast is at **Schedule 5** (at [51/1258] of DMH4).

**Q. RELIEF SOUGHT**

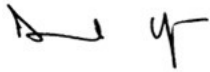
141. For the reasons set out in this statement, the Joint Administrators consider that the purposes of the Administration as set out at paragraph 3(1) of Schedule B1 to the Insolvency Act have been sufficiently achieved in relation to the Company. The Joint Administrators have successfully realised the property of the Company, including its allocation of the Sale Proceeds. They have dealt with the financial support directions issued under the Pensions Act 2004 in respect of the Company by way of the Global Settlement and the promulgation of the CVA. The CVA has been successful in providing a process for agreeing creditor claims and has allowed for efficient distributions of the Company's assets.
142. The Company's creditors have been paid the principal of their claims in full plus interest.
143. The Joint Administrators have considered the process for dissolving the Company in accordance with Irish law. The Company is to be dissolved through an Irish liquidation.
144. Accordingly, the Joint Administrators respectfully request that the Court makes the order for the termination of the Administration, conditional on the passing of a shareholder resolution to place the Company into a liquidation.
145. For the reasons set out in this statement, the Joint Administrators also request that the Joint Administrators be discharged under paragraph 98 of Schedule B1 to the Insolvency Act in respect of any action as joint administrators arising out of the Company's Administration, with such discharge to take effect 28 days after the termination of the Administration. The Joint Administrators are not aware of any existing claims made against any of the Joint Administrators arising out of the conduct of the Company's Administration, nor is any Joint Administrator aware of any facts which would give rise to any such claims.
146. Having made distributions to all creditors of the Company in respect of the principal of their claims in full, the Joint Administrators consider that their remuneration and expenses should be approved by Order of the Court, although such approval has also been obtained from the

former members of the Committee. The Joint Administrators respectfully request that the Court grants an Order in respect of the Joint Administrators' remuneration for Period 1 and those anticipated fees in Period 2 on the basis of the details set out in this statement and the Schedules.

147. Similarly, and also in accordance with the terms of the CVA, the Joint Administrators also respectfully request that the Court grants an Order in respect of the Supervisors' remuneration for CVA Period 1 and those anticipated fees in CVA Period 2 on the basis of the details set out in this statement and the Schedules.
148. Finally, for the reasons set out in paragraph 60 above, the Joint Administrators respectfully request that, as a prudent measure in the event of unforeseen delays, the Administration be extended pursuant to paragraph 76(2)(a) of Schedule B1 to the Insolvency Act for a period of three months so as to expire at 12:01pm on 13 April 2021.

## **R. CONCLUSION**

149. For the reasons mentioned above, I respectfully request that the Court grants the relief sought by the Application.



.....

**DAVID MARTIN HUGHES**

Date: 13 November 2020

**IN THE HIGH COURT OF JUSTICE**  
**THE BUSINESS AND PROPERTY COURTS OF**  
**ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

**IN THE MATTER OF:**

**NORTEL NETWORKS (IRELAND)  
LIMITED**

**No. 541 of 2009 /**  
**CR-2009-000047**

**AND IN THE MATTER OF THE INSOLVENCY ACT  
1986**

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**FOURTH WITNESS STATEMENT OF  
DAVID MARTIN HUGHES**

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Applicants  
David Martin Hughes  
Fourth Statement  
Exhibit "DMH4"  
13 November 2020

**IN THE HIGH COURT OF JUSTICE**  
**THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST (ChD)**

IN THE MATTER OF:

NORTEL NETWORKS (IRELAND) LIMITED

**No. 541 of 2009 / CR-2009-000047**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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EXHIBIT "DMH4"

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This is the Exhibit marked "DMH4" which is referred to in the witness statement of David Martin Hughes dated 13 November 2020.



.....  
**David Martin Hughes**  
13 November 2020



**SCHEDULE A**  
**RECORDING, MONITORING AND REPORTING PROCESSES APPLIED TO JOINT**  
**ADMINISTRATORS' REMUNERATION**

Unless otherwise defined herein, terms defined in the fourth witness statement of David Martin Hughes dated 13 November 2020 ("**Hughes 4**") shall have the same meaning when used in this Schedule A and references to the exhibit are to exhibit DMH4 to that statement.

