

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PT HOLDCO,  
INC., PRIMUS TELECOMMUNICATIONS CANADA, INC., PTUS, INC., PRIMUS  
TELECOMMUNICATIONS, INC., AND LINGO, INC**

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**RESPONDING MOTION RECORD OF BELL CANADA  
(Returnable September 16, 2016)**

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September 15, 2016

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# Tab 1



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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF PT  
HOLDCO, INC., PRIMUS TELECOMMUNICATIONS CANADA, INC., PTUS, INC.,  
PRIMUS TELECOMMUNICATIONS, INC., AND LINGO, INC

Primus Canada

**AFFIDAVIT OF WALTER RAMKA**  
(Sworn September 15, 2016)

I, **WALTER RAMKA**, of the City of Georgetown, in the Province of Ontario, **MAKE OATH AND SAY as follows:**

1. I am the Associate Director, Credit and A/R Management, Bell Business Market and Wholesale at Bell Canada ("**Bell**"), and as such have personal knowledge of the matters hereinafter deposed to, or where I do not possess such personal knowledge, I have stated the source of my information, and in all such cases do verily believe it to be true.
2. I have read the affidavit of Michael Nowlan, sworn September 9, 2016 (the "**Nowlan Affidavit**") filed in support of a Motion brought by PT Holdco, Inc., ("**Holdco**"), Primus Telecommunications Canada Inc. ("**Primus Canada**"), PTUS, Inc. ("**PTUS**"), Primus Telecommunications, Inc., ("**PTI**") and Lingo, Inc. ("**Lingo**"), and together with PTUS and PTI, the "**U.S. Primus Entities**", and collectively with Holdco and Primus Canada, the "**Primus Entities**"), which is scheduled to be heard by the Court on September 16, 2016 for, *inter alia*, an Order: (i) extending the stay of proceedings; (ii) terminating these proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") and (iii) discharging FTI Consulting Canada Inc. ("**FTI**") as Court-appointed monitor (the "**Monitor**") in these CCAA proceedings upon the delivery of a Monitor's Discharge Certificate, and make this affidavit in response.

3. On January 19, 2016, Primus Canada, *inter alia*, entered into an asset purchase agreement with Birch Communications Inc. (the "**Purchaser**") which was conditional on Court approval (the "**APA**"). Attached hereto and marked as **Exhibit "A"** is a copy of the APA.
4. On January 19, 2016, Primus Canada obtained an order from Justice Penny pursuant to the CCAA, which, among other things, appointed FTI as Monitor (the "**Initial Order**").
5. The APA contemplated that arrears accumulated by Primus Canada prior to the Initial Order may be required to be paid in order to obtain consents from third party service providers such as Bell. These arrears, which may be required to be paid, were defined as "Cure Costs" in the APA.
6. The APA further contemplated that if negotiations were to occur with regards to the settlement and payment of Cure Costs, it could only be so in the presence of representatives of Primus Canada, the Purchaser and the Monitor, unless that right was waived, as appears from section 2.3(3) of the APA which reads as follows:

“(3) All negotiations with respect to the settlement and payment of Cure Costs may only be conducted from and after the filing of the Initial Order and shall be conducted in the presence of a representative of each of the Primus Canada, the Purchaser and the Monitor, unless the right to have a representative present is waived by the Primus Canada, the Purchaser or the Monitor, respectively.”
7. Around the beginning of February 2016, Primus Canada, the Purchaser, the Monitor and Bell began negotiations regarding the assignment of Primus Canada's service contracts with Bell (the "**Bell Agreements**") and with respect to the payment of Cure Costs under the Assigned Contracts (as defined hereinafter), as more fully appears from a copy of email communications between legal counsel for Primus Canada, the Monitor, the Purchaser, and Bell, dated February 3, 2016, which is attached hereto and marked as **Exhibit "B"**.
8. From the outset, it had been understood by Bell that all of the Bell Agreements were to be assigned to the Purchaser, as a long list of Bell Agreements were listed as Essential Contracts and included in Schedule B to the APA. As such, as requested by the Monitor, Primus Canada and the Purchaser, Bell provided the amounts owed as arrears by Primus

Canada for the services provided in the pre-January 19, 2016, as well as post-January 19, 2016 periods, along with supporting detailed calculations, as relates to all of the Bell Agreements, as more fully set out in Exhibit "B".

9. Due to the nature of the services provided by Bell to Primus Canada and their billing method (i.e. certain services are billed in advance and others in arrears), although the breakdown provided by Bell to Primus Canada, the Purchaser and the Monitor on February 3, 2016 (and again on February 17, 2016) was accurate based on the information available to Bell at the time, it was indicated that the numbers were preliminary and subject to change, principally because certain pre-filing services (usage from January 1 to January 18) were in the process of being billed, but that the variance in the pre-filing amounts should not be significant, as detailed in Exhibit "B". A copy of the email sent by Bell's counsel dated February 17, 2016 is attached hereto and marked as **Exhibit "C"**.
10. On or about February 9, 2016, counsel for Bell learned from counsel for Primus Canada that the Purchaser indeed did not intend to assume all of the Bell Agreements, which was later confirmed by letter from counsel for Primus Canada addressed to counsel for Bell dated February 11, 2016. Attached hereto and marked as **Exhibit "D"** is a copy of the said letter.
11. In light of this turn of events and throughout the subsequent negotiations, Bell clearly indicated it would not take any responsibility regarding any negative impact on the services offered by Primus Canada to its clients should the Purchaser decide not to assume Primus Canada's obligations under all of the Bell Agreements, as more fully appears from a copy of an email dated February 9, 2016, sent by Bell's legal counsel to the Purchaser, attached hereto and marked as **Exhibit "E"**.
12. Once again, Bell went through the exercise of separating the Cure Costs under the Bell Agreements, which the Purchaser required be assigned to it (the "**Assigned Contracts**") and those to be excluded (the "**Excluded Contracts**"), and forwarded this information, along with supporting detailed calculations of the pre and post-January 19 period charges, to the Purchaser, the Monitor and Primus Canada, as detailed in Exhibit "C".

