

- (i) any of the provisions of the articles or by-laws of the Corporation or its Subsidiaries;
  - (ii) any agreement or other instrument to which the Corporation or any of its Subsidiaries is a party or by which the Corporation or any of its Subsidiaries is bound, except for the obtaining of certain consents under the Shareholders Agreement and the Voting Trust Agreement, all of which will be obtained prior to the Time of Closing; or
  - (iii) any Applicable Law in respect of which the Corporation or its Subsidiaries must comply, except to the extent that such violation would not reasonably be expected to limit in any material manner the operations of the Business as they are presently conducted or result in a Material Adverse Affect.
- (i) Each of the Shareholders, including the Minority Shareholders is a party, whether directly or as a party to the Voting Trust Agreement, to and is bound by the provisions of the Shareholders Agreement (including for greater certainty, the provisions of Section 5.7 – Drag Along Rights, thereof). Pursuant to the Shareholders Agreement, the Minority Shareholders are required to sell to the Purchaser the Class A Shares of the Corporation held by them on the terms and conditions set forth herein, and at the Time of Closing, the Purchaser will acquire good and valid title to all of the Shares held by all of the Shareholders, including the Minority Shareholders, in each case, free and clear of all Encumbrances.
- (2) *Financial*
- (a) The books and records of the Corporation and its Subsidiaries present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries and all material financial transactions of the Corporation and its Subsidiaries have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles.
  - (b) The audited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on December 31, 2006, together with the report of KPMG LLP, chartered accountants, thereon and the notes thereto (collectively, the “Audited Financial Statements”), a copy of which is attached hereto as Schedule 3.01(2)(b) present fairly in all material respects the consolidated financial position of the Corporation and its Subsidiaries as at December 31, 2006 and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.
  - (c) The unaudited consolidated financial statements of the Corporation, consisting of the balance sheet and statements of income, retained earnings and cash flows for the period ended on the Balance Sheet Date, (collectively, the “Unaudited Financial Statements”), a copy of which is attached hereto as Schedule 3.01(2)(c) present fairly in all material respects the consolidated financial position of the Corporation and its

Subsidiaries as at the Balance Sheet Date and the results of operations and cash flows of the Corporation and its Subsidiaries for the periods presented, all in accordance with generally accepted accounting principles.

- (d) The Corporation and its Subsidiaries have no accrued, contingent or other liabilities which would be required to be disclosed in a balance sheet prepared in accordance with generally accepted accounting principles, except for (i) liabilities set out or reflected in the Balance Sheet as at December 31, 2006 and in the Balance Sheet as at the Balance Sheet Date, (ii) normal liabilities that have been incurred by the Corporation and its Subsidiaries since the Balance Sheet Date in the ordinary course of business and consistent with past practices, and (iii) liabilities described in Schedule 3.01(2)(d).
- (e) Except as set forth in Schedule 3.01(2)(e), since the Balance Sheet Date, the business of the Corporation and its Subsidiaries has been carried on in its usual and ordinary course and neither the Corporation nor its Subsidiaries has entered into any transaction out of the usual and ordinary course of business.
- (f) Since the Balance Sheet Date there has been no Material Adverse Effect in respect of the Corporation or its Subsidiaries.
- (g) No current or former director, officer, shareholder or employee of the Corporation or its Subsidiaries or any person not dealing at arm's length within the meaning of the Tax Act with any such person or with the Corporation or its Subsidiaries is indebted to the Corporation or any of its Subsidiaries, except such indebtedness as is disclosed in Schedule 3.01(2)(g).

(3) *Condition of Assets*

- (a) The Corporation and its Subsidiaries are the owner, with good title to all assets, of all assets shown or reflected on the Balance Sheet (except for assets disposed of in the usual and ordinary course since the Balance Sheet Date) or acquired by the Corporation and its Subsidiaries since the Balance Sheet Date including the Owned Intellectual Property, free and clear of all liens, charges, encumbrances and any other rights of others other than those set out in Part II of Schedule 3.01(3)(a). Neither the Corporation nor any of its Subsidiaries now own or previously owned any real property.
- (b) All machinery and equipment owned or used by the Corporation and its Subsidiaries have been properly maintained and are in good working order for the purposes of on-going operation, subject to ordinary wear and tear for machinery and equipment of comparable age.
- (c) All of the Inventories, net of reserves, are of merchantable quality and reasonably fit for their usual purpose. Current Inventory levels are consistent with the level of Inventories that has been maintained in the operation of the business of the Corporation and its Subsidiaries prior to the date hereof in accordance with the operation of such business in the ordinary course.

- (d) Except as set forth in Schedule 3.01(2)(d), there are no outstanding orders, notices or similar requirements relating to the Corporation or its Subsidiaries issued by any Governmental Authority and there are no matters under discussion with any Governmental Authority relating to orders, notices or similar requirements.
- (e) No capital expenditures in the aggregate in excess of \$5,000,000 have been made or authorized by the Corporation or its Subsidiaries since the Balance Sheet Date.
- (f) Except as set forth in Schedule 3.01(3)(f), no dividends have been declared or paid on or in respect of the Shares and no other distribution on any of its securities or shares has been declared or made by the Corporation or its Subsidiaries since December 31, 2006 and all dividends which to the date hereof have been declared or paid by the Corporation or its Subsidiaries have been duly and validly declared and accrued for or paid.
- (g) Except as set forth in Schedule 3.01(3)(g), the products manufactured or produced by or for the Corporation and its Subsidiaries meet, in all material respects, the specifications in all Contracts with customers of the Corporation and its Subsidiaries relating to the sale of such products. Except as set forth in Schedule 3.01(3)(g), there are no material claims against the Corporation or its Subsidiaries pursuant to any product warranty or with respect to the production or sale of defective or inferior products. All services provided by the Corporation and its Subsidiaries to its customers have been provided in accordance with, in all material respects, the terms of all contracts relating thereto.

(4) *Contracts and Commitments*

- (a) The Corporation is not a party to any contract, agreement, lease, instrument or other commitment (whether written or oral) ("Contracts") outside the usual and ordinary course of business and is not a party to any Contract by the Corporation or its Subsidiaries extending for a period of time longer than 12 months or involving expenditures by the Corporation and its Subsidiaries in the aggregate in excess of \$100,000, except such Contracts as are listed in Schedule 3.01(4)(a).
- (b) Neither the Corporation nor any of its Subsidiaries is in default or breach, in any material respect, under any Contract to which it is a party and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Contracts are, in all material respects, in good standing and in full force and effect without amendment thereto and each of the Corporation and its Subsidiaries, as the case may be, is entitled to all benefits thereunder.
- (c) Except as set forth in Schedule 3.01(4)(c), neither the Corporation nor any of its Subsidiaries is a party to or bound by any guarantee, indemnification, surety or similar obligation.
- (d) Except as set forth in Schedule 3.01(4)(d), neither the Corporation nor any of its Subsidiaries is a party to any lease or other Contract in the nature of a lease for real

property, whether as lessor or lessee. The current uses of each property subject to a such a lease comply, in all material respects, with Applicable Law.

- (e) Except as set forth in Schedule 3.01(4)(e) neither the Corporation nor any of its Subsidiaries is a party to any Contract containing outstanding covenants or other obligations (other than customary confidentiality and non-disclosure obligations entered into in the ordinary course of business) that in any way restrict the business activity of the Corporation or its Subsidiaries or limit the freedom of the Corporation or its Subsidiaries to engage in any line of business or to compete with any person.
- (f) The Corporation does not have any Subsidiaries or hold any interest in any other person other than the Subsidiaries or any agreements, options or commitments to acquire any securities of any person or to acquire or lease any real property or assets other than, in the latter case, Inventory and equipment that are to be used in the usual and ordinary course of business, except as listed in Schedule 3.01(4)(f).
- (g) There is no agreement, option, understanding or commitment, or any right or privilege capable of becoming an agreement, for the purchase from the Corporation or any of its Subsidiaries of its business or any of its assets other than in the usual and ordinary course of business.
- (h) Except as disclosed in Schedule 3.01(4)(h), no consent is required nor is any notice required to be given under any Contract by any party thereto or any other person in connection with the completion of the transactions contemplated by this Agreement in order to maintain the rights of the Corporation and its Subsidiaries under such Contract, in all material respects. The completion of the transactions contemplated by this Agreement will not afford any party to any of the material Contracts or any other person the right to terminate any such Contract nor will the completion of such transactions result in any material additional or more onerous obligation on the Corporation or its Subsidiaries under any Contract.

(5) *Intellectual Property.*

- (a) Attached hereto as Schedule 3.01(5)(a) is a list of all registered trade marks, trade names, patents and copyrights, of all unregistered trade marks, trade names and copyrights and of all patent applications, trade mark registration applications and copyright registration applications, both domestic and foreign, owned or made by the Corporation or its Subsidiaries.
- (b) All trade marks, trade names, patents and copyrights, both domestic and foreign, and other Intellectual Property used in or required for the proper carrying on of the business of the Corporation and its Subsidiaries are validly and beneficially owned by or licensed to the Corporation and the Subsidiaries, as the case may be, with the right to use the same, and are in good standing and duly registered in all appropriate offices to preserve the right thereof and thereto; the Employees and all consultants and independent contractors retained by the Corporation and its Subsidiaries have agreed to maintain the confidentiality of confidential Intellectual Property and have provided waivers of all moral rights in the Intellectual Property.

- (c) To the knowledge of the Corporation, the conduct of the Corporation and its Subsidiaries does not infringe upon the Intellectual Property rights, domestic or foreign, of any other person, nor has the Corporation or any of its Subsidiaries received any notice of infringement. To the knowledge of the Corporation, no person has infringed the rights of the Corporation and its Subsidiaries to the Intellectual Property.
  
- (6) *Employees*
  - (a) Neither the Corporation nor its Subsidiaries is a party to or bound by any contract or commitment to pay any management or consulting fee except as disclosed in Schedule 3.01(6)(a).
  
  - (b) Neither the Corporation nor its Subsidiaries has any written employment contract with any person whomsoever, except as disclosed in Schedule 3.01(6)(b).
  
  - (c) Schedule 3.01(6)(c) sets out:
    - (i) the names of all employees of the Corporation and its Subsidiaries;
  
    - (ii) their position or title;
  
    - (iii) their status (i.e., full time, part time, temporary, casual, seasonal, co-op student);
  
    - (iv) their total annual remuneration, including a breakdown of (A) salary and (B) bonus, commissions or other incentive compensation, if any;
  
    - (v) other terms and conditions of their employment (other than Benefit Plans and Compensation Policies);
  
    - (vi) [intentionally omitted];
  
    - (vii) their total length of employment including any prior employment that would affect calculation of years of service for any purpose, including statutory entitlements, contractual entitlements (express or implied) benefit entitlement or pension entitlement; and
  
    - (viii) whether any employees are on any approved or statutory leave of absence, and, if so, the reason for such absence and the expected date of return.
  
  - (d) Schedule 3.01(6)(d) sets out:
    - (i) the names of all consultants of the Corporation and its Subsidiaries;
  
    - (ii) whether the consultant is providing services pursuant to a written consulting contract;
  
    - (iii) the term of any contract under clause (ii) above;

- (iv) notice, if any, required for the Corporation to terminate the consulting relationship without cause;
  - (v) the date the consultant first commenced providing services to the Corporation or the Subsidiaries;
  - (vi) the hourly fee of the consultant and any bonus, commissions or other incentive compensation payable to the consultant, if any ; and
  - (vii) the annual fees paid to the consultant for the preceding calendar year.
- (e) Neither the Corporation nor its Subsidiaries is bound by or a party to any collective bargaining agreement.
- (f) No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent:
- (i) holds bargaining rights with respect to any employees of the Corporation or its Subsidiaries by way of certification, interim certification, voluntary recognition, designation or successor rights;
  - (ii) has applied to be certified as the bargaining agent of any employees of the Corporation or its Subsidiaries; or
  - (iii) has applied to have the Corporation or its Subsidiaries declared a related employer or successor employer pursuant to applicable labour legislation,
- (g) There are no actual, threatened or pending organizing activities of any trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent or any actual, threatened or pending unfair labour practice complaints, strikes, work stoppages, picketing, lock-outs, hand-billings, boycotts, slowdowns, arbitrations, grievances, complaints, charges or similar labour related disputes or proceedings pertaining to the Corporation or its Subsidiaries, and there have not been any such activities or disputes or proceedings within the last year, except as disclosed in Schedule 3.01(6)(g).
- (h) All vacation pay for employees of the Corporation and its Subsidiaries is properly reflected and accrued in the books and accounts of the Corporation and its Subsidiaries.
- (i) Since the Balance Sheet Date, except in the ordinary course of business or as required by Applicable Law and consistent with the Corporation's past practices, there have been no increases or decreases in staffing levels of the Corporation and its Subsidiaries and there have been no changes in the terms and conditions of employment of any employees of the Corporation or its Subsidiaries, including their salaries, remuneration and any other payments to them, and there have been no changes in any remuneration payable or benefits provided to any officer, director, consultant, independent or dependent contractor or agent of the Corporation or its

Subsidiaries, and the Corporation and its Subsidiaries have not agreed or otherwise become committed to change any of the foregoing since that date.