**1. BASIS FOR PREVIOUS COMMITTEE AND CREDITOR APPROVAL OF JOINT ADMINISTRATORS' REMUNERATION**

- 1.1 As was the case in respect of other EMEA Debtors, in the Statement of Proposals approved by creditors of the Company in February 2009 the Joint Administrators asserted that where a creditors' committee was formed, in accordance with Rule 2.106 of the Insolvency Rules 1986 (the "**1986 Rules**") the Joint Administrators would ask the creditors' committee to determine the basis of their remuneration and would consult and agree with the creditors' committee, from time to time, on the quantum to be drawn. In the event that a creditors' committee could not be formed, the Joint Administrators were to conduct a creditors' meeting by correspondence to fix the basis of their remuneration and the arrangements for drawing it. The Statement of Proposals set out that the Joint Administrators were to ask the creditors' committee for payment of their professional fees on account on a monthly basis of 80% of time charged as agreed by the creditors' committee in accordance with Rule 2.106 of the 1986 Rules. It was stated that the residual 20% per month would be agreed by subsequent resolution of the creditors' committee.
- 1.2 As set out in paragraph 82 of Hughes 4, during the course of the Administration the Joint Administrators have prepared detailed fee packs which have been provided to the Committee and the former members of the Committee following the Committee becoming inquorate. The most recent formally approved fee pack for the period 3 September 2016 to 29 June 2018, dated 2 August 2018, was approved on 8 August 2018.
- 1.3 As set out in paragraph 84 of Hughes 4, the Joint Administrators have prepared two further fee packs. The first of these fee packs was for the period 30 June 2018 to 13 March 2020 and dated 29 May 2020. The second of these fee packs was for the period 14 March to 4 September 2020 and included an estimate of fees for the period 4 September 2020 to the termination of the Administration and was dated 14 October 2020. The Joint Administrators' remuneration as set out in these fee packs was informally approved on 5 June 2020 and 21 October 2020 respectively.

**2. BASIS FOR APPROVAL OF SUPERVISORS' FEES**

- 2.1 The terms on which the Supervisors are to be remunerated are set out in the CVA, a copy of which is at **[16/517]** of DMH4. Clause 29.1 of the CVA provides that "*The Supervisors shall be paid in respect of their work in preparing, implementing and operating the CVA and all acts reasonably incidental thereto*" (**[16/541]** of DMH4). Clause 29.2 further provides that the basis of the Supervisors' remuneration will be fixed by reference to the time properly given by them and their staff in attending to matters arising in connection with the CVA. Such time costs are to be charged at the Supervisors' rates from time to time for insolvency related work (Clause 29.2). Clause 29.3 provides, relevantly, that the Supervisors' fees shall be approved in accordance with Clause 30.7. Incidentally, I note that Clause 35.1 provides that Clause 29 shall survive the termination of the CVA. As to the approval mechanism referred to in Clause 29.3 (i.e. the one provided by Clause 30.7):
- 2.1.1 Clause 30.7.1 provides that the Supervisors' fees are to be invoiced monthly (or for such other periods as the Supervisors determine appropriate) to the Company.
- 2.1.2 Clause 30.7.2 permits the Supervisors to be paid 80% of their fees immediately (**[16/542]** of DMH4).