13. Ultimately, the Purchaser decided to assume all of the Bell Agreements and, therefore, the notion of Excluded and Assigned Contracts became irrelevant for the purposes of negotiation of an assignment agreement and the calculation of Cure Costs.
14. In the meantime, on February 11, 2016, Primus Canada, the Monitor and Bell (including BCE Nexxia Corp.) entered into a post-filing agreement pursuant to which Bell continued providing services to Primus Canada on a go-forward basis, pursuant to the Bell Agreements in consideration of weekly payments in accordance with the formula set out in that agreement (the "**Post-Filing Agreement**"), as more fully appears from a copy of said Post-Filing Agreement, which is attached hereto and marked as **Exhibit "F"**.
15. As appears from Exhibits "B" and "C", Bell did not stop at providing the amounts owed as Cure Costs, it also provided a very specific and detailed breakdown of its calculations in Excel Spreadsheets sent to Primus Canada, the Purchaser and the Monitor and their respective counsel. From these spreadsheets, the method of calculation used by Bell to separate the pre and post-January 19 charges was readily apparent, such that Primus Canada, the Purchaser and the Monitor had the ability to verify the method used by Bell and the application of said method to the numerous accounts under which Bell invoiced Primus Canada pursuant to the Bell Agreements (the "**Accounts**").
16. Following the decision of the Purchaser to assume all of the Bell Agreements, the negotiations essentially focused on (i) the content of the Assignment Agreement (as defined hereafter) and (ii) the confirmation of the Cure Costs.
17. By email dated February 23, 2016, counsel for Bell advised counsel for Primus Canada, the Purchaser and the Monitor that a material amount had been omitted as relates to Cure Costs under what were then considered "Excluded Contracts". The amount of \$436,352.00 was therefore to be added to the initial amounts of CDN\$2,834,607.59 and USD\$36,731.02, which had been communicated by email of February 17, 2016 (Exhibit "C"), such that the aggregate Cure Costs payable to Bell became CDN\$3,270,959.59 and USD\$36,731.02, as more fully appears from a copy of the email dated February 23, 2016, which is attached hereto and marked as **Exhibit "G"**.

18. Since the parties were under time constraints given the timing of the motion to obtain the assignment order by Primus Canada, it was agreed that the business people of Bell, Primus Canada, the Monitor and the Purchaser would hold conference calls without the participation of their respective legal counsel in order to (i) identify all contracts and accounts included by the assignment sought by the Purchaser and (ii) increase the efficiency of the negotiations regarding the calculation of the Cure Costs.
19. During these conference calls, the Purchaser, Primus Canada and the Monitor had the opportunity to review and discuss with Bell the method used by Bell to calculate the pre and post-January 19 charges and the application of such method to the various Accounts. In such respect, the method applied by Bell used the billing dates of the Accounts as the determining date for calculating the pre and post-January 19 charges (the "**Billing Date Method**"). This calculation method was used by Bell for every single Account.
20. The point person for Primus Canada during these discussions was Doug Cooper. The point persons for the Purchaser were Greg Darnell and Scott Emener. The Bell point persons were Jill Gibson and Peter Zammit.
21. I am advised by Ms. Gibson and Mr. Zammit that at no point during these discussions did any of the representatives of Primus Canada, the Purchaser or the Monitor indicate any disagreement whatsoever with the use of the Billing Date Method or with its application to the Accounts, as noted in Exhibits "B" and "C".
22. I am also advised by Ms. Gibson that, more particularly on February 23, 2016, a conference call took place in which Scott Emener and Greg Darnell, representatives of the Purchaser, Bob Nice (senior executive at Primus Canada), Ms. Gibson and Ivan Mihaljevic from Bell participated. I am further advised by Ms. Gibson that neither the representatives of the Purchaser nor of Primus Canada raised any issues whatsoever with the most recent Cure Costs numbers which had been provided by Bell earlier that morning, or with the method used by Bell to calculate such amounts.

23. On February 25, 2016, Justice Hainey of the Ontario Superior Court of Justice issued an approval and vesting order approving the transaction contemplated in the APA, with the permitted encumbrances.
24. On March 1, 2016, Bell's counsel confirmed to counsel for Primus Canada, the Purchaser and the Monitor's representatives that there would be no further changes to the Cure Costs numbers as they had last been provided on February 23, 2016 (Exhibit "G") in the aggregate amounts of CDN\$3,270,959.59 and USD\$36,731.02, using the Billing Date Method, as more fully appears from a copy of an email from Bell's counsel to counsel for Primus Canada, the Purchaser and to the Monitor's representatives dated March 1, 2016, attached hereto and marked as **Exhibit "H"**.
25. As a result, on the same day, Bell, Primus Canada and the Purchaser executed a Consent to Assignment & Assumption of Contracts Agreement (the "**Assignment Agreement**"), which is attached hereto and marked as **Exhibit "I"**. The Assignment Agreement provides, *inter alia*, the following:

"WHEREAS as at the effective date and time of the Initial Order, namely 12:01 a.m. on January 19th, 2016 (the "**Initial Order Date**") the outstanding amount payable by Primus to Bell for the Subject Services was in the aggregate amount of CDN\$3,270,959.59 and US\$36,731.02 (together, the "**Arrears**");"

26. The Assignment Agreement demonstrates that the parties to the agreement, namely, Bell, the Purchaser and Primus Canada, agreed on the amount of the Cure Costs under the Bell Agreements as well as to the method applied by Bell to calculate such Cure Costs, namely, the Billing Date Method.
27. The Assignment Agreement contains the following provisions:

"4. The Monitor shall pay, or arrange to be paid, to Bell the full amount of the Arrears, by way of wire transfers in accordance with the wire transfer instructions for the Canadian Dollar trust account and the US Dollar trust account of Bell's lawyers, Borden Ladner Gervais LLP, set out in Schedule "B" hereto, in accordance with the terms of the Approval and Vesting Order, which was rendered by Mr. Justice Hainey on February 25, 2016."

[...]

"6. Primus hereby agrees to pay to Bell all amounts due and owing to Bell for the Subject Services between the Initial Order Date and the Effective Date, in accordance with the Post-Filing Agreement.