- (j) The Corporation and its Subsidiaries are employing all employees of the Corporation and its Subsidiaries in compliance with all applicable Taxation, health, labour and employment laws, rules, regulations, notices, and orders.
- (k) Each of the Corporation and its Subsidiaries is in compliance with all provisions of all Applicable Laws relating to occupational health and safety, including the *Occupational Health and Safety Act* (Ontario) and regulations made pursuant thereto and there are no outstanding claims, charges or orders thereunder.
- (l) Each of the Corporation and its Subsidiaries is in compliance with applicable workers' compensation laws and regulations made pursuant thereto and there are no outstanding assessments, levies or penalties thereunder.
- (m) Each of the Corporation and its Subsidiaries has prepared and posted an employment equity plan for all employees of the Corporation and its Subsidiaries as may be required pursuant to Applicable Laws dealing with employment equity including, the *Employment Equity Act* or the federal contractors program.
- (n) The Corporation has prepared and posted a pay equity plan for all employees of the Corporation and has made all necessary adjustments pursuant to such pay equity plan in full compliance with the *Pay Equity Act* (Ontario), and the Corporation has fully disclosed to the Purchaser the terms pertaining thereto.

(7) *Privacy Laws*

- (a) The collection, use and retention of the Personal Information by the Corporation and its Subsidiaries, the disclosure or transfer of the Personal Information by the Corporation and its Subsidiaries to any third parties and transfer of the Personal Information by the Corporation and its Subsidiaries to the Purchaser as part of the Purchaser's due diligence and as contemplated by this Agreement or any ancillary agreement complies with all Privacy Laws and is consistent with the Corporation's own Privacy Policies.
- (b) There are no restrictions on the collection, use, disclosure and retention by the Corporation or its Subsidiaries of the Personal Information except as provided by Privacy Laws and the Corporation's own Privacy Policies.
- (c) There are no investigations, inquiries, actions, suits, claims, demands or proceedings, whether statutory or otherwise, pending, ongoing, or to the Corporation's knowledge, threatened, with respect to the collection, use, disclosure or retention by the Corporation or its Subsidiaries of the Personal Information.
- (d) No decision, judgment or order, whether statutory or otherwise, is pending or has been made, and no notice has been given pursuant to any Privacy Laws, requiring the

Corporation or its Subsidiaries to take (or to refrain from taking) any action with respect to the Personal Information.

(8) *Benefit Plans*

- (a) Schedule 3.01(8)(a) contains a list of every benefit plan, program, agreement or arrangement (whether written or unwritten) maintained, contributed to, or provided by the Corporation or any Subsidiary thereof for the benefit of any of the employees, former employees or dependent or independent contractors of the Corporation and its Subsidiaries or their respective dependants or beneficiaries (the “Benefit Plans”) including all bonus, deferred compensation, incentive compensation, share purchase, share option, stock appreciation, phantom stock, savings, profit sharing, severance or termination pay, health or other medical, life, disability or other insurance (whether insured or self-insured), supplementary unemployment benefit, pension, retirement and supplementary retirement plans, programs, agreements and arrangements, except for any statutory plans to which the Corporation is obliged to contribute or comply including the Canada/Québec Pension Plan, or plans administered pursuant to applicable federal or provincial health, worker’s compensation or employment insurance legislation.
- (b) Schedule 3.01(8)(b) contains a list of all compensation policies and practices of the Corporation and its Subsidiaries (“Compensation Policies”) applicable to employees of the Corporation and its Subsidiaries.
- (c) The Corporation has delivered to the Purchaser true, complete and up-to-date copies of all Benefit Plans and Compensation Policies and all amendments thereto together with all summary descriptions of the Benefit Plans and Compensation Policies provided to past or present participants therein.
- (d) No fact, condition or circumstance exists that would materially affect the information contained in the documents provided pursuant to Section 3.01(8)(c) and, in particular, no promises or commitments have been made by the Corporation and its Subsidiaries to amend any Benefit Plan or Compensation Policy.
- (e) Except as disclosed on Schedule 3.01(8)(e) neither the execution, delivery or performance of this Agreement, nor the consummation of any of the other the transactions contemplated by this Agreement, will result in any bonus, golden parachute, severance or other payment or obligation to any current or former employee or director of the Corporation or its Subsidiaries (whether or not under any Benefit Plan), materially increase the benefits payable or provided under any Benefit Plan, result in any acceleration of the time of payment or vesting of any such benefit, or increase or accelerate employer contributions thereunder.
- (f) The obligations of the Corporation and its Subsidiaries to any of the Benefit Plans that are multi-employer plans are restricted to providing information and making contributions and are set out completely and accurately in the collective bargaining agreements listed in Schedule 3.01(8)(f).



(9) *Environmental*

- (a) The business of the Corporation and its Subsidiaries, as carried on by the Corporation and its Subsidiaries, and their assets are in compliance in all material respects with all Environmental Laws and, to the knowledge of the Corporation, there are no facts that could give rise to a notice of non-compliance with any Environmental Law.
- (b) Schedule 3.01(9)(b) contains a complete list of all environmental Permits used in or required to carry on the business of the Corporation and its Subsidiaries in its usual and ordinary course and such Permits are in full force and effect.
- (c) The Corporation and its Subsidiaries have not used any of their facilities, or permitted them to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances except in compliance in all material respects with all Environmental Laws.
- (d) Neither the Corporation nor any of its Subsidiaries has been convicted of an offence or been subjected to any judgment, injunction or other proceeding or been fined or otherwise sentenced for non-compliance with any Environmental Laws, and it has not settled any prosecution or other proceeding short of conviction in connection therewith.

(10) *Taxes*

- (a) Except as set out in Schedule 3.01(10)(a):
  - (i) Each of the Corporation and its Subsidiaries has filed all Tax Returns, including any elections and designations required by or referred to in any such Tax Return, which were required to be filed by it with any Taxation Authority prior to the date hereof. All Tax Returns filed by the Corporation and its Subsidiaries are accurate and complete in all material respects;
  - (ii) Each of the Corporation and its Subsidiaries has withheld, and will continue until the Closing Date to withhold, any Taxes that are required by Applicable Law to be withheld and has timely paid or remitted, and will continue until the Closing Date to pay and remit, on a timely basis, the full amount of any Taxes that have been or will be withheld, to the applicable Taxation Authority;
  - (iii) Each of the Corporation and its Subsidiaries has paid and will continue until the Closing Date to pay all Taxes, including any amount due on or before the Closing Date, including instalments or prepayments of Taxes, which are required to have been paid to any Taxation Authority pursuant to Applicable Law, and no deficiency with respect to the payment of any Taxes or Tax instalments has been asserted against it by any Taxation Authority.
  - (iv) Neither the Corporation nor its Subsidiaries is a party to any agreement, waiver or arrangement with any Taxation Authority that relates to any

extension of time with respect to the filing of any Tax Return, any payment of Taxes or any assessment;

(11) *International Trade Laws*

- (a) Except as set forth on Schedule 3.01(11)(a) and except for non-compliance that would not result in a Material Adverse Effect, the Corporation and its Subsidiaries, as applicable, are in material compliance with (i) all Applicable Laws concerning the exportation of any products, technology, technical data and services, including those administered by, without limitation, the United States Department of Commerce, the United States Department of State, and the United States Department of the Treasury; (ii) United States and international economic and trade sanctions, including those administered by the Office of Foreign Assets Control ("OFAC") of the United States Department of the Treasury; (iii) the antiboycott regulations administered by the United States Department of Commerce, and all laws and regulations administered by the Bureau of Customs and Border Protection in the United States Department of Homeland Security;
- (b) Except as set forth on Schedule 3.01(11)(b) and except for non-compliance that would not result in a Material Adverse Effect, the Corporation and its Subsidiaries, as applicable, are in compliance with the United States Foreign Corrupt Practices Act and the Corruption of Foreign Public Officials Act (Canada);
- (c) To the Knowledge of the Corporation, no director, officer or employee of Company or any of its Subsidiaries is identified on any of the following documents: (i) the OFAC list of "Specially Designated Nationals and Blocked Persons" ("SDNs"); (ii) the Bureau of Industry and Security of the United States Department of Commerce "Denied Persons List", "Entity List" or "Unverified List"; (iii) the Office of Defense Trade Controls of the United States Department of State "List of Debarred Parties"; (iv) the Financial Sanctions Unit of the Bank of England "Consolidated List"; (v) the Solicitor General of Canada's "Anti-Terrorism Act Listed Entities"; (vi) the Australian Department of Foreign Affairs and Trade "Charter of the United Nations (Anti-terrorism-Persons and Entities) List"; (vii) the United Nations Security Council Counter-Terrorism Committee "Consolidated List"; or (viii) European Union Commission Regulation No. 1996/2001 of October 11, 2001;

(12) *General*

- (a) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Corporation or its Subsidiaries):
  - (i) pending or threatened against or materially adversely affecting, or which could materially adversely affect, the Corporation or its Subsidiaries or any of their assets,
  - (ii) before or by any Governmental Authority,

except such actions, suits or proceedings as are disclosed in Schedule 3.01(12)(a) and or to the Corporation's knowledge, there is no valid basis for any such action, suit or proceeding.

- (b) The Corporation is not conducting its business in any jurisdiction other than the Province of Ontario; the Corporation's Subsidiary, Med-Eng, Inc., is not conducting its business in any jurisdiction other than the State of New York; and the Corporation's Subsidiaries, 1252110 Alberta Ltd. and 1252144 Alberta Ltd., and the Partnership are not conducting their respective businesses in any jurisdiction other than the Province of Alberta.
- (c) The Corporation is conducting its business in material compliance with all Applicable Laws of Canada and of the Province of Ontario, the Corporation's Subsidiary, Med-Eng, Inc. is conducting its business in all material respects in compliance with all Applicable Laws of the United States and of the State of New York and the Corporation's Subsidiaries, 1252110 Alberta Ltd. and 1252144 Alberta Ltd., and the Partnership are conducting their respective businesses in compliance with all applicable laws of the Province of Alberta, except in each case where any such non-compliance would not have a Material Adverse Effect. The Corporation and its Subsidiaries have or, where applicable, have caused their contractors and agents to comply with Applicable Laws in those jurisdictions where business is being carried on by or on behalf of the Corporation or its Subsidiaries with a Governmental Authority. Except as set forth in 3.01(12)(c), (i) the Corporation has not been charged with and, to the knowledge of the Corporation, the Corporation is not now under investigation with respect to, a violation of any Applicable Law, (ii) the Corporation is not a party to or bound by any order, judgment, decree, injunction or of any Governmental Authority and (c) the Corporation has filed all material reports and has all material licenses and permits required to be filed with any Governmental Authority on or before the date hereof.
- (d) Attached as Schedule 3.01(12)(d) is a true and complete list of all Permits necessary or required to enable the business of the Corporation and its Subsidiaries to be carried on as now conducted and its assets to be owned, leased and operated.
- (e) Attached as Schedule 3.01(12)(e) is a true and complete list of all insurance policies maintained by the Corporation and its Subsidiaries that also specifies the insurer, the amount of the coverage, the type of insurance, the policy number and any pending claims thereunder.
- (f) Assuming that the Closing Date is the date of this Agreement, the Corporation together with its affiliates (as defined in the Competition Act) do not have assets in Canada that exceed \$11 million or annual gross revenues from sales in, from and into Canada that exceed \$30 million, in either case, as determined pursuant to section 109 of the Competition Act, provided that, for the purposes of Section 5.01(a), the assumption that the Closing Date is the date of this Agreement will not apply.