- 2.1.3 The balance of fees incurred by the Supervisors are to be approved by the Committee (Clause 30.7.3).
- 2.1.4 Clause 30.7.4 provides that if there is from time to time no creditors' committee to assist the Supervisors then the balance of their fees is to be paid "*following the approval of those fees by either the English Court or a meeting of Creditors*", whichever the Supervisors deem to be the appropriate and most cost efficient process ([16/542] of DMH4).
- 2.2 There are no creditors nor a Committee extant to approve the Supervisors' remuneration and so, on this basis, the Joint Administrators now seek the Court's approval for the payment to the Supervisors of the balance, as contemplated by Clauses 29.3 and 30.7.4.
3. **STAFFING**
- 3.1 The EY engagement team who provide assistance to the Joint Administrators and the Supervisors comprises:
  - 3.1.1 staff from EY Dublin with appropriate levels of insolvency experience to assist the Joint Administrators generally and, in particular, in liaising with creditors of the Company (such as the Irish Revenue) and ensuring local statutory compliance;
  - 3.1.2 staff from EY in the UK selected based on their ability, knowledge and experience of UK insolvency procedures. The EY team includes a billing team which is, broadly speaking, responsible for accounting for time costs and the reporting of time costs to creditors;
  - 3.1.3 staff from EY in India from the Global Delivery Services ("**GDS**") team, who undertake high-volume administrative tasks and support the billing team performing tasks such as obtaining timesheet data in respect of all EMEA Debtors, preparing timesheet reconciliations and providing core fee analysis to EY London.
- 3.2 The Schedules to Hughes 4 group the members of EY staff undertaking work in the Administration and CVA in order of seniority. The Schedules also name the members of EY staff undertaking work during the relevant period. In light of the number of team members it would be impractical to detail their experience individually. The scale of the administrations of the EMEA Debtors, including the Administration, has necessitated, in the early months, over 290 EY employees in Europe and the UK working on the matter. However, the Joint Administrators have kept the number of resources deployed under continuous review and since September 2017 a core engagement team (that is, those recording more than ten hours in a week) of around 15 people in EY Dublin and EY London experienced in insolvency, restructuring and tax matters, and valuation and business modelling have worked on the Administration and CVA.
- 3.3 Together with the Joint Administrators, a small team of senior members of EY staff undertake the management of the EY engagement team working on the Administration and CVA. Where appropriate, the leadership team delegate tasks to staff to ensure they are carried out in a cost effective and efficient manner, but with regard to the level of skill and experience required in a particular situation. The leadership team keep in touch regularly to ensure consistency of approach and work allocation across the Administration and CVA.
- 3.4 The core team dealing with the Company has been kept small during the Administration and CVA because of the complexities of the case and the need to address a number of technical and legal challenges, particularly in the later stages as the Company migrates to dissolution. This team employs formal control mechanisms to ensure that tasks are allocated to the appropriate grade of staff member and are carried out properly and in a cost-effective way. These are set out in detail below.
- 3.5 The Administration is supported by its own administration appointment checklist, which is used to provide a standardised methodology and more detailed framework with which to consider and structure the work planned for specific areas of the engagement. Once such an engagement is underway, the primary responsibility for monitoring the appointment checklist resides with the engagement manager.

- 3.6 The core engagement team has regular meetings to discuss progress in the EMEA group to gain the benefit from the experience of the wider engagement team in the winding-up of the other EMEA Debtors.

#### 4. TIME RECORDING

- 4.1 The Joint Administrators endeavour to manage time recording of the EMEA Debtors on a group basis rather than an entity by entity basis, using a single engagement team of staff. This enables a consistent approach between EMEA Debtors and allows significant synergies to be achieved and cost savings to be made by, for example, avoiding unnecessary duplication of work. The principles and processes set out in this section apply to the Company both in the Administration and in the CVA. Notwithstanding the central management approach, the workstreams and time recording systems have been designed such that staff can record time for tasks specific to the Company directly to the Company.
- 4.2 In certain instances, it has been necessary for several members of the engagement team to be present at the same meeting or conference call, for example, because those members have different fields of expertise (for example, tax or restructuring) or because the matters discussed are common to several EMEA Debtors. In all cases, the Joint Administrators are confident that no unnecessary duplication of work has taken place.
- 4.3 The EY time recording system is designed to provide a detailed breakdown of the costs incurred in the conduct of the Administration and CVA. Time is recorded against one of a number of different charge codes or "workstreams". The relevant workstreams in respect of the Company are listed and explained in detail in the Schedules to this statement.
- 4.4 The general practice at EY in respect of time recording is not to record periods of less than 6 minutes and so the minimum unit of time recording is 6 minutes. However, the EY time recording system allows for recording in multiples of the 6-minute unit if a large amount of time has been spent on one particular task or matter. For example, if a member of staff has worked on one particular task for one hour, that time will be recorded as one 60-minute unit as opposed to ten 6-minute units. The use of such multiples is particularly suited to longer periods of work spent on one matter and this practice has been adopted in respect of the conduct of the Administration and the CVA.