7. Birch hereby agrees to pay to Bell in accordance with and subject to the corresponding Assumed Agreement, when due, all amounts due and owing to Bell for the Subject Services rendered from and after the Effective Date, on a go forward basis.

8. Birch and Primus hereby agree to make all necessary adjustments between themselves as relates to the value of the Subject Services rendered by Bell before the Effective Date and after the Effective Date, in accordance with the provisions of Sections 6 and 7 hereof, it being acknowledged and agreed that Bell will not be party to such adjustments, save and except to provide to Birch and Primus, as soon as practicable, the breakdown of the value of the Subject Services rendered by Bell (i) between the Initial Order Date and the Effective Date, and (ii) on and after the Effective Date, and to provide further updates of these amounts, from time to time and as soon as practicable, when billing information becomes available to Bell. [Emphasis added]

28. It is clear from section 8 of the Assignment Agreement that Bell was to have no involvement in the adjustments as at the closing date of the transaction between Primus Canada and the Purchaser, other than to provide the breakdown of pre and post-closing charges as it had done in relation to pre and post-filing charges.
29. On March 2, 2016, Primus Canada sought and obtained an assignment order with respect to the rights and obligations under the contracts indicated at Schedule A of same order, pursuant to section 11.3 of the CCAA. Additionally, Schedule A of the order included the Cure Costs to be paid to each counterparty pursuant to these contracts, notably to Bell, in accordance with the amounts indicated as Cure Costs in Schedule A of the Assignment Agreement.
30. On April 1, 2016, the Monitor issued its monitor's certificate and the transaction contemplated by the APA closed pursuant to its terms.
31. On or about June 29, 2016, in accordance with the provisions of section 8 of the Assignment Agreement, Bell provided its final breakdown of pre and post-closing charges to counsel for the Purchaser, Primus Canada and the Monitor, as appears from a copy of an email sent by Bell to the Purchaser, Primus Canada and the Monitor dated June 29, 2016, attached hereto and marked as **Exhibit "J"**. I am advised by Mr. Zammit that the method used to calculate the breakdown as at March 31, 2016 was the same

method as that used by Bell to calculate the breakdown as at January 19, 2016, namely the Billing Date Method.

32. I am advised by Ms. Gibson and Mr. Zammit that on July 5, 2016, a conference call was held, during which the Monitor and representatives of the Purchaser advised the Bell representatives that they would review the numbers provided by Bell on June 29, 2016 (Exhibit J) and that they would revert to Bell.
33. I am advised by Ms. Gibson and Mr. Zammit that on or about July 21, 2016, a conference call was held among Doug Cooper, now an employee of the Purchaser, Steven Bissell, a representative of the Monitor, Ms. Gibson and Mr. Zammit, representatives of Bell, to review and discuss the adjustments which the Purchaser and Primus Canada had proposed, in accordance with section 8 of the Assignment Agreement.
34. It appears that Primus Canada and the Purchaser, no longer wished to use the Billing Date Method in order to calculate the breakdown of amounts pre and post-closing as between themselves, now rather preferring a method based on the dates the services were provided (the "**Service Date Method**"). Pursuant to the provisions of sections 6 to 8 of the Assignment Agreement, this issue is irrelevant to Bell, as the adjustments for pre and post-closing amounts are to be dealt with exclusively between Primus Canada and the Purchaser, to the specific exclusion of Bell.
35. I am advised by Ms. Gibson that during the call, she advised that this was not Bell's issue, and that it mattered little to Bell how the post-January 19 charges were paid, or by whom, so long as they were paid in full to Bell in accordance to the provisions of sections 6 to 8 of the Assignment Agreement.
36. Bell's position in this respect had already been communicated to the Monitor and its counsel as well as counsel for the Purchaser on June 20, 2016, as appears from a copy of said email which is attached hereto and marked as **Exhibit "K"**.
37. To date, Primus Canada and the Purchaser have failed to pay to Bell the aggregate amount of CAD\$2,257,780.17 and USD\$82,662.17 with respect to post-filing services payable pursuant to the provisions of section 6 and 7 of the Assignment Agreement.



38. I am advised by Ms. Gibson and Mr. Zammit that during the call held on July 21, 2016, representatives of the Purchaser advised that when using the Service Date Method to calculate the breakdown of pre and post-closing charges, an amount of approximately \$1,200,000.00 is shifted from the post-closing period to the post-filing/pre-closing period and that the Purchaser was unwilling to pay such amount to Bell.
39. Moreover, Steven Bissell, a representative of the Monitor, indicated that, similarly, had the Service Date Method been used to calculate the pre and post-January 19 charges, a corresponding amount of approximately \$1,200,000.00 would have been shifted from the post-filing/pre-closing period to the pre-filing period and that therefore, Primus Canada's position was apparently that it would also refuse to pay such amount to Bell.
40. I am advised by Ms. Gibson of Bell that she clearly indicated that she disagreed with the stated position of Primus Canada. It is to be noted that no representatives of Primus Canada were on the call to make its position clear.
41. On July 28, 2016, Steven Bissell, a representative of the Monitor, wrote to Ms. Gibson, Mr. Zammit, Doug Cooper and to counsel for Bell and for the Monitor, as appears from a copy of said email which is attached hereto and marked as **Exhibit "L"**. In that email, Mr. Bissell states:

"The Monitor understands that these outstanding amounts reflect the agreed approach of allocating charges to periods based on when services were provided/accrued versus an allocation methodology based on invoice dates. [...]"

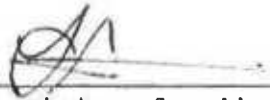
In accordance with the provisions of section 8 of the Assignment Agreement, the reference to an "agreed approach of allocating charges" would relate to an agreement between Primus Canada and the Purchaser, considering that Bell is specifically excluded from such adjustments.

42. By email dated August 1, 2016, counsel for Bell advised counsel for the Monitor that it disagreed with the proposed approach and that it would revert with a more formal position. Attached hereto and marked as **Exhibit "M"** is a copy of the email dated August 1, 2016.