- (g) The value of the assets of the Corporation and its Subsidiaries, calculated in the manner prescribed by the Investment Canada Act, is less than \$281 million.
- (h) The Corporation is a WTO investor within the meaning of the Investment Canada Act.
- (i) To the knowledge of the Corporation, except for the Non-Resident Shareholders, none of the beneficial owners of the Shares is a non-resident person within the meaning of section 116 of the Tax Act.
- (j) Schedule 3.01(12)(j) is a correct and complete list showing (i) the name of each bank in which the Corporation and its Subsidiaries has an account and the names of all persons authorized to draw on the account, and (ii) the names of all persons who hold powers of attorney from the Corporation and its Subsidiaries.
- (k) Schedule 3.01(12)(k) lists the ten largest customers and the ten largest suppliers of the Corporation and its Subsidiaries (or such additional customers or suppliers of the Corporation and its Subsidiaries which are sufficient to constitute ten per cent or more of total sales or purchases, as the case may be) for the calendar years ending December 31, 2005 and December 31, 2006, and the aggregate amount which each customer was invoiced and each supplier was paid during each such calendar year. The Corporation is not aware of, nor has it received notice of, any intention on the part of any such customer or supplier to cease doing business with the Corporation and its Subsidiaries or to modify or change in any material manner any existing arrangement with the Corporation and its Subsidiaries for the purchase or supply of any products or services. The relationships of the Corporation and its Subsidiaries with each of its principal suppliers, shippers and customers are satisfactory, and there are no material unresolved disputes with any such supplier, shipper or customer.
- (l) No agent, broker, investment banker, financial advisor or other firm or person engaged by the Corporation and its Subsidiaries is or will be entitled to any brokers' or finders' fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement, except CIBC World Markets Inc., whose fees and expenses will be paid by the Corporation in accordance with the Corporation's agreement with such firm and such fees will included in determining the adjustment on account of Working Capital pursuant to Section 2.03.
- (m) No representation or warranty or other statement made by the Corporation in this Agreement contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

3.02 **Offeree Shareholders' Representations and Warranties**

Each Offeree Shareholder, for itself and not jointly, represents and warrants to the Purchaser that:

- (a) The Offeree Shareholder is the registered owner of the Shares set forth opposite the name of the Offeree Shareholder in Schedule 3.01(1)(d), free and clear of all liens, charges, encumbrances and any other rights of others;
- (b) The Offeree Shareholder has good and sufficient power, authority and right to enter into and deliver this Agreement and to transfer the legal and beneficial title and ownership of the Shares owned by the Offeree Shareholder to the Purchaser free and clear of all liens, charges, encumbrances and any other rights of others;
- (c) Except for the Shareholders Agreement, there is no contract, option or any other right or agreement binding upon or which at any time in the future may become binding upon the Offeree Shareholder to sell, transfer, assign, pledge, charge, mortgage or in any other way dispose of or encumber any of the Shares owned by the Offeree Shareholder other than pursuant to the provisions of this Agreement;
- (d) Neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by the Offeree Shareholder will result in the violation of any agreement or other instrument to which the Offeree Shareholder is a party or by which the Offeree Shareholder is bound; and
- (e) Except for any Offeree Shareholder whose name is identified in Schedule 3.02(e) as a Non-Resident Shareholder, the Offeree Shareholder or the beneficial owner of the Shares it represents, is not a non-resident person within the meaning of section 116 of the Tax Act.

3.03

**Purchaser's Representations and Warranties**

The Purchaser represents and warrants to the Shareholders and the Corporation that:

- (a) The Purchaser is a corporation duly incorporated, organized and subsisting under the laws of the province of Ontario.
- (b) The Purchaser has good and sufficient power, authority and right to enter into and deliver this Agreement and to complete the transactions to be completed by the Purchaser contemplated hereunder.
- (c) This Agreement constitutes a valid and legally binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court.
- (d) Neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by the Purchaser will result in a violation of:
  - (i) any of the provisions of the constating documents or by-laws of the Purchaser;

- (ii) any agreement or other instrument to which the Purchaser is a party or by which the Purchaser is bound; or
  - (iii) any Applicable Law in respect of which the Purchaser must comply.
- (e) Assuming that the Closing Date is the date of this Agreement, the Purchaser together with its affiliates (as defined in the Competition Act) does not have assets in Canada that exceed \$140 million or annual gross revenues from sales in, from or into Canada that exceed \$15 million, in either case, as determined pursuant to section 109 of the Competition Act, provided that, for the purposes of Section 5.02(a), the assumption that the Closing Date is the date of this Agreement will not apply.
- (f) The Purchaser is a WTO investor within the meaning of the Investment Canada Act.
- (g) The Purchaser has internal resources and financing commitments from responsible financial institutions (each a “Commitment Letter” and collectively, the “Commitment Letters”), copies of which have been provided to the Corporation and the Offeree Shareholders, available in connection with the acquisition of the Shares, which are in the aggregate amount sufficient to consummate the transaction contemplated hereby. There are no conditions to the funding of the financing described in the Commitment Letters other than those expressly set forth in the Commitment Letters delivered to the Corporation and the Offeree Shareholders on or prior to the date hereof (the conditions so set forth in the Commitment Letters, the “Disclosed Conditions”). No Person has any right to (i) impose, and the Purchaser no obligation to accept, any condition precedent to such financing other than the Disclosed Conditions, or (ii) reduce the amounts of the financing commitments made in the Commitment Letters. As of the date of this Agreement, each Commitment Letter is in full force and effect, in all material respects, and there has been no breach, default, action or omission to act on the part of the Purchaser, or to the Purchaser’s actual knowledge, on the part of the other parties thereto, that would permit any party thereto to terminate or cancel any Commitment Letter. The financial statements of the Purchaser as of March 31, 2007 and for the period then ended, which have been previously delivered to the Corporation, fairly present, in all material respects, the financial condition and results of operation of the Purchase as of the dates and for the periods then ended in accordance with generally accepted accounting principles; and
- (h) No agent, broker, investment banker, financial advisor or other firm or person engaged by the Purchaser is or will be entitled to any brokers’ or finders’ fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement, except Genuity Capital Markets, whose fees and expenses will be paid by the Purchaser in accordance with Purchaser’s agreement with such firm.

3.04 **Exclusivity of Representations and Warranties**

The representations and warranties of the Corporation, each Offeree Shareholder and the Purchaser set forth in Sections 3.01, 3.02 and 3.03, respectively, are the only representations and

warranties made by such party. THE CORPORATION AND EACH OFFEREE SHAREHOLDER SPECIFICALLY DISCLAIM ANY WARRANTY REGARDING THE FURTHER PROFITABILITY OF THE CORPORATION FOLLOWING THE CLOSING DATE. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SPECIFICALLY SET FORTH IN SECTIONS 3.01, 3.02 AND 3.03, THE CORPORATION, EACH OFFEREE SHAREHOLDER AND THE PURCHASER, RESPECTIVELY, MAKE NO REPRESENTATION , WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER.

#### **ARTICLE 4 - COVENANTS**

##### **4.01 Covenants of the Corporation**

(1) Except as otherwise contemplated by this Agreement or consented to in writing by the Purchaser, from the date of this Agreement until Closing, the Corporation will ensure that each of the Corporation and its Subsidiaries will:

- (a) carry on their business only in the ordinary course of business consistent with past practice and shall not, other than in the ordinary course of business, enter into any transaction or take any action which if taken before the date hereof would constitute a breach of any representation, warranty or covenant contained in this Agreement;
- (b) use all reasonable commercial efforts to preserve intact its business, organization and goodwill, to keep available the employees of its business as a group and to maintain satisfactory relationships with suppliers, distributors, customers and others with whom the Corporation and its Subsidiaries have business relationships;
- (c) use all reasonable commercial efforts to cause its current insurance policies not to be cancelled or terminated or any other coverage thereunder to lapse, unless simultaneously with such terminations, cancellation or lapse, replacement policies underwritten by insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies, and where possible, for substantially similar premiums, are in full force and effect;
- (d) promptly advise the Purchaser in writing of the occurrence of any Material Adverse Effect in respect of the Corporation or its Subsidiaries or of any facts that come to their attention which would cause any of the Corporation's representations and warranties herein contained to be untrue in any respect;
- (e) not amend or waive any of the provisions of any of the employment Contracts and other arrangements for any of the employees of the Corporation and its Subsidiaries earning annual base salary in excess of \$200,000, other than as required by such Contracts or arrangements;
- (f) maintain the books, records and accounts of the Corporation and its Subsidiaries in the usual and ordinary course, consistent with past practice and record all transactions on a basis consistent with that practice;

- (g) as soon as practicable after the date of this Agreement, and in any event no later than 30 days prior to the Closing Date, prepare and file, jointly with the Purchaser, a joint voluntary notice with the Committee on Foreign Investment in the United States (CFIUS) under the Exon-Florio amendment to the Defense Production Act of 1950, as amended (Exon-Florio), with respect to the transaction contemplated by this Agreement. The parties shall provide CFIUS with any additional or supplemental information requested by CFIUS or its member agencies during the Exon-Florio review process. The parties, in cooperation with each other, shall take all commercially reasonable steps advisable, necessary or desirable to finally and successfully complete the Exon-Florio review process as promptly as practicable; and
- (h) as soon as practicable after the date of this Agreement, file the notice required by Section 122.4(b) of the United States International Traffic in Arms Regulations to be filed with the United States Department of State. The parties shall cooperate with each other, as necessary, whether prior to or following the Closing Date, to facilitate the amendment of any licenses, agreements, or other authorization under U.S. export control laws as required by the closing of this Agreement.

4.02 **Examination of Records and Assets**

The Corporation will make available to the Purchaser and its authorized representatives all data bases recorded or stored by means of any device, including in electronic form, title documents, abstracts of title, deeds, surveys, leases, certificates of trade marks and copyrights, contracts and commitments in its possession or under its control relating to any of the Corporation and its Subsidiaries, their assets or business. The Corporation will forthwith make available to the Purchaser and its authorized representatives for examination all books of account and accounting records relating to the Corporation and its Subsidiaries. The Corporation will give the Purchaser and its authorized representatives every reasonable opportunity to have access to and to inspect the assets of the Corporation and its Subsidiaries. The exercise of any rights of access or inspection by or on behalf of the Purchaser under this Section 4.02 will not affect or mitigate the covenants, representations and warranties of the Corporation or the Offeree Shareholders in this Agreement which will continue in full force and effect.

4.03 **Regulatory Matters**

Each of the Purchaser and the Corporation agree to make, if applicable, an appropriate filing pursuant to the HSR Act with respect to the transaction contemplated hereby within ten Business Days after the date of this Agreement and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act. The Purchaser shall have responsibility for any required filing fees association with the HSR Act filing. The Purchaser and the Corporation, acting through outside counsel, agree to coordinate and cooperate fully and promptly with each other in exchanging information and providing assistance as the other party may reasonably request in connection with any government inquiries related to the transaction contemplated herein. The Corporation and the Purchaser will (i) promptly notify the other of any communication to it from any governmental entity relating to the matters that are the subject of this Agreement and (ii) to the extent practicable and permitted by law, provide copies to the other of any



information to be submitted to any governmental entity relating to the matters that are the subject of this Agreement.

4.04 **Cooperation Regarding Structure**

Between the date hereof and the Closing Date, the Purchaser and the Corporation will in good faith cooperate and work together to endeavour to structure the transaction contemplated by this Agreement in a manner which accommodates the tax, corporate and other commercial considerations of the Purchaser; provided that such structure does not adversely affect the Corporation or the Shareholders.