#### 5. REALLOCATED TIME COSTS

- 5.1 Throughout the Administration and CVA, fees of the Joint Administrators and Supervisors for work in the administrations and CVAs common to all EMEA Debtors have been charged centrally. Each EMEA Debtor (including the Company) is subject to both direct costs charged in respect of specific tasks undertaken for that company alone and its allocation of central costs.
- 5.2 Appropriate apportionment rates have been applied to these fees and the costs are apportioned between the various EMEA Debtors (including the Company) accordingly in order to ensure a proportionate and reasonable allocation of costs in accordance with the estimated benefit to each company of the work. As a general principle, the Joint Administrators have used an allocation apportionment by reference to the value of creditors as per each EMEA Debtor's statement of affairs prepared at the outset of the administration. However, where a task requires the same or a very similar level of work for each EMEA Debtor then an equal allocation apportionment is used. For example, billing processes and work drafting template reports to be replicated across EMEA Debtors (e.g. Progress Reports) have been centralised and those costs apportioned equally amongst the EMEA Debtors.
- 5.3 The allocation of central costs incurred for work in the CVA is governed by the **"CVA Cost Sharing Agreement"** dated 31 March 2017 made between the various EMEA Debtors. A copy of the CVA Cost Sharing Agreement is provided at **[56/1271]** of DMH4 and sets out that:
- 5.3.1 direct time costs relating to a specific company are to be charged directly to that company. Such matters include statutory requirements, adjudication of creditor claims and the making of distributions; and

- 5.3.2 general costs are apportioned between EMEA Debtors in proportion to the assets available to each EMEA Debtor. Those costs include central time costs which relate to general controls and processes which have been put in place for the benefit of all EMEA Debtors.
- 5.4 The Joint Administrators and Supervisors have periodically and regularly reviewed the apportionment rates used in order to ensure fairness and reasonableness and the resulting apportionments are set out in the Schedules to this statement.
6. **MONITORING**
- 6.1 Internal process meetings are held amongst the relevant staff on a regular basis. This ensures that senior members of the engagement team are kept fully apprised of work being undertaken across the various EMEA Debtors.
- 6.2 In addition to their own experience, the Joint Administrators and the senior members of the engagement team had the benefit of the EY internal risk management team, technical specialists and legislation experts providing them with advice regarding their statutory requirements, their professional requirements and best practice.
- 6.3 Every formal appointment requires specific tasks to be performed which are unique to that appointment and are not included in standard appointment checklists. In such instances, engagement managers maintain their own individual task lists which supplement the standard checklists. Engagement managers review their individual task lists on a regular basis. For tasks which have been delegated to other EY staff, internal update meetings are held in which the engagement manager obtains updates on any progress made and reviews the work completed to date on delegated tasks. The engagement manager applies professional skill, judgement and experience of formal appointments together with his or her knowledge of the specific intricacies of the engagement to ensure that all delegated tasks are completed to a satisfactory standard and in a timely manner by engagement staff. Appointment checklists are reviewed on a regular basis by the engagement manager.
- 6.4 Consultation with third party advisors acts as an additional control on the work undertaken. HSF, as the Joint Administrators' English law legal advisors, are consulted by the Joint Administrators, Supervisors and their staff as appropriate to discuss strategy and the work that may be required.
7. **EXPENSES**
- 7.1 Whilst the Joint Administrators are not seeking approval of their expenses, Category 2 expenses (being those costs that are directly referable to the appointment in question but are not a payment to an independent third party, as set out in Statement of Insolvency Practice 9, for example, printing) incurred in relation to the Administration during Period 1 are set out in **Schedule 3 at [49/1246]** of DMH4. The Joint Administrators do not anticipate charging any Category 2 expenses during Period 2.
- 7.2 The legal fees incurred by the Joint Administrators in Period 1 and prudent estimates of the legal fees expected to be incurred in Period 2 are also set out in in **Schedule 3 at [49/1246]** of DMH4.
- 7.3 There are a number of procedures in place to subject expenses to critical scrutiny. In particular, expenses are first subject to review by a separate billing team and must be reported to a manager on a weekly basis. The Joint Administrators' legal advisers work on a time cost basis and internal review processes are undertaken to review their invoices regularly. In addition, there is a further overarching internal EY audit and approval process from the senior team for engagement expenses.