43. However, to date, neither Primus Canada, the Purchaser, nor their respective counsel have advised Bell of the reasons for their default in the payment of post-filing charges such that Bell is in the untenable situation of having to respond without knowing precisely the position(s) adopted by Primus Canada and/or the Purchaser.
44. During the month of August and early September 2016, the Monitor's representatives and the Monitor's counsel pressed Bell's counsel for a formal position.
45. On September 9, 2016, counsel for Bell wrote to counsel for the Monitor advising that, notwithstanding the fact that neither Primus Canada nor the Purchaser had indicated their position with respect to the default in payment of charges incurred during the post-filing/pre-closing period, Bell and its counsel were preparing a formal response. Such response was made complicated as a result of the various issues and by the CCAA proceedings, as appears from a copy of said email attached hereto and marked as **Exhibit "N"**.
46. Bell and its counsel have worked steadfastly with a view to achieving a resolution of the outstanding issues. Therefore, the statement made at paragraph 16 of the Nowlan Affidavit that "Bell has not provided the Primus Entities with its position", and the mere suggestion that counsel for Bell has not been responsive is both inaccurate and disingenuous.
47. In light of the foregoing, it appears that the issues of adjustments of Bell's post-filing charges as between Primus Canada and the Purchaser pursuant to the provisions of section 8 of the Assignment Agreement, and the payment of the balance of such post-filing charges, must be dealt with and resolved prior to the Monitor's discharge.
48. Bell is of the view that it is not appropriate for the Monitor to be discharged until a resolution to these issues has been found, either by mutual agreement as between the parties, or by further order of the Court.

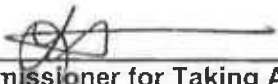
SWORN BEFORE ME at the City of )  
Mississauga, in the Province of Ontario, )  
this 15th day of September, 2016 )  
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\_\_\_\_\_  
**Walter Ramka**

  
\_\_\_\_\_  
A Commissioner for taking affidavits

# Tab A

**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF WALTER RAMKA  
SWORN BEFORE ME, THIS 15th DAY  
OF SEPTEMBER, 2016**

A handwritten signature in black ink, consisting of a stylized 'S' followed by a horizontal line and a small flourish.

**A Commissioner for Taking Affidavits**

**PRIMUS TELECOMMUNICATIONS CANADA INC.,  
PRIMUS TELECOMMUNICATIONS, INC. and LINGO, INC.**

as Vendors

and

**BIRCH COMMUNICATIONS, INC.**

as Purchaser

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**ASSET PURCHASE AGREEMENT**

**January 19, 2016**

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- Schedule K – Regulated Customer Relationship Values by State

## ASSET PURCHASE AGREEMENT

This asset purchase agreement is made as of January 19, 2016, between Primus Telecommunications Canada Inc., a corporation incorporated under the laws of Ontario, Primus Telecommunications, Inc., a corporation incorporated under the laws of Delaware, and Lingo, Inc., a corporation incorporated under the laws of Delaware (collectively, the "Vendors") and Birch Communications, Inc., a corporation incorporated under the laws of Georgia (the "Purchaser").

### RECITALS:

The Vendors desire to sell certain of its and its subsidiaries' assets and the Purchaser has agreed to purchase such assets subject to the terms and conditions set forth in this Agreement and in accordance with the applicable provisions of the CCAA.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Vendor and the Purchaser agree as follows:

### ARTICLE 1 INTERPRETATION

#### Section 1.1 Definitions

In this Agreement and the recitals above, the following terms have the following meanings:

"Accounting Referee" means a national accounting firm independent of the Vendors and the Purchaser, acceptable to both the Vendors and the Purchaser, acting reasonably, represented by members of such firm's Toronto office.

"Accounts Receivable" means, on any date, all non-credit balance customer accounts receivable generated in the operation of the Business, together with any unpaid interest or fees accrued thereon which are outstanding on such date and the full benefit of all security or collateral of any Vendor for, or in respect of, such amounts, including recoverable advances and deposits, but for greater clarity, excluding any amounts owing to any Vendor at the Closing Time from any of its shareholders or Affiliates (other than a Vendor), or from any other Person with whom it does not deal at arm's length.

"Affiliate" has the meaning given to the term "affiliate" in the *Business Corporations Act* (Ontario).

"Agreement" means this asset purchase agreement, as amended from time to time.

"Applicable Law" means, in respect of any Person, property, transaction or event, any domestic or foreign statute, law (including the common law), ordinance, rule, regulation, treaty, restriction, regulatory policy, standard, code or guideline, by-law or

order, in each case, having the force of law that applies in whole or in part to such Person, property, transaction or event.

**"Approval and Vesting Order"** means an order by the Court substantially in the form attached as Schedule I approving this Agreement and authorizing the Vendors to complete the Transaction and vesting in the Purchaser all the right, title and interest of the Vendors in and to the Purchased Assets free and clear of all Encumbrances and Claims other than Permitted Encumbrances.

**"Assignment Order"** means an order or orders of the Court pursuant to Section 11.3 and other applicable provisions of the CCAA, in form and substance satisfactory to the Purchaser, acting reasonably, authorizing and approving (i) the assignment of any Essential Contract for which a consent, approval or waiver necessary for the assignment of such Essential Contract has not been obtained prior to the Closing Time, (ii) the prevention of any counterparty to any such Essential Contract from exercising any right or remedy under such Essential Contract by reason of any defaults arising from the CCAA Proceedings or the insolvency of any Vendor and (iii) the vesting in the Purchaser of all right, title and interest of the relevant Vendor in such Essential Contract.

**"Assumed Contracts"** means the contracts and other written agreements listed on Schedule B and on Schedule C, but excluding the Excluded Contracts.