4.05 **Inclusion of Financial Statements and Assistance**

The Corporation consents to the Purchaser including a copy of the audited consolidated financial statements of the Corporation for the periods ended on December 31, 2005 and December 31, 2006, the Unaudited Financial Statements (as defined in Section 3.01(2)(c)) and any other financial statements required by Applicable Law, in any prospectus, registration statement, offering memorandum or other offering document of the Purchaser prepared in connection with any debt or equity financing contemplated by the Purchaser, together with such other information regarding the Corporation and the Subsidiaries as may reasonably be required to be included in any such prospectus, registration statement, offering memorandum or other offering document. The Corporation also agrees to reasonably assist the Purchaser in connection with the completion of such financing, including in connection with preparing the responses to the due diligence inquiries of the persons providing such financing and in connection with obtaining the required consents and comfort letters of the auditors and other relevant parties. The Purchaser shall on request reimburse the Corporation for all out-of-pocket expenses incurred by the Corporation in connection with providing such assistance.

4.06 **Retention Bonuses and Commissions**

The Shareholders will be responsible for (a) the retention bonuses provided for in the employment arrangements with the employees set out on Schedule 3.01(8)(e); and (b) the commissions payable to Paul Timmis provided for in his employment arrangements in respect of all sales up to the Closing Date. At the Time of Closing, the amount of the retention bonus for Paul Timmis will be deposited into an escrow account and will be disbursed in accordance with the terms of the employment arrangement between the Corporation and Paul Timmis relating to such retention bonus. In the event of a forfeiture by Paul Timmis of his entitlement for all or any portion of his retention bonus, such amount will be released from escrow and will be delivered to the Purchaser, or as the Purchaser directs.

4.07 **Purchaser Financing**

(1) The Purchaser shall use its reasonable commercial efforts to arrange and consummate the financing on substantially the terms and conditions set forth in the Commitment Letters, including using reasonable commercial efforts to (A) satisfy on a timely basis all terms, conditions, representations and warranties applicable to the Purchaser in the Commitment Letters, (B) enter into definitive agreements with respect to the financing as promptly as

practicable on terms and conditions no less certain than those contained in the Commitment Letters and (C) obtain the funds under the Commitment Letters.

(2) The Purchaser shall keep the Corporation reasonably informed with respect to all material activity concerning the status of the financing and shall give the Corporation prompt notice of any material adverse change or material delay with respect to the financing. Without limiting the foregoing, the Purchaser shall notify the Corporation promptly, and in any event within one Business Day, if at any time prior to the date of Closing (A) any Commitment Letter shall be breached in any respect or expire or be terminated for any reason or (B) any financing source that is a party to any Commitment Letter notifies Purchaser that such source no longer intends to provide financing to Purchaser on the terms set forth therein. Without the prior written consent of the Corporation, neither the Purchaser nor any of its affiliates shall knowingly take any action or omit to take any action that reasonably would be expected to impair, delay or prevent the Purchaser's ability to timely obtain the proceeds of the financing or to enter into and timely consummate any alternate financing arrangement. The Purchaser shall not, without the prior written consent of the Corporation, terminate, amend or alter, or agree to terminate, amend or alter, any Commitment Letter in a manner that reasonably would impair, delay or prevent the transactions contemplated by this Agreement.

(3) If any portion of the financing becomes unavailable on the terms and conditions contemplated in the Commitment Letters, the Purchaser shall use reasonable commercial efforts to (A) arrange alternate financing (on terms and conditions, with respect to timing and amount, no less favorable in any material respect than those contained in the Commitment Letters) and, if obtained, shall promptly provide the Corporation with a copy of the new financing commitments, (B) enter into definitive agreements with respect to any such alternate financing arrangements as promptly as practicable and (C) obtain funds under such alternate financing arrangements to the extent necessary to consummate the transactions contemplated by this Agreement without undue delay.

## **ARTICLE 5- CONDITIONS AND TERMINATION**

### **5.01 Conditions for the Benefit of the Purchaser**

The sale by the Shareholders and the purchase by the Purchaser of the Shares is subject to the following conditions, which are for the exclusive benefit of the Purchaser and which are to be performed or complied with at or prior to the Time of Closing:

- (a) except to the extent otherwise contemplated herein, the representations and warranties of the Corporation set forth in Section 3.01 and the Offeree Shareholders set forth in Section 3.02 will be true and correct in all material respects and for this purpose all materiality qualifications in such representations and warranties will be disregarded at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Corporation shall have used reasonable commercial efforts to obtain from each of the Minority Shareholders an instrument executed by that Minority Shareholder setting forth as to that Minority Shareholder the representations and warranties in

substantially the form set forth in Section 3.02 and shall cause all such instruments so obtained to be delivered to the Purchaser;

- (c) the Corporation and the Shareholders will have performed or complied with all of the obligations and covenants and conditions of this Agreement to be performed or complied with in all material respects by the Corporation or the Shareholders at or prior to the Time of Closing;
- (d) any waiting period (and any extension thereof) applicable to the completion of the transaction contemplated by this Agreement under the *Hart-Scott-Rodino Antitrust Improvements Act of 1976*, as amended, and the rules and regulations thereunder (the "HSR Act"), shall have been terminated or shall have expired, and the approvals required to consummate of the transaction contemplated by this Agreement pursuant to the antitrust laws of any other applicable jurisdiction shall have been obtained (or any applicable waiting period thereunder shall have been terminated or shall have expired) or litigation relating to the denial of such required approvals shall have terminated in favour of the approval of the transaction;
- (e) the security in favour of Canadian Imperial Bank of Commerce over the property and assets of the Corporation and its Subsidiaries will have been discharged;
- (f) no action or proceeding will be pending or threatened by any person to enjoin, restrict or prohibit
  - (i) the sale and purchase of the Shares contemplated hereby; or
  - (ii) the right of the Corporation and its Subsidiaries to conduct the business of the Corporation and its Subsidiaries;
- (g) all required consents and approvals and notices to be obtained from or given to the applicable Governmental Authorities by the Corporation or its Subsidiaries and required to be obtained or given under any of the Permits or Contracts of the Corporation and its Subsidiaries, will have been obtained or given, as the case may be;
- (h) no Material Adverse Effect in respect of the Corporation and its Subsidiaries will have occurred from the date hereof to the Time of Closing;
- (i) all directors of the Corporation and its Subsidiaries specified by the Purchaser will resign;
- (j) all directors of the Corporation and its Subsidiaries will release the Corporation and its Subsidiaries from any and all possible claims arising from any act, matter or thing arising at or prior to the Time of Closing except for any claim for indemnification to which a director or officer of the Corporation may be entitled;
- (k) share certificates representing all of the Shares duly endorsed in blank for transfer, or accompanied by irrevocable security transfer powers of attorney duly executed in

blank, in either case by the holders of record will have been delivered to the Purchaser;

- (l) the Escrow Agreement will have been signed and delivered by the parties thereto;
- (m) the Shareholders Agreement, the Voting Trust Agreement, the Employee Share Purchase Plan – 2006 of the Corporation and the Stock Option Plan shall have been terminated; and
- (n) all necessary steps and proceedings will have been taken to permit the Shares to be duly and regularly transferred to and registered in the name of the Purchaser.

5.02 **Conditions for the Benefit of the Shareholders**

The sale by the Shareholders and the purchase by the Purchasers of the Shares is subject to the following conditions, which are for the exclusive benefit of the Shareholders and which are to be performed or complied with at or prior to the Time of Closing:

- (a) the representations and warranties of the Purchaser set forth in Section 3.03 will be true and correct in all material respects and for this purpose all materiality qualifications in such representations and warranties will be disregarded at the Time of Closing with the same force and effect as if made at and as of such time;
- (b) the Corporation will release, and will cause its Subsidiaries to release, all directors of the Corporation and its Subsidiaries from any and all possible claims arising from any act, matter or thing arising at or prior to the Time of Closing;
- (c) the Purchaser will have performed or complied with all of the obligations and covenants and conditions of this Agreement to be performed or complied with by the Purchaser at or prior to the Time of Closing;
- (d) the Escrow Agreement will have been signed and delivered by the parties thereto;
- (e) any waiting period (and any extension thereof) applicable to the completion of the transaction contemplated by this Agreement under the HSR Act shall have been terminated or shall have expired, and the approvals required to consummate of the transaction contemplated by this Agreement pursuant to the antitrust laws of any other applicable jurisdiction shall have been obtained (or any applicable waiting period thereunder shall have been terminated or shall have expired) or litigation relating to the denial of such required approvals shall have terminated in favour of the approval of the transaction; and
- (f) the Purchaser will have deposited with the Escrow Agent in respect of the retention bonus of Paul Timmis described in Section 4.06(a) \$19,000,000 in cash by wire transfer of immediately available funds to the Escrow Agent.

5.03            **Waiver of Condition**

The Purchaser, in the case of a condition set out in Section 5.01, and the Offeree Shareholders, in the case of a condition set out in Section 5.02, will have the exclusive right to waive the performance or compliance of such condition in whole or in part and on such terms as may be agreed upon without prejudice to any of its rights in the event of non-performance of or non-compliance with any other condition in whole or in part. Any such waiver will not constitute a waiver of any other conditions in favour of the waiving party. Such waiving party will retain the right to complete the sale and purchase of the Shares herein contemplated but will not have the right to sue the other party in respect of any breach of the other party's covenants, obligations or any inaccuracy or misrepresentation in a representation or warranty of the other party which gave rise to the non-performance of or non-compliance with the condition so waived.

5.04            **Termination**

This Agreement may be terminated, by notice given prior to or at the completion of the sale and purchase of the Shares herein contemplated:

- (a) by the Offeree Shareholders or the Purchaser if a material breach of any representation, warranty, covenant, obligation or other provision of this Agreement has been committed by the other party (or the Corporation in the case of a termination by the Purchaser) and such breach has not been waived on or before the Closing Date;
- (b) by the Purchaser if any of the conditions in Section 5.01 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Purchaser to comply with its obligations under this Agreement) and the Purchaser has not waived such condition on or before the Closing Date;
- (c) by the Offeree Shareholders if any of the conditions in Section 5.02 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Offeree Shareholders or the Corporation to comply with their obligations under this Agreement) and the Offeree Shareholders have not waived such condition on or before the Closing Date;
- (d) by written agreement of the Purchaser and the Offeree Shareholders; or
- (e) by the Offeree Shareholders, if any Commitment Letter is withdrawn and an alternative financing commitment letter(s) (within the meaning of Section 4.07(3)) is not delivered by the Purchaser to the Corporation and the Offeree Shareholders within five days of such withdrawal.

5.05            **Effect of Termination**

- (a) Each party's right of termination under Section 5.04 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated

pursuant to Section 5.04, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 6.02(2) and 8.03 will survive; provided, however, that if this Agreement is terminated by a party because of a material breach of a representation or warranty, covenant, obligation or other provision of this Agreement by one of the other parties or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of such other party's failure to comply with its obligations under this Agreement including in the case of termination by the Offeree Shareholders as a result of the failure of the Purchaser to satisfy its obligations pursuant to Sections 2.01, 2.02, 2.04(a) or 2.04(b) or both, or pursuant to Section 5.04(e), the terminating party's right to pursue all legal remedies with respect to such breach will survive such termination unimpaired.

- (b) In the event of the termination of this Agreement by the Offeree Shareholders or the Purchaser pursuant to Section 5.04, written notice thereof shall forthwith be given to the non-terminating parties hereto. If this Agreement is terminated and the transactions contemplated herein are abandoned as provided herein:
  - (i) the Purchaser will redeliver to the Corporation all documents, work papers and other material of the Corporation relating to the transactions contemplated hereby, whether obtained before or after the execution hereof; and
  - (ii) from and after the date of this Agreement, all confidential information received by the Purchaser with respect to the business of the Corporation shall be treated in accordance with the provisions of the Confidentiality Agreement dated May 2, 2007 between CIBC World Markets Corp., on behalf of the Corporation, and the Purchaser, which shall survive the termination of this Agreement.

#### **ARTICLE 6- CLOSING ARRANGEMENTS**

##### **6.01 Closing**

The sale and purchase of the Shares will be completed at the Time of Closing at the offices of McCarthy Tétrault LLP, 40 Elgin Street, Suite 1400, Ottawa, Ontario, K1P 5K6.

##### **6.02 Deliveries and Confidentiality**

(1) The Purchaser will ensure that the Corporation preserves all documents described in Section 4.02 for a period of six years from the Closing Date, or for such other period as is required by any Applicable Law, and will permit the Shareholders and their authorized representatives reasonable access thereto in connection with the affairs of the Shareholders.

(2) The Purchaser will not disclose to anyone or use for its own or for any purpose other than the purpose contemplated by this Agreement any confidential information concerning the Shareholders or the Corporation obtained by the Purchaser pursuant hereto, and will hold all such information in the strictest confidence.

(3) From and after the Closing Date the Shareholders will not disclose to anyone or use for any purpose, other than as required in order to permit the Shareholders to comply with any applicable laws, including laws relating to taxes, any confidential information concerning the Corporation and its Subsidiaries and will hold all such information in the strictest confidence.

6.03 **Directors' and Officers' Insurance**

(1) The Corporation will purchase a pre-paid non-cancellable run-off extension to the Corporation's current directors' and officers' insurance policy on terms and conditions no less advantageous to the directors and officers of the Corporation than those contained in the policy in effect on the date hereof, for all present and former directors and officers of the Corporation and its Subsidiaries, covering claims made prior to or within six years after the Closing Date.

(2) From and after the Closing Date, the Purchaser will, and will cause the Corporation (or its successor) to, indemnify the current and former directors and officers of the Corporation and its Subsidiaries to the fullest extent to which the Purchaser and the Corporation are permitted to indemnify such officers and directors under and in accordance with their respective charter, by-laws, Applicable Law and contracts of indemnity.

**ARTICLE 7 - INDEMNIFICATION**

7.01 **Survival**

All covenants, representations and warranties of each party contained in this Agreement will survive the Closing and will continue in full force and effect, subject to the provisions of this Article 7.

7.02 **Indemnification by the Corporation**

(1) Subject to the provisions of this Article 7, the Corporation will indemnify and save harmless the Purchaser and the directors, officers, employees and agents of the Purchaser (collectively, the "Purchaser Indemnitees") from and against all Claims incurred by the Purchaser directly or indirectly resulting from (i) any breach of any covenant of the Corporation contained in this Agreement, (ii) any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 or (iii) the contravention of, non-compliance with or other breach, on or before the Closing Date, by the Corporation or its Affiliates of the Teaming Agreement ("GD Teaming Agreement") between General Dynamics Armament and Technical Products ("GD") and the Corporation dated May 27, 2005, as amended.

(2) Notwithstanding any of the other provisions of this Agreement, the Corporation will not be liable to any Purchaser Indemnitee in respect of:

- (a) any representation and warranty of the Corporation set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement unless any claim or demand by the Purchaser against the Corporation with respect thereto is given to the Corporation and the Offeree Shareholders by the Purchaser prior to December 21, 2008, except in the

case of fraud, in which case there will be no time limit for the Purchaser to make a demand or claim against the Corporation in respect thereof; or

- (b) any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.01 or any contravention of, non-compliance with or other breach, on or before the Closing Date, of the GD Teaming Agreement:
  - (i) unless and until the aggregate of all Claims exceeds \$4.0 million, and then only to the extent that such aggregate exceeds \$2.0 million; or
  - (ii) in excess of the Indemnification Escrow Amount;

other than, in all cases, any Claim attributable to fraud.

(3) Subject to the provisions of this Article 7, each Shareholder, severally and not jointly, will indemnify and save harmless the Purchaser Indemnitees from and against all Claims incurred by the Purchaser directly or indirectly resulting from any breach of any covenant of that Shareholder contained in this Agreement or resulting from any inaccuracy or misrepresentation in any representation or warranty of that Shareholder set forth in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b), as the case may be.

(4) Notwithstanding any of the other provisions of this Agreement, no Shareholder will be liable to any Purchaser Indemnitee in respect of:

- (a) any inaccuracy or misrepresentation of a Shareholder set forth in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b), unless any claim or demand by the Purchaser against that Shareholder is given to that Shareholder prior to December 21, 2008; or
- (b) any inaccuracy or misrepresentation of a Shareholder set forth in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b), in an amount for that Shareholder in excess of that Shareholder's pro rata share of the Indemnification Escrow Amount;

other than, in all cases, a Claim based on the absence of, or deficiency in, the title of that Shareholder to its Shares or a Claim attributable to fraud.

(5) The Indemnification Escrow Amount shall be the Purchaser's sole recourse in the event of a successful Claim made by the Purchaser against the Corporation or the Shareholders except in respect of liability of any Shareholder for a Claim based on the absence of, or deficiency in, the title of that Shareholder to its shares, or liability under any Claim attributable to fraud of that Shareholder.

(6) For greater certainty, the Indemnification Escrow Amount is available to the Purchaser to satisfy Claims against the Corporation which the Purchaser is entitled to make pursuant to Sections 7.02(1) and (2). For the purposes of this Agreement, but without any derogation from the monetary limits set forth in Section 7.02(2), any Claim incurred by the Corporation (including any direct Claim or any Claim arising from a Third Party Proceeding) pursuant to Section 7.02 will be deemed to be a Claim incurred by the Purchaser.



7.03 **Indemnification by the Purchaser**

(1) Subject to the provisions of this Article 7, the Purchaser will indemnify collectively and save harmless the Shareholders and the Corporation and the directors, officers, employees and agents of the Shareholders and of the Corporation (the "Shareholder Indemnitees") from and against all Claims incurred by the Shareholders or the Corporation directly or indirectly resulting from any breach of any covenant of the Purchaser contained in this Agreement or from any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.03.

(2) Notwithstanding any of the other provisions of this Agreement, the Purchaser will not be liable to the Shareholder Indemnitees in respect of any Claim directly or indirectly resulting from any inaccuracy or misrepresentation in any representation or warranty set forth in Section 3.03, unless any claim or demand by the Shareholders against the Purchaser with respect thereto is given to the Purchaser by the Shareholders prior to December 21, 2008 and the Purchaser will not be liable in respect of any Claim unless and until the aggregate of all such Claims exceeds \$4.0 million and then only to the extent that such aggregate exceeds \$2.0 million and only up to a maximum amount equal to \$40 million, other than, in all cases, any Claim attributable to fraud.

7.04 **Third Party Indemnification**

Promptly after the assertion by any third party of any claim, demand or notice thereof (a "**Third Party Proceeding**") against any person entitled to indemnification under this Agreement (the "**Indemnitee**") that results or may result in the incurrence by such Indemnitee of any Claims for which such Indemnitee would be entitled to indemnification pursuant to this Agreement, such Indemnitee will promptly notify the party from whom such indemnification is or may be sought (the "**Indemnitor**") of such Third Party Proceeding. Such notice will also specify with reasonable detail (to the extent the information is reasonably available) the factual basis for the Third Party Proceeding, the amount claimed by the third party, or if such amount is not then determinable, a reasonable estimate of the likely amount of the claim by the Third Party. The failure to promptly provide such notice will not relieve the Indemnitor of any obligation to indemnify the Indemnitee, except to the extent such failure prejudices the Indemnitor. Thereupon, the Indemnitor will have the right, upon written notice (the "Defence Notice") to the Indemnitee within 30 days after receipt by the Indemnitor of notice of the Third Party Proceeding (or sooner if such Third Party Proceeding so requires) to conduct, at its own expense, the defence against the Third Party Proceeding in its own name or, if necessary, in the name of the Indemnitee provided that: (a) the Indemnitor acknowledges and agrees in the Defence Notice that as between the Indemnitor and the Indemnitee, it is liable to pay for all Claims arising from or relating to such Third Party Proceeding and (b) the Indemnitor provides to the Indemnitee adequate security (approved by the Indemnitee acting reasonably) from time to time in respect of such Claims. The Defence Notice will specify the counsel the Indemnitor will appoint to defend such Third Party Proceeding (the "Defence Counsel"), and the Indemnitee will have the right to approve the Defence Counsel, which approval will not be unreasonably withheld. Any Indemnified Party will have the right to employ separate counsel in any Third Party Proceeding and/or to participate in the defence thereof, but the fees and expenses of such counsel will not be included as part of any Claims incurred by the Indemnified Party unless (i) the Indemnitor failed to give the Defence Notice, including the acknowledgement and agreement to be set out therein within the prescribed period, (ii) such Indemnified Party has received an opinion of counsel, reasonably acceptable to the Indemnitor, to the effect that the interests of the Indemnified

Party and the Indemnitor with respect to the Third Party Proceeding are sufficiently adverse to prohibit the representation by the same counsel of both parties under applicable ethical rules, or (iii) the employment of such counsel at the expense of the Indemnitor has been specifically authorized by the Indemnitor. The party conducting the defence of any Third Party Proceeding will keep the other party apprised of all significant developments and will not enter into any settlement, compromise or consent to judgment with respect to such Third Party Proceeding unless the Indemnitor and the Indemnitee consent, which consent will not be unreasonably withheld.

7.05 **Duty to Mitigate and Subrogation**

(1) Nothing in this Agreement in any way restricts or limits the general obligation at law of the Indemnified Party to mitigate any damages which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement. The amount of any and all Claims under this Article 7 will be determined after taking into account any actual tax cost incurred (grossed up for such tax cost) or net of (i) the amount of any tax benefits actually realized by the Indemnified Party arising from the deduction of any such Claims, and (ii) any amounts actually recovered by the Indemnified Party under insurance policies, indemnities, reimbursement arrangements or similar agreements with respect to such Claims. The Indemnified Party shall take reasonable steps to enforce such recovery.

(2) The Indemnified Party shall, to the extent permitted by law, subrogate its rights relating to any third party claim to the Indemnifying Party and shall make or permit to be made all counterclaims and implead and permit to be impleaded all other Persons as may be reasonably required by the Indemnifying Party, the whole at the cost and expense of the Indemnifying Party.

7.06 **Exclusive Remedy**

From and after the completion of the sale and purchase of Shares herein contemplated, except in the case of a breach of Section 6.02(2) or (3), the rights of indemnity set forth in this Article 7 are the sole and exclusive remedies of each party in respect of any inaccuracy or misrepresentation in any representation or warranty, or breach of covenant or other obligation by another party under this Agreement. Accordingly, the parties waive, from and after the Closing, any and all rights, remedies and claims that one party may have against another party, whether at law, under any statute or in equity (including claims for contribution or other rights of recovery arising under any Environmental Law, claims for breach of contract, breach of representation and warranty, negligent representation and all claims for breach of duty), or otherwise, directly or indirectly, relating to the provisions of this Agreement or the transaction contemplated by this Agreement other than equitable remedies in the case of a breach of Section 6.02(3), as expressly provided for in this Article 7 and other than those arising with respect to any fraud. This Article 7 will remain in full force and effect in all circumstances and will not be terminated by any breach (fundamental, negligent or otherwise) by any party of its representations, warranties, covenants or other obligations under this Agreement or under any Closing document or by any termination or rescission of this Agreement by any party.

7.07 **Adjustment to Purchase Price**

All amounts payable by the Corporation or the Shareholders to a Purchaser Indemnitee pursuant to Article 7 will be deemed to be a decrease to the Purchase Price. All amounts

payable by the Purchaser to a Shareholder Indemnitee pursuant to Article 7 will be deemed to be an increase to the Purchase Price.

## **ARTICLE 8 - GENERAL**

### **8.01 Further Assurances**

Each of the Shareholders, the Corporation and the Purchaser will from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may, either before or after the Closing Date, reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

### **8.02 Time of the Essence**

Time is of the essence of this Agreement.

### **8.03 Costs and Expenses**

Each of the Shareholders, the Corporation and the Purchaser will pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant to this Agreement and any other costs and expenses whatsoever and howsoever incurred and will indemnify and save harmless the other from and against any Claim for any broker's, finder's or placement fee or commission alleged to have been incurred as a result of any action by it in connection with the transactions under this Agreement.