**"Assumed Obligations"** has the meaning set out in Section 2.6.

**"Base Purchase Price"** means \$44 million.

**"Benchmark Accounts Receivable"** means \$6,658,890.

**"Benchmark Monthly Revenue"** means \$12,976,672.

**"Benefit Plans"** means all oral or written plans, arrangements, agreements, programs, policies, practices or undertakings with respect to some or all of the Employees, former employees of any Vendor or the Business or their respective dependents or beneficiaries and which provide for or relate to (i) bonus, profit sharing or deferred profit sharing, performance compensation, deferred or incentive compensation, supplemental retirement arrangements, share compensation, share purchase or share option, share appreciation rights, phantom stock, vacation or vacation pay, sick pay, employee loans, or any other compensation in addition to salary; (ii) insured or self-insured benefits for or relating to income continuation or other benefits during absence from work (including short term disability, long term disability and workers compensation), hospitalization, health, welfare, legal costs or expenses, medical or dental treatments or expenses, life insurance, accident, death or survivor's benefits, supplementary employment insurance, day care, tuition or professional commitments or expenses and perquisites or similar employment benefits or (iii) welfare, termination, retirement, savings, pensions, supplemental retirement or any other similar benefits or rights, in each case sponsored, maintained or contributed to or required to be contributed to by

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any Vendor or by which any Vendor is bound or with respect to which any Vendor participates or has any actual or potential liability or obligation.

**"Books and Records"** means all files, documents, instruments, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise), including tax and accounting books and records, used or intended for use by any Vendor in connection with the ownership of the Purchased Assets or operation of the Business, including the Assumed Contracts, active and non-active customer lists, active and non-active customer information, account records, invoices, notes and trouble tickets for a minimum of six months prior to the date hereof, service request documents, sales records, computer files, data processing records, employment and personnel records, sales literature, advertising and marketing data and records, credit records, records relating to suppliers and other data, in each case, relating to the Business, and, for greater certainty, excluding the minute books and corporate records of any Vendor.

**"BSS"** means billing support systems.

**"Business"** means the business of the Vendors, being the provision of telecom services to customers in Canada, the United States and Puerto Rico.

**"Business Day"** means a day on which banks are open for business in Toronto, Ontario but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario.

**"CABS"** means carrier access billing services.

**"CCAA"** means *Companies' Creditors Arrangement Act (Canada)*.

**"CCAA Proceedings"** means the proceedings under the CCAA to which the Vendors will be subject pursuant to the Initial Order.

**"chapter 15"** means chapter 15, title 11 of the United States Bankruptcy Code.

**"chapter 15 Proceedings"** means the proceedings under chapter 15 made pursuant to the Initial Order.

**"Claims"** means any claim of any nature or kind (including any cross-claim or counterclaim), demand, investigation, chose in or cause of action, suit, default, assessment, litigation, third party action, arbitral proceeding or proceeding by or before any Person.

**"Closing"** means the successful completion of the Transaction.

**"Closing Cash Payment"** has the meaning set out in Section 3.2(b).

**"Closing Cash Purchase Price"** has the meaning set out in Section 3.1.

**"Closing Date"** means the date on which Closing occurs that is expected to be five Business Days after the date upon which the Approval and Vesting Order is obtained and is final, not stayed or varied in a manner prejudicial to the Purchaser, or vacated or appealed, unless the Purchaser has provided written consent that Closing occur despite such appeal, or such other earlier or later date as may be agreed by the Parties.

**"Closing Statement"** has the meaning set out in Section 3.7(a).

**"Closing Time"** means 2:00 p.m. (Toronto time) on the Closing Date.

**"COBRA"** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, Section 4980B of the Code, Title I Part 6 of ERISA.

**"Code"** means the United States Internal Revenue Code of 1986, as amended.

**"Competition Act"** means the *Competition Act* (Canada), R.S.C., 1985, c. C-34.

**"Consent Required Contract"** has the meaning set out in Section 2.3.

**"Court"** means Ontario Superior Court of Justice (Commercial List).

**"Cure Costs"** means in respect of any Assumed Contract, all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assignment thereof from a Vendor to the Purchaser; provided that, in respect of the Business pertaining to U.S. and Puerto Rico customers only and where it is possible to transfer or redesignate Vendor's customers or network services to contracts of the Purchaser, Cure Costs will include any redesignation or other fees, costs or expenses required to accomplish such redesignation or transfer ("**Redesignation Costs**") provided that such Redesignation Costs do not exceed US \$250,000 in the aggregate.

**"Customer Prepayments"** means the sum of all payments received by any Vendor in respect of services to be provided by Purchaser after the Closing Time.

**"Deposit"** has the meaning set forth in Section 3.3.

**"Employee"** means an individual who is employed by any Vendor, whether on a full-time or a part-time basis, whether active or inactive as of the Closing Date, and includes an employee on short term or long term disability leave.

**"Employee Plans"** means all "employee benefit plans" within the meaning of Section 3(3) of ERISA, all formal written plans and all other compensation and benefit plans, contracts, policies, programs and arrangements of the Vendor in connection with the Business in effect as of the date hereof, including all pension, profit sharing, savings and thrift, bonus, stock bonus, stock option or other cash or equity-based incentive or deferred compensation, severance pay and medical and life insurance plans in which any of the Employees or their dependents participate.

**"Encumbrances"** means any security interest, lien, claim, charge, hypothec, reservation of ownership, pledge, encumbrance, mortgage, adverse claim or right of a third party of any nature or kind whatsoever and any agreement, option or privilege (whether by law, contract or otherwise) capable of becoming any of the foregoing, (including any conditional sale or title retention agreement, or any capital or financing lease).

**"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

**"ERISA Affiliate Liability"** means any obligation, liability, or expense of any Vendors which arises under or relates to any employee benefit plan or arrangement of Vendors or its affiliates that is subject to Title IV of ERISA, Section 302 of ERISA, Section 412 of the Code, COBRA or any other statute or regulation that imposes liability on a so-called "controlled group" basis with or without reference to any provision of Section 414 of the Code or Section 4001 of ERISA, including by reason of any Vendors' affiliation with any of any trade or business, whether or not incorporated, that together with the Vendors would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA (an **"ERISA Affiliate"**) or the Purchaser or any of its limited partners being deemed a successor to any ERISA Affiliate of any Vendor.

**"Escrow Agent"** means FTI Consulting Canada Inc., solely in its capacity as escrow agent for the Vendors and the Purchaser pursuant to an escrow agreement dated the date hereof between the Vendors, the Purchaser and FTI Consulting Canada Inc.

**"Essential Contracts"** means the contracts and other written agreements listed on Schedule B, each of which is a Consent Required Contract, material and required for the operation of the Business by the Purchaser.