### **8.04 Public Announcements**

Subject to disclosure as may be required by law or regulation of any government authority to which the Corporation, any Shareholder or the Purchaser submits, no publicity release or announcement concerning the discussions between the parties hereto, this Agreement, or the transactions contemplated hereby between the parties hereto will be issued by any party without the prior approval of the form and substance thereof by each other party. In the event that disclosure is required by law or regulation of any government authority to which the Corporation, any Shareholder or the Purchaser submits, to the extent practicable in the circumstances, the parties will consult in advance concerning the disclosure and the party proposing to make disclosure shall provide drafts for consideration and prior approval by the other parties with respect to any required press release or other disclosure. For greater certainty, the foregoing shall not prevent the Corporation from publicly commenting upon the transaction contemplated hereby on a general basis without reference to the Purchaser.

### **8.05 Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, other legal representatives, successors and permitted assigns of the parties hereto.

8.06 **Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

8.07 **Amendments and Waivers**

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the parties hereto. No waiver of any breach of any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

8.08 **Assignment**

This Agreement may be assigned by any Offeree Shareholder or by the Purchaser without the consent of the Purchaser or the Offeree Shareholders as the case may be, to an Affiliate of such Offeree Shareholder or the Purchaser, provided that such Affiliate enters into a written agreement to be bound by the provisions of this Agreement in all respects and to the same extent as such Offeree Shareholder or the Purchaser is bound and provided that such Offeree Shareholder or the Purchaser will continue to be bound by all the obligations hereunder as if such assignment had not occurred and perform such obligations to the extent that such Affiliate fails to do so. The Purchaser may also assign this Agreement without the consent of the Offeree Shareholders to the Senior Lenders (as defined in Section 1.01 (Take Back Notes)) and the Bridge Lenders (as defined in Section 1.01 (Take Back Notes)), or their respective agents, as collateral security for the obligations of the Purchaser to the Senior Lenders and the Bridge Lenders in respect of credit facilities made available by them to the Purchaser, or in respect of notes issued to them by the Purchaser, as the case may be. Following the Closing Date, any Offeree Shareholder may assign any of its rights or obligations under this Agreement in connection with any dissolution or winding-up of such Offeree Shareholder only with the prior written consent of the Purchaser, which consent will not be unreasonably withheld.

8.09 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and will be given by personal delivery, by registered mail or by electronic means of communication addressed to the recipient as follows:

To Richard L'Abbé and 1062455 Ontario Inc.

c/o Richard L'Abbé  
1902 – 3590 Rivergate Way  
Ottawa, Ontario K1V 1V6

To Growthworks Canadian Fund Ltd.

275 Slater Street, Suite 900  
Ottawa, Ontario K1P 5H9

Facsimile No.: (613) 567-3979

Attention: Richard Charlebois  
Vice President, Investments

with a copy to Growthworks Canadian Fund Ltd.

20 Queen Street West, Suite 3504  
Toronto, Ontario M5H 3R3

Facsimile No.: (416) 929-0901

Attention: Les Lyall  
Senior Vice-President

To Schroder Canada and Schroder UK

c/o Schrodgers Venture Managers (Canada) Limited  
Suite 3000, 1800 McGill College Ave.  
Montreal, Quebec H3A 3J6

Facsimile No.: (514) 861-2495

Attention: Paul S. Echenberg

with a copy to Stikeman Elliott LLP:

40<sup>th</sup> Floor, 1155 René Levesque West  
Montreal, QC H3B 3V2

Facsimile No.: (514) 397-3222

Attention: André Roy

and with a copy to:

Schroder Ventures Holdings Limited  
111 Strand Street  
London WC2R 0AG

Facsimile No.: (44) 207 240 5346

Attention: Gerard Lloyd

To the Corporation:

Med-Eng Systems Inc.  
2400 St. Laurent Blvd.  
Ottawa, Ontario K1G 6C4

Facsimile No.: (613) 739-3345

Attention: Danny Osadca, President and CEO

with a copy to:

McCarthy Tétrault LLP  
Barristers & Solicitors  
Suite 1400, 40 Elgin Street  
Ottawa, ON K1P 5K6

Facsimile No.: (613) 563-9386

Attention: Robert D. Chapman

To the Purchaser:

Allen-Vanguard Corporation  
5459 Canotek Road  
Ottawa, Ontario  
K1J 9M3

Facsimile No.: (613) 749-8981

Attention: David Luxton  
President and CEO

with a copy to:

Lang Michener LLP  
50 O'Connor Street  
Suite 300  
Ottawa, Ontario  
K1P 6L2

Facsimile No.: (613) 231-3191

Attention: Elisabeth Preston

or to such other street address, individual or electronic communication number or address as may be designated by notice given by either party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on

the day of actual delivery thereof and, if given by registered mail, on the fifth Business Day following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the Business Day during which such normal business hours next occur if not given during such hours on any day. If the party giving any demand, notice or other communication knows or ought reasonably to know of any difficulties with the postal system that might affect the delivery of mail, any such demand, notice or other communication may not be mailed but must be given by personal delivery or by electronic communication.

**8.10 Remedies Cumulative**

The right and remedies of the parties under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

**8.11 No Third Party Beneficiaries**

This Agreement is solely for the benefit of :

- (a) the Shareholders and the Corporation, and their respective heirs, executors, administrators, other legal representatives, successors and permitted assigns, with respect to the obligations of the Purchaser under this Agreement, and
- (b) the Purchaser, and its successors and permitted assigns, with respect to the obligations of the Corporation and the Shareholders under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other person any remedy, claim, liability, reimbursement, cause of action or other right. The Corporation appoints the Purchaser as the trustee for the Purchaser Indemnitees of the covenants of indemnification of the Corporation with respect to such Purchaser Indemnitees as specified in this Agreement and the Purchaser accepts such appointment. The Purchaser appoints the Offeree Shareholders as the trustee for the Shareholder Indemnitees of the covenants of indemnification of the Purchaser with respect to such Shareholder Indemnitees specified in this Agreement and the Shareholders accept such appointment.

**8.12 Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**8.13 Attornment**

For the purpose of all legal proceedings this Agreement shall be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario shall have jurisdiction to entertain any action arising under this Agreement. The Corporation, each Shareholder and the Purchaser each hereby attorns to the jurisdiction of the courts of the Province of Ontario.

8.14      **Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

[Balance of this page intentionally left blank.]




8.15 **Electronic Execution**

Delivery of an executed signature page to this Agreement by any party by electronic transmission in PDF format will be as effective as delivery of a manually executed copy of this Agreement by such party.

**IN WITNESS WHEREOF** the parties have executed this Agreement.

**Allen-Vanguard Corporation**

By:   
Name: DAVID LUSSON  
Title: PRESIDENT + CEO

**Richard L'Abbé**

**1062455 Ontario Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.**

By: \_\_\_\_\_  
Name:  
Title:

**Med-Eng Systems Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Schroder Venture Managers (Canada)**

**Limited** in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: \_\_\_\_\_  
Name:  
Title:

**Schroder Ventures Holdings Limited** in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By: \_\_\_\_\_  
Name:  
Title:

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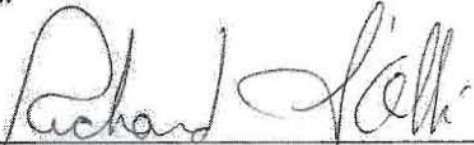
IN WITNESS WHEREOF the parties have executed this Agreement.

**Allen-Vanguard Corporation**

By: \_\_\_\_\_

Name:

Title:



**Richard L'Abbe**

**Schroder Venture Managers (Canada)**

**Limited** in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: \_\_\_\_\_

Name:

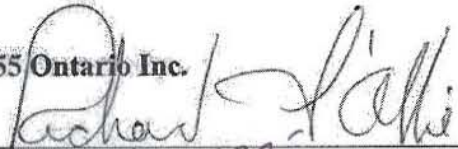
Title:

**1062455 Ontario Inc.**

By: \_\_\_\_\_

Name: RICHARD L'ABBE

Title: PRESIDENT



**Schroder Ventures Holdings Limited** in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By: \_\_\_\_\_

Name:

Title:

**Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.**

By: \_\_\_\_\_

Name:

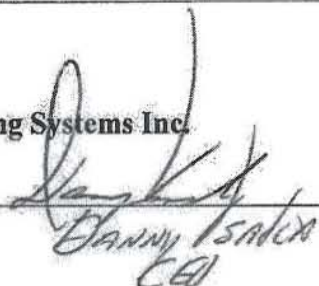
Title:

**Med-Eng Systems Inc.**

By: \_\_\_\_\_

Name:

Title:

  
DANNY SADIA  
CEO

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**Allen-Vanguard Corporation**

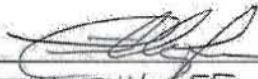
By: \_\_\_\_\_  
Name:  
Title:

Richard L'Abbé

**1062455 Ontario Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.**

By:   
Name: TIMOTHY LEE  
Title: SVP INVESTMENTS

**Med-Eng Systems Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Schroder Venture Managers (Canada)**

Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: \_\_\_\_\_  
Name:  
Title:

**Schroder Ventures Holdings Limited** in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By: \_\_\_\_\_  
Name:  
Title:

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IN WITNESS WHEREOF the parties have executed this Agreement.

**Allen-Vanguard Corporation**

By: \_\_\_\_\_  
Name:  
Title:

**Richard L'Abbé**

**1062455 Ontario Inc.**

By: \_\_\_\_\_  
Name:  
Title:

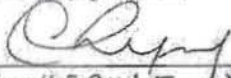
**Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.**

By: \_\_\_\_\_  
Name:  
Title:

**Med-Eng Systems Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Schroder Venture Managers (Canada) Limited** in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By:   
Name: CATHERINE LYNG  
Title: DIRECTOR

**Schroder Ventures Holdings Limited** in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By: \_\_\_\_\_  
Name:  
Title:

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IN WITNESS WHEREOF the parties have executed this Agreement.

**Allen-Vanguard Corporation**

By: \_\_\_\_\_  
Name:  
Title:

Richard L'Abbé

**1062455 Ontario Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Growthworks Canadian Fund Ltd., by its manager, GrowthWorks WV Management Ltd.**

By: \_\_\_\_\_  
Name:  
Title:

**Med-Eng Systems Inc.**

By: \_\_\_\_\_  
Name:  
Title:

**Schroder Venture Managers (Canada)**

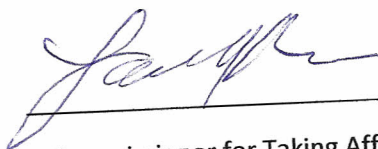
Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLP3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6

By: \_\_\_\_\_  
Name:  
Title:

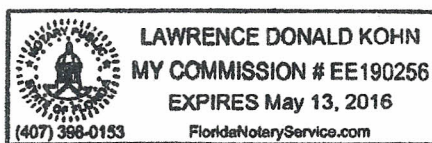
**Schroder Ventures Holdings Limited** in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, on behalf Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc)

By: Gerard Lloyd  
Name: GERARD LLOYD  
Title: Director

This is Exhibit "B" referred to in the  
affidavit of Paul Echenberg  
sworn before me, this 15<sup>th</sup> day  
of December 2014.



A Commissioner for Taking Affidavits



**THIS ESCROW AGREEMENT** is made as of the 17th day of September, 2007

**BETWEEN:**

**Allen-Vanguard Corporation**, a corporation incorporated under the laws of the Province of Ontario (the “Purchaser”),

- and -

**Offeree Shareholders** (as defined below),

- and -

**Med-Eng Systems Inc.**, a corporation incorporated under the laws of the Province of Ontario (the “Corporation”),

- and -

**Computershare Trust Company of Canada**, a trust company governed by the laws of Canada (the “Escrow Agent”).

**RECITALS:**

- A. The Parties other than the Escrow Agent are parties to a share purchase agreement dated as of August 3, 2007 (the “**Share Purchase Agreement**”), under which the Purchaser agreed to purchase all of the issued and outstanding shares in the capital of the Corporation (as defined in Section 1.1).
- B. Pursuant to a Shareholder Agreement made as of the 19<sup>th</sup> day of April, 2000 between the Corporation and all Shareholders (as defined below), the Shareholders are obliged to sell their shares of the Corporation in accordance with the Share Purchase Agreement.
- C. Pursuant to Section 2.04 of the Share Purchase Agreement, the Purchaser and the Offeree Shareholders agreed to enter into an escrow agreement to provide for the deposit of funds and Take Back Notes (as defined herein) receivable by all Shareholders as part of the Purchase Price (as defined in the Share Purchase Agreement) into escrow to be held as security for (i) any Claims for indemnification made by the Purchaser for itself or on behalf of a Purchaser Indemnitee pursuant to Section 7.02 or 7.04 of the Share Purchase Agreement, and (ii) any post-Closing downwards adjustment in the Estimated Working Capital under Section 2.03 of the Share Purchase Agreement, all in accordance with the terms and conditions of this Agreement.
- D. The foregoing recitals are representations and statements of fact by the Purchaser, the Offeree Shareholders and the Corporation, and not by the Escrow Agent.

**THEREFORE**, the parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND PRINCIPLES OF INTERPRETATION**

**1.1 Definitions**

Whenever used in this Agreement, the words and terms listed below have the meanings set out below.

**“Agreement”** means this escrow agreement, including all schedules, and all amendments or restatements, as permitted, and references to “Article” or “Section” mean the specified Article or Section of this Agreement.

**“Authorized Investment”** means a Canadian dollar denominated investment in any: (a) short-term direct obligations of, or unconditionally guaranteed by, the federal government of Canada, any agency thereof, or any Province of Canada, or (b) short-term guaranteed investment certificates of deposit or other evidences of indebtedness issued by, or money market fund maintained by, any bank listed on Schedule I to the *Bank Act* (Canada).

**“Business Day”** means any day of the week other than a Saturday or Sunday, or a statutory or civic holiday observed in Toronto, Ontario.

**“Claims”** means all losses, damages, expenses, liabilities (whether accrued, actual, contingent, latent or otherwise), claims and demands of whatever nature or kind including all reasonable legal fees and disbursements incurred by a Purchaser Indemnitee directly or indirectly resulting from any breach of any covenant of the Corporation or any Shareholder contained in the Share Purchase Agreement or from any inaccuracy or misrepresentation in any representation or warranty of the Corporation set forth in Section 3.01 of the Share Purchase Agreement or of any Shareholder set out in Section 3.02 or in a certificate delivered pursuant to Section 5.01(b) of the Share Purchase Agreement.

**“Corporation”** means Med-Eng Systems Inc., a corporation governed by the laws of the Province of Ontario.

**“Escrow Funds”** means, collectively, the Indemnification Escrow Fund and the Working Capital Escrow Fund.

**“Indemnification Escrow Amount”** has the meaning ascribed thereto in Section 2.1(a)(i).

**“Indemnification Escrow Fund”** has the meaning ascribed thereto in Section 2.1(a)(i).

**“Notice of Claim”** has the meaning ascribed thereto in Section 4.1(b).

**“Objection Notice”** has the meaning ascribed thereto in Section 4.1(c).

**“Offeree Shareholders”** means Richard L’Abbé, 1062455 Ontario Inc., Growthworks Canadian Fund Ltd., Schroder Canada and Schroder UK.

**“Parties”** means, collectively, all of the Purchaser, the Shareholders, the Corporation and the Escrow Agent, and **“Party”** means any one of them.



“**Purchaser Indemnitee**” means the Purchaser and the directors, officers, employees and agents of the Purchaser.

“**Schroder Canada**” means Schroder Venture Managers (Canada) Limited in its capacity as general partner of each of Schroder Canadian Buy-Out Fund II Limited Partnership CLP1, Schroder Canadian Buy-Out Fund II Limited Partnership CLP2, Schroder Canadian Buy-Out Fund II Limited Partnership CLPL3, Schroder Canadian Buy-Out Fund II Limited Partnership CLP4, Schroder Canadian Buy-Out Fund II Limited Partnership CLP5, Schroder Canadian Buy-Out Fund II Limited Partnership CLP6, limited partnerships formed under the laws of Quebec.

“**Schroder UK**” means Schroder Ventures Holdings Limited in its capacity as general partner of Schroder Canadian Buy-Out Fund II UKLP, a limited partnership formed under the laws of England and on behalf of Schroder Canadian Buy-Out Fund II Coinvestment Scheme and on behalf of SVG Capital plc (formerly, Schroder Ventures International Investment Trust plc).

“**Shareholders**” means all of the shareholders of the Corporation as set forth in Schedule 4.1(f).

“**Share Purchase Agreement**” has the meaning ascribed thereto in Recital A.

“**Take Back Notes**” means the Fixed Rate Secured Subordinated Notes, due December 31, 2007, of the Purchaser issued to the Offeree Shareholders as contemplated in the Share Purchase Agreement.

“**Working Capital Escrow Amount**” has the meaning ascribed thereto in Section 2.1(a)(ii).

“**Working Capital Escrow Fund**” has the meaning ascribed thereto in Section 2.1(a)(ii).

## 1.2 Certain Rules of Interpretation

In this Agreement:

- (a) **Consent** – Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Currency** – Unless otherwise specified, all references to money amounts are to lawful currency of Canada.
- (c) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (d) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (e) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.

- (f) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (g) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (h) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (i) **Statutory references** – A reference to a statute includes all regulations and rules made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, supplements or supersedes any such statute or any such regulation.
- (j) **Time** – Time is of the essence in the performance of the Parties' respective obligations. All references to a time in this Agreement shall be Toronto time.
- (k) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### 1.3 **Entire Agreement**

This Agreement and the agreements and other documents required to be delivered pursuant to this Agreement, constitute the entire agreement between the Parties and set out all the covenants, promises, warranties, representations, conditions, understandings and agreements between the Parties relating to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no covenants, promises, warranties, representations, conditions, understandings or other agreements, oral or written, express, implied or collateral between the Parties in connection with the subject matter of this Agreement except as specifically set forth in this Agreement and any document required to be delivered pursuant to this Agreement.

### 1.4 **Schedules**

The schedules to this Agreement, listed below, are an integral part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 2.3	Form of Investment Direction
Schedule 4.1(f)	Proportionate Interests of the Shareholders and Mailing Addresses for Distributions
Schedule 4.2	Form of Distribution Direction

## ARTICLE 2

### ESTABLISHMENT OF ESCROW; INVESTMENT OF ESCROW FUNDS

#### 2.1 Deposit of Escrow Amount; Escrow Fund

- (a) The amounts set forth below will be deposited by the Shareholders with the Escrow Agent in cash or in Take Back Notes measured by the principal amount thereof or in a combination of cash and Take Back Notes, on or about the date hereof. The Escrow Agent shall acknowledge receipt of such amounts by delivering to the Parties a written receipt executed by the Escrow Agent.
- (i) \$40,000,000 (the “**Indemnification Escrow Amount**”); the Indemnification Escrow Amount, as (i) increased by any interest earned or accrued on the cash portion thereof further to the Authorized Investments made in accordance with Section 2.3, and (ii) reduced by any distributions made in accordance with Section 4.1, is referred to herein as the “**Indemnification Escrow Fund**”; and
- (ii) \$3,000,000 (the “**Working Capital Escrow Amount**”); the Working Capital Escrow Amount, as (i) increased by any interest earned or accrued on the cash portion thereof further to the Authorized Investments made in accordance with Section 2.3, and (ii) reduced by any distributions made in accordance with Section 4.2, is referred to herein as the “**Working Capital Escrow Fund**”.
- (b) All amounts received in cash by the Escrow Agent upon payment of interest and principal under the Take Back Notes shall be held by the Escrow Agent in place of the Take Back Notes in accordance with the terms hereof.
- (c) The Offeree Shareholders may from time to time deposit cash with the Escrow Agent in substitution, in whole or in part, for Take Back Notes, such amount of cash to be equal to the aggregate principal amount of such Take Back Notes plus interest accrued thereon to the date of deposit of such cash.

#### 2.2 Appointment of Escrow Agent

The Offeree Shareholders and the Purchaser hereby appoint the Escrow Agent as escrow agent, and the Escrow Agent hereby accepts such appointment and agrees to act as escrow agent and to hold, safeguard and disburse each of the Escrow Funds in accordance with the terms and conditions of this Agreement.

### **2.3 Investment of Escrow Fund**

The Escrow Agent shall invest the cash portion of Indemnification Escrow Fund and Working Capital Escrow Fund from time to time in such Authorized Investments as may be specified by the Offeree Shareholders pursuant to a written direction delivered by the Offeree Shareholders substantially in the form of Schedule 2.3. If the Escrow Agent has not at any time received such written direction in respect of any of the Escrow Funds, such Escrow Funds shall be held in a segregated interest-bearing cash account to be held by the Escrow Agent at a Bank listed on Schedule I of the Bank Act (Canada); provided however that such Escrow Funds shall not be commingled with any other Escrow Fund. The Escrow Agent is authorized to liquidate in accordance with its customary procedures any portion of the applicable Escrow Funds consisting of investments to provide for payments required to be made under this Agreement. The Escrow Agent shall have no responsibility or liability for any diminution of any of the Escrow Funds resulting from any Authorized Investment made in accordance with this Section 2.3, including any losses on any investment liquidated prior to maturity in order to make a payment required hereunder.

### **2.4 Interest**

- (a) Interest earned in respect of the Escrow Funds shall be for the benefit of the Party to whom such Escrow Funds, or a portion thereof, is distributed pro rata to such distributed amount.
- (b) Each of the Shareholders shall be required to recognize and include as income in its applicable Tax Returns, and pay any applicable Tax arising in respect of, its proportionate share of any interest earned or accrued in respect of each Escrow Fund further to the Authorized Investments made in accordance with Section 2.3; provided however that no amount shall be credited by the Escrow Agent to any of the Shareholders on account of interest earned or accrued in respect of any of the Escrow Funds until a distribution is made out of the applicable Escrow Fund in accordance with this Agreement.

## **ARTICLE 3 DUTIES OF ESCROW AGENT; FEES; REMOVAL OR RESIGNATION OF ESCROW AGENT**

### **3.1 Duties and Liabilities of the Escrow Agent**

- (a) The Escrow Agent and its officers, directors, employees, agents and successors and assigns shall have no duties or responsibilities other than those expressly set forth in this Agreement, and shall have no liability or responsibility arising under any other agreement, including any agreement referred to in this Agreement, to which the Escrow Agent is not a party, and no implied duties or obligations shall be read into this Agreement against the Escrow Agent.
- (b) The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and shall not be held liable for any error in judgment made in

good faith, unless it is proved that the Escrow Agent was negligent or engaged in wilful misconduct.

- (c) Subject to Section 3.1(b), the Escrow Agent shall be entitled to: (i) rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it hereunder without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof, and (ii) act in reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so.
- (d) The Escrow Agent may retain legal counsel, accountants, engineers, appraisers, other experts, agents, agencies and advisors as may be reasonably required for the purpose of discharging its duties or determining its rights under this Agreement, and the Escrow Agent shall not be held liable or responsible for the misconduct of any of them. Subject to Section 3.1(b), the Escrow Agent shall incur no liability if it acts, or does not act, in accordance with the opinion and instruction of such legal counsel. The reasonable costs of such services shall be added to and be part of the Escrow Agent's fee hereunder.
- (e) In the event of any disagreement between the other Parties hereto resulting in adverse claims or demands being made in connection with any of the Escrow Funds or in the event that the Escrow Agent is in doubt as to what action (if any) it should take hereunder in connection with any of the Escrow Funds, the Escrow Agent shall be entitled, at its discretion, to refuse to comply with any demands or claims on it, as long as such disagreement shall continue, and in so refusing the Escrow Agent may make no delivery or other disposition of any asset involved herein or affected hereby, and in so doing the Escrow Agent shall not be or become liable in any way or to any other Party for its failure or refusal to comply with such conflicting demands or adverse claims, and shall be entitled to continue so to refrain from acting and so to refuse to act until the Escrow Agent shall have received (i) a final non-appealable order of a court of competent jurisdiction directing delivery of such Escrow Funds, or (ii) a written agreement executed by the Offeree Shareholders and the Purchaser directing delivery of such Escrow Funds, in which event the Escrow Agent shall disburse such Escrow Funds in accordance with such order or agreement.
- (f) All payments made from either of the Escrow Funds shall be subject to any withholding or other requirements of any applicable Laws in force at the time of the payment.
- (g) Subject to Section 3.1(b), the Escrow Agent shall not be responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, or for the form or execution of such instrument, or for the identity, authority or right of any Person executing or depositing any such instrument.