**"Excise Tax Act"** means the *Excise Tax Act* (Canada).

**"Excluded Assets"** means all cash and cash equivalents of any Vendor, the Excluded Contracts, all Benefit Plans and Employee Plans and all of any Vendor's right, title and interest, in and to those assets and rights set forth in Schedule D.

**"Excluded Contracts"** means those contracts and other written agreements to which any Vendor is a party that (i) is not listed on Schedule B or C, (ii) is deemed to be an Excluded Contract pursuant to Section 2.3(1)(a) or (iii) becomes an Excluded Contract pursuant to Section 2.8, and, for greater certainty, **"Excluded Contracts"** includes the contracts and other written agreements listed on Schedule E.

**"FCC"** means the Federal Communications Commission of the United States.

**"Governmental Authority"** means any domestic or foreign government, whether federal, provincial, state, territorial or municipal; and any governmental agency, ministry, department, court (including the Court), tribunal, commission, stock exchange, bureau, board or other instrumentality exercising or purporting to exercise legislative, judicial, regulatory or administrative functions of, or pertaining to, government or securities market regulation.

**"Income Tax Act"** means the *Income Tax Act* (Canada).

**"Indemnified Party"** means a Person with indemnification rights or benefits under this Agreement.

**"Initial Order"** means the order of the Court with respect to the CCAA Proceedings, granting the Vendors protection pursuant to the CCAA, which is expected to be obtained on or about January 19, 2016.

**"Intellectual Property"** means:

- (a) patents, patent applications and other patent rights, including provisional and continuation patents;
- (b) registered and unregistered trade-marks, service marks, logos, slogans, corporate names, trade names, business names and other indicia of origin, and all applications and registrations therefor;
- (c) internet domain names, applications and reservations for internet domain names, uniform resource locators and the corresponding internet sites;
- (d) customer service telephone numbers (toll free and local numbers) and blocks of telephone numbers assigned to any Vendor; and
- (e) all other intellectual property used to support the Business.

**"Investment Canada Act"** means the *Investment Canada Act*.

**"Management Agreement"** has the meaning set out in Section 2.4(2).

**"Monitor"** means FTI Consulting Canada Inc. in its capacity as monitor of the Vendors in the CCAA Proceedings.

**"Monitor's Certificate"** means the certificate of the Monitor certifying that the Monitor has received written confirmation in form and substance satisfactory to the Monitor from the Parties that all conditions of Closing have been satisfied or waived by the applicable Parties and that the Monitor has received the Closing Cash Payment.

**"Net Revenue"** means the net revenue of the Business shown on the consolidated monthly financial statements prepared in a manner consistent with the Vendor's past accounting policies and practices, which for greater certainty excludes any Pass-Through Charges.

**"Offered Employees"** has the meaning set out in Section 4.1(1).

**"Ordinary Course of Business"** means the ordinary conduct of the Vendors with respect to the Purchased Assets or the Business in a manner that is consistent with the

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conduct of the Business in the six month period preceding the date hereof and consistent with the orders of the Court in the CCAA Proceedings and the chapter 15 Proceedings.

**"OSS"** means operation support systems.

**"Outside Date"** means June 30, 2016.

**"Party"** means the Purchaser or any Vendor.

**"Pass-Through Charges"** means all charges collected for the purposes of being remitted to a Governmental Authority.

**"Permitted Encumbrances"** means those Encumbrances set forth in Schedule G.

**"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted.

**"Post-Closing Statement"** has the meaning set out in Section 3.7(c).

**"Public Statement"** has the meaning set out in Section 9.5.

**"Purchase Price"** has the meaning set out in Section 3.1.

**"Purchased Assets"** means all of each Vendor's right, title and interest, in and to the assets used in or required for the Business, including those assets set forth in Schedule A, but excluding the Excluded Assets.

**"Purchased Intellectual Property"** means all Intellectual Property of any Vendor used in or required for the Business, including the items listed in Schedule H.

**"Purchaser"** has the meaning set out in the recitals hereto.

**"Regulated Customer Relationships"** has the meaning set out in Section 2.4(1).

**"Regulated Customer Relationships Escrow"** means to be paid to the Monitor in escrow and deducted from the Closing Cash Payment pursuant to Section 3.2(1)(b)(ii) or Section 3.2(1)(b)(iii), as the case may be.

**"Representative"** means, in respect of a Party, each director, officer, employee, agent, Affiliate, manager, lender, solicitor, accountant, professional advisor, consultant, contractor and other representative of such Party or such Party's Affiliates.

**"Required Approvals"** means any material permit, license, consent, waiver, approval, registration or authorization of any Governmental Authority required for Purchaser to



continue to operate the Business following the Closing in substantially the same manner as the Business is operated by Vendors on the date of this Agreement.

**"Sales Tax"** means all taxes, interest, penalties and fines imposed under Sales Tax Legislation.

**"Sales Tax Legislation"** means Part IX of the *Excise Tax Act* and *An Act Respecting the Quebec Sales Tax* (Québec) and the regulations made under such legislation.

**"State PUC"** means any state public utility commission or other regulatory body of the District of Columbia or any United States state or possession with jurisdiction over the provision of intrastate telecommunications services.

**"Target Accounts Receivable"** means the sum of the current and 30 day Canadian Accounts Receivable balances of the Vendors and the current and 30 day U.S. Accounts Receivable balances of the Vendors converted to Canadian dollars taken from the accounts receivable sub-ledgers underlying the consolidated monthly financial statements as at the monthly accounting period end preceding the Closing Date all in a manner consistent with past accounting policies and practices of the Vendors.

**"Total Actual Revenue"** means Net Revenue for the three full monthly accounting periods immediately preceding the Closing Date, divided by three.

**"Transaction"** means the transaction of purchase and sale contemplated by this Agreement.

**"Transfer Taxes"** means all present and future transfer taxes, sales taxes, use taxes, production taxes, value-added taxes, goods and services taxes, land transfer taxes, registration and recording fees, and any other similar or like taxes and charges imposed by a Governmental Authority in connection with the sale, transfer or registration of the transfer of the Purchased Assets, including Sales Tax but excluding any taxes imposed or payable under the Income Tax Act and any other applicable income tax legislation.