- (h) The Escrow Agent shall not be required to take notice of any default or to take any action with respect to such default involving any expense or liability, unless notice in writing of such default is delivered to the Escrow Agent in accordance with Section 5.1(f) and unless the Escrow Agent is indemnified, in a manner satisfactory to it, against such expense or liability.
- (i) The Escrow Agent shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this Agreement. Such documentation must not require the exercise of any discretion or independent judgment on the part of the Escrow Agent.
- (j) Each other Party hereby represents to the Escrow Agent that any account to be opened by, or interest to held by, the Escrow Agent in connection with this Agreement, for or to the credit of such Party, either (i) is not intended to be used by or on behalf of any third party; or (ii) is intended to be used by or on behalf of a third party, in which case such Party hereto agrees to complete and execute forthwith a declaration in the Escrow Agent's prescribed form as to the particulars of such third party.
- (k) Subject to Section 3.1(b), no provision of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur financial liability in the performance of its duties or the exercise of any of its rights or powers.
- (l) The Escrow Agent shall retain the right not to act and shall, subject to Section 3.1(b), not be liable for refusing to act if, due to a lack of information or for any other reason whatsoever, the Escrow Agent, in its sole reasonable judgment, determines that such act may cause it to be in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline. Further, should the Escrow Agent, in its reasonable judgment, determine at any time that its acting under this Agreement has resulted in its being in non-compliance with any applicable anti-money laundering or anti-terrorist legislation, regulation or guideline, then the Escrow Agent shall have the right to resign on ten days written notice to the other parties to this Agreement, or such shorter period as agreed to by the parties to this Agreement, notwithstanding the provisions of Section 3.3(a) of this Agreement, provided (i) that the Escrow Agent's written notice shall describe the circumstances of such non-compliance; (ii) that if such circumstances are rectified to the Escrow Agent's satisfaction within such ten day period, then such resignation shall not be effective.
- (m) The Parties acknowledge that the Escrow Agent may, in the course of providing services hereunder, collect or receive financial and other personal information about such parties and/or their representatives, as individuals, or about other individuals related to the subject matter hereof, and use such information for the following purposes:

- (i) to provide the services required under this agreement and other services that may be requested from time to time;
- (ii) to help the Escrow Agent manage its servicing relationships with such individuals;
- (iii) to meet the Escrow Agent's legal and regulatory requirements; and
- (iv) if Social Insurance Numbers are collected by the Escrow Agent, to perform tax reporting and to assist in verification of an individual's identity for security purposes.

Each party acknowledges and agrees that the Escrow Agent may receive, collect, use and disclose personal information provided to it or acquired by it in the course of this Agreement for the purposes described above and, generally, in the manner and on the terms described in its Privacy Code, which the Escrow Agent shall make available on its website or upon request, including revisions thereto. Further, each party agrees that it shall not provide or cause to be provided to the Escrow Agent any personal information relating to an individual who is not a party to this Agreement unless that party has assured itself that such individual understands and has consented to the aforementioned uses and disclosures.

- (n) Upon the Escrow Agent's delivery of the Indemnification Escrow Amount and the Working Capital Escrow Amount in accordance with the provisions of this Agreement, the Escrow Agent shall be automatically and immediately released from all obligations under this Agreement to any party hereto and to any other person with respect to the Indemnification Escrow Amount and the Working Capital Escrow Amount.
- (o) Subject to Section 3.1(b), the Escrow Agent will not be liable to any of the other Parties hereunder for any action taken or omitted to be taken by it under or in connection with this Agreement. Under no circumstances will the Escrow Agent be liable for any special, indirect, incidental, consequential, exemplary, aggravated or punitive losses or damages hereunder, including any loss of profits, whether foreseeable or unforeseeable.

### **3.2 Fees, Costs and Expenses of the Escrow Agent**

As full compensation for its services rendered under this Agreement, the Escrow Agent shall be entitled to remuneration in accordance with the Schedule of Fees provided by the Escrow Agent and executed by the Corporation and the Escrow Agent. The Escrow Agent shall be reimbursed for all reasonable out-of-pocket expenses or disbursements incurred or made by the Escrow Agent in the performance of its duties hereunder (except to the extent such expenses or disbursements were made or incurred as a result of the negligence or wilful misconduct of the Escrow Agent). All fees, expenses or disbursements payable under this Section 3.2 shall be paid by the Corporation. The Escrow Agent shall invoice the Corporation in arrears in respect of such fees, expenses and disbursements. Any amount owing under this Section and unpaid 30 days after request for such payment, will bear interest from the expiration of such 30 days at a rate per

annum equal to the then current rate charged by the Escrow Agent, payable on demand. The foregoing section shall survive the termination of this Agreement or the resignation or removal of the Escrow Agent.

### **3.3 Resignation or Removal of the Escrow Agent**

- (a) The Escrow Agent may resign from its position as escrow agent and be discharged from all further duties and liabilities hereunder upon thirty days' written notice delivered to the Offeree Shareholders and the Purchaser, or such shorter notice as the Parties may agree. The Escrow Agent may be removed from its office as escrow agent by the Offeree Shareholders and the Purchaser upon 30 days' joint written notice delivered (by the Offeree Shareholders and the Purchaser) to the Escrow Agent, or such shorter notice as the Parties may agree. Upon any discharge or removal, the Escrow Agent shall deliver the Escrow Funds by certified cheque as jointly directed by the Offeree Shareholders and the Purchaser, and shall execute such further assurances and documents as are required by the Offeree Shareholders and the Purchaser in connection with such transition.
- (b) In the event of the resignation or removal of the Escrow Agent, the Offeree Shareholders and the Purchaser shall jointly appoint a successor escrow agent on terms and conditions substantially identical to the terms and conditions of this Agreement.

### **3.4 Indemnification of the Escrow Agent**

The Shareholders and the Purchaser shall be jointly and severally liable to indemnify the Escrow Agent, its officers, directors, employees and agents and hold them harmless from and against any and all loss, liability, damage, cost and expense of any nature incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to, reasonable attorneys' fees and other costs and expenses of defending or preparing to defend against any claim of liability, unless and except to the extent such loss, liability, damage, cost and expense shall be caused by the breach by the Escrow Agent of its obligations under this Agreement or by the Escrow Agent's negligence, bad faith or wilful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement or the resignation or removal of the Escrow Agent.

## **ARTICLE 4 DISTRIBUTIONS FROM ESCROW FUNDS**

### **4.1 Distributions out of the Indemnification Escrow Fund**

- (a) If a Purchaser Indemnitee is entitled to indemnification in accordance with Section 7.02 or 7.04 of the Share Purchase Agreement for a Claim incurred by a Purchaser Indemnitee, the Purchaser on behalf of such Purchaser Indemnitee shall



be entitled, subject to the requirements and limitations described herein and in the Share Purchase Agreement, to draw upon the Indemnification Escrow Fund for the amount of such Claim.

- (b) From time to time (subject to the time and other limitations set forth in the Share Purchase Agreement), the Purchaser on behalf of the Purchaser Indemnitees may give written notice of any Claim for indemnification arising under Section 7.02 or 7.04 of the Share Purchase Agreement (a “**Notice of Claim**”) to the Offeree Shareholders and the Escrow Agent. The Notice of Claim shall set out a reasonably detailed description of the basis for the Claim, including the provision(s) of the Share Purchase Agreement giving rise to the Claim and the aggregate amount of the Claim.
- (c) The Offeree Shareholders shall have a period of 30 days after receipt of the Notice of Claim within which to object thereto by delivery to the Purchaser and the Escrow Agent of a written notice (an “**Objection Notice**”) setting forth the reasons for the objection.
- (d) If the Offeree Shareholders do not deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the dollar amount of the Claim claimed in the Notice of Claim shall be deemed established for all purposes of this Agreement and the Share Purchase Agreement and, at the end of such 30 days’ period, the Escrow Agent shall pay such amount to the Purchaser from the Indemnification Escrow Fund. The Escrow Agent shall pay such amount in the form of Take Back Notes plus interest accrued thereon in accordance with their terms until all Take Back Notes have been delivered from the Indemnification Escrow Fund before any payments are made in cash. The Escrow Agent shall not, and shall not be required to, inquire into or consider whether a Notice of Claim complies with the requirements of the Share Purchase Agreement.
- (e) If the Offeree Shareholders deliver an Objection Notice within 30 days of receipt of a Notice of Claim, then the Escrow Agent shall make payment of the non-disputed portion of the Notice of Claim as provided in Section 4.1(d) above and shall make payment with respect to the disputed portion of the Notice of Claim only in accordance with (i) joint written instructions of the Purchaser and the Offeree Shareholders, or (ii) a final non-appealable order of a court of competent jurisdiction. The Escrow Agent shall act on any such court order without further inquiry or question.
- (f) On December 21, 2008, the Indemnification Escrow Fund shall be reduced by the value (if any) of any Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement which remain pending as of such date, and the Escrow Agent shall distribute the remaining amount to the Shareholders (in the proportions set forth on Schedule 4.1(f)) on, or as soon as possible after, such date. Any amount remaining in the Indemnification Escrow Fund after all Claims for indemnification made under Sections 7.02 and 7.04 of the Share Purchase Agreement are resolved shall be distributed by the Escrow Agent to the

Shareholders (in the proportions set forth on Schedule 4.1(f)) as soon as possible after such resolution.

- (g) For greater certainty, the aggregate liability of the Shareholders and the Company with respect to any and all Claims made under Section 7.02 or 7.04 of the Share Purchase Agreement shall not exceed \$40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof and the aggregate amount of any distributions made by the Escrow Agent to the Purchaser under this Section 4.1 shall in no event exceed \$40,000,000, plus interest earned or accrued further to the Authorized Investments made in accordance with Sections 2.3 and 2.4(a) hereof.

#### **4.2 Distributions out of the Working Capital Escrow Fund**

- (a) If the Purchaser becomes entitled, pursuant to Section 2.03 of the Share Purchase Agreement, to all or a portion of the Working Capital Escrow Amount, then the Offeree Shareholders and the Purchaser agree to execute and deliver to the Escrow Agent a joint written direction, substantially in the form of Schedule 4.2, authorizing the Escrow Agent to pay such amount to the Purchaser from the Working Capital Escrow Fund. The Escrow Agent shall, as soon as possible following the receipt of such joint written direction, without further inquiry or question, pay such amount to the Purchaser from the Working Capital Escrow Fund. The Escrow Agent shall pay such amount in the form of Take Back Notes plus accrued interest thereon in accordance with their terms to the full extent of Take Back Notes available before any portion of the payment is made in cash.
- (b) If any amount is remaining in the Working Capital Escrow Fund after all payments required to be made to the Purchaser pursuant to Section 2.03 of the Share Purchase Agreement have been made, then the Offeree Shareholders and the Purchaser agree to execute and deliver to the Escrow Agent a joint written direction, substantially in the form of Schedule 4.2, authorizing the Escrow Agent to pay such remaining amount to the Shareholders from the Working Capital Escrow Fund (in the proportions set forth on Schedule 4.1(f)). The Escrow Agent shall, as soon as possible following the receipt of such joint written direction, without further inquiry or question, pay such amount to the Shareholders from the Working Capital Escrow Fund (in the proportions set forth on Schedule 4.1(f)).

### **ARTICLE 5 GENERAL**

#### **5.1 Notices**

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section referred to as a “Notice”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery, or by facsimile):