**"Transferred Employees"** has the meaning set out in Section 4.3.

**"Unbilled Revenue"** means revenue associated with goods and services provided by any Vendor to its customers that has not been invoiced or billed to such customers.

**"U.S. Court"** means the United States Bankruptcy Court for the District of Delaware.

**"U.S. Recognition Order"** means one or more orders made by a court of competent jurisdiction in the United States, including, but not limited to the United States Bankruptcy Court for the District of Delaware, under chapter 15 recognizing and giving effect to the Initial Order, Approval and Vesting Order, and the Assignment Order.

**"Vendors"** has the meaning set out in the recitals hereto.

### **Section 1.2 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

### **Section 1.3 General Construction**

The terms "this Agreement", "hereof", "herein" and "hereunder" and similar expressions refer to this Agreement and not to any particular section hereof. The expression "Section" or reference to another subdivision followed by a number mean and refer to the specified Section or other subdivision of this Agreement. 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.

### **Section 1.4 Extended Meanings**

Words importing the singular include the plural and vice versa and words importing gender include all genders. The term "including" means "including, without limitation," and such terms as "includes" have similar meanings.

### **Section 1.5 Currency**

All references in this Agreement to dollars, monetary amounts or to \$ are expressed in Canadian currency unless otherwise specifically indicated.

### **Section 1.6 Statutes**

Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules, regulations and interpretations made under it, as it or they may have been or may from time to time be modified, amended or re-enacted.

### **Section 1.7 Schedules**

The following Schedules are incorporated in and form part of this Agreement:

Schedule A	-	Purchased Assets
Schedule B	-	Essential Contracts
Schedule C	-	Other Assumed Contracts
Schedule D	-	Excluded Assets
Schedule E	-	Excluded Contracts
Schedule F	-	Purchase Price Allocation
Schedule G	-	Permitted Encumbrances
Schedule H	-	Purchased Intellectual Property
Schedule I	-	Form of Approval and Vesting Order
Schedule J	-	Form of Management Services Agreement
Schedule K	-	Regulated Customer Relationship Values by State

## ARTICLE 2 PURCHASE AND SALE

### Section 2.1 Purchase and Sale of Assets

Subject to the terms and conditions hereof at the Closing Time, each Vendor hereby agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from such Vendor the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances) pursuant to the Approval and Vesting Order.

### Section 2.2 Excluded Assets

The Purchased Assets shall include only those assets expressly contemplated in the definition of Purchased Assets and the Purchaser shall in no way be construed to acquire any interest in the Excluded Assets.

### Section 2.3 Assignment of Contracts

- (1) In the event that there are any Assumed Contracts which are not assignable in whole or in part without the consent, approval or waiver of another party or parties to them (each a "Consent Required Contract"):
  - (a) If any such consents, approvals or waivers or Assignment Orders therefor have not yet been obtained as of the Closing Date, then nothing in this Agreement will be construed as an assignment of any such Consent Required Contract and the Purchaser shall have no liability or obligation whatsoever in respect of any such Consent Required Contract and all such Consent Required Contracts shall be deemed to be Excluded Contracts;
  - (b) Following the issuance of the Initial Order and until the Approval and Vesting Order is granted, the Vendor shall use its commercially reasonable efforts to obtain any such consent, approval or waiver and the Purchaser shall provide its reasonable cooperation to assist the Vendor in obtaining any such consent, approval or waiver;
  - (c) If any consent, approval or waiver is not obtained for any Essential Contract prior to the service of the motion for the Approval and Vesting Order, the Vendor shall bring a motion to the Court for issuance of an Assignment Order with respect to each such Essential Contract together with the motion for the Approval and Vesting Order; and
  - (d) Once the consent, approval or waiver to the assignment of a Consent Required Contract is obtained or, with respect to any such Consent Required Contract that is an Essential Contract only, the assignment of such Consent Required Contract has been ordered by the Court, such Consent Required Contract shall be deemed to be assigned to the Purchaser on Closing.

- (2) With respect to each Consent Required Contract, subject to closing and to either (i) the consent, approval or waiver of the other parties thereto required for the assignment thereof, or (ii) in the absence of such consent, the obtaining of an Assignment Order, as part of the Purchase Price the Purchaser shall pay the applicable Cure Costs related to such Consent Required Contract on Closing.
- (3) All negotiations with respect to the settlement and payment of Cure Costs may only be conducted from and after the filing of the Initial Order and shall be conducted in the presence of a representative of each of the Vendor, the Purchaser and the Monitor, unless the right to have a representative present is waived by the Vendor, the Purchaser or the Monitor, respectively.

#### **Section 2.4 Regulated Customer Relationships**

- (1) Notwithstanding anything in this Agreement to the contrary, the transfer of the customer accounts and relationships described in the Management Agreement for which a Required Approval of the FCC or a State PUC (the "**Regulated Customer Relationships**") is required and has not been obtained at or before the Closing shall not occur at Closing but shall instead occur automatically without any further action of the Vendors, the Purchaser or the Monitor upon the later of (A) the date the Required Approval from the FCC has been obtained and (B) the date the Required Approval from the relevant State PUC has been obtained.
- (2) The Purchaser and certain of the Vendors shall enter into a management agreement (the "**Management Agreement**") in the form attached hereto as Schedule J.

#### **Section 2.5 "As is, Where is"**

The Purchaser acknowledges that the Vendors are selling the Purchased Assets on an "as is, where is" basis as they shall exist at the Closing Time subject to the benefit of the representations and warranties in this Agreement. No representation, warranty or condition is expressed or can be implied as to fitness for purpose, merchantability, condition, quantity or quality or in respect of any other matter or thing whatsoever concerning the Purchased Assets or the right of any Vendor to sell or assign same save and except as expressly represented or warranted herein. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario), the *Civil Code of Québec* or similar legislation do not apply hereto and have been waived by the Purchaser. The description of the Purchased Assets contained in the Schedules is for purpose of identification only. Except as otherwise provided in Section 5.2, no representation, warranty or condition has or will be given by any Vendor concerning completeness or accuracy of such descriptions.

#### **Section 2.6 Assumed Obligations**

The Purchaser shall assume and perform, discharge and pay when due the following obligations and liabilities of the Vendors (the "**Assumed Obligations**") after the Closing:

- (a) all debts, liabilities and obligations under the Assumed Contracts (to the extent assigned or transferred to the Purchaser on Closing and in respect of Assumed Contracts for services, only those debts, liabilities and obligations for services performed from and after the Closing Time) for the period from and after the Closing Time, in each case provided that such debts, obligations or liabilities are not arising from, due to or attributable to (i) any default existing or breach (with or without the giving of notice, the lapse of time, or both) by any Vendor occurring prior to or as a consequence of Closing, or (ii) any default, breach or violation of any Vendor of any term or condition of this Agreement;
- (b) all debts, liabilities and obligations under customer deposits and Customer Prepayments;
- (c) all debts, liabilities and obligations for realty taxes in respect of the Purchased Assets attributable to the period from and after the Closing Time;
- (d) all debts, liabilities and obligations for which the Purchaser is responsible pursuant to Section 4.3;
- (e) all Cure Costs; and
- (f) all debts, liabilities and obligations arising from ownership and use of the Purchased Assets for the period from and after the Closing Time that are not Excluded Obligations.

#### **Section 2.7 Excluded Obligations**

Other than the Assumed Obligations, the Purchaser shall not assume, pay, satisfy, discharge, perform or fulfill and shall not be liable, directly or indirectly, or otherwise responsible for any debts, liabilities or other obligations or Claims of the Vendors, including, without limiting the generality of the foregoing:

- (a) all legal, accounting, broker other professional fees, costs and expenses incurred by the Vendors in connection with the CCAA Proceedings or the transactions contemplated by this Agreement;
- (b) all debts, liabilities, obligations or Claims related to any Benefit Plans or Employee Plans (including in respect of the Transferred Employees);
- (c) all debts, liabilities, obligations or Claims related to Employees (other than Transferred Employees pursuant to Section 4.3 only) or former employees;
- (d) all debts, liabilities and obligations related to any Purchased Asset arising out of or related to the period prior to the Closing Time;
- (e) all debts, liabilities and obligations relating to any Excluded Asset;

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- (f) all obligations and liabilities owing by any Vendor to any Affiliate thereof;
- (g) all liabilities and obligations of any Vendor arising out of any proceeding (i) pending against any Vendor or the Business as of the Closing Date; or (ii) commenced against any Vendor after the Closing Date to the extent such liability or obligation arises or results from the Vendors' ownership or operation of the Purchased Assets and the Business prior to the Closing Date;
- (h) all obligations and liabilities for prepayments and deposits for non-active customers in the U.S.;
- (i) all debts, liabilities and obligations for or related to any obligation for any taxes that are not expressly assumed by the Purchaser pursuant to Section 2.6 or Section 3.6;
- (j) all taxes imposed on or relating to the Purchased Assets that are attributable to any pre-Closing tax period whether or not any such period ends on or before the Closing Date (other than any Transfer Taxes); and
- (k) without duplication, all debts, liabilities and obligations of the Vendors arising under this Agreement.

#### **Section 2.8 Additions to Excluded Contracts**

Notwithstanding Section 2.7, the Purchaser shall have the right, at any time prior to the granting of the Approval and Vesting Order to add to the list of contracts and other written agreements listed in Schedule E by notice in writing to the Vendor and the Monitor so that any contract or other written agreement so added shall be an Excluded Contract and shall not be assigned to the Purchaser at Closing, without any adjustment to the Purchase Price.

### **ARTICLE 3 PURCHASE PRICE**

#### **Section 3.1 Purchase Price**

The aggregate purchase price (the "Purchase Price") amount payable by the Purchaser to the Vendors for the Purchased Assets is the sum of: (i) (A) the Base Purchase Price, as adjusted pursuant to Section 3.7 below, *less* (B) all Cure Costs, *less* (C) all amounts payable that do not constitute Cure Costs in respect of Essential Contracts for services provided in the period prior to or up until the Closing Time (but for greater certainty, not for termination or assignment costs or legal or transfer fees), provided, however, the reductions to the Purchase Price pursuant to clauses (B) and (C) will be made only to the extent such reductions exceed \$3 million in the aggregate, and then only to the extent of 50% of such excess (the "Closing Cash Purchase Price") plus (ii) the assumption by the Purchaser of the Assumed Obligations.

**Section 3.2 Satisfaction of Purchase Price**

- (1) Provided that all conditions precedent to Closing have been satisfied or waived in accordance with Article 7, the Purchase Price shall be paid and satisfied on Closing as follows:
- (a) as to the amount of the Deposit, by the crediting and set off of the Deposit against an amount of the Closing Cash Purchase Price equal to the amount of the Deposit;
  - (b) as to the balance of the Closing Cash Purchase Price (the "Closing Cash Payment"):
    - (i) if the Required Approvals from the FCC and each State PUC have been obtained by the Purchaser by the Closing Time, the Purchaser shall pay the Closing Cash Payment to the Monitor by wire transfer of immediately available funds to an account designated by the Monitor and held by the Monitor in such account pending further order of the Court; or
    - (ii) if the Required Approval from the FCC has not been obtained by the Closing Time, the Purchaser shall pay the Closing Cash Payment less \$2.5 million, such amount being the amount of the Closing Cash Purchase Price attributable to the Regulated Customer Relationships; or
    - (iii) if the Required Approval from the FCC has been obtained by the Closing Time, the Purchaser shall pay the Closing Cash Payment less an amount equal to the amount attributable to the Regulated Customer Relationships for which the State PUC Required Approvals have not been obtained by the Closing Time, based on Schedule K, such amount being the amount of the Closing Cash Purchase Price attributable to the Regulated Customer Relationships not transferred at the Closing Time; and
  - (c) as to the dollar value of the Assumed Obligations, by the assumption by the Purchaser of the Assumed Obligations.
- (2) If any amount of the Regulated Customer Relationships Escrow is deducted from the Closing Cash Payment pursuant to Section 3.2(1)(b)(ii) or Section 3.2(1)(b)(iii), the Purchaser shall deposit such amount with the Monitor at the Closing Time to be held by the Monitor in escrow. Within ten Business Days following the last day of the first full calendar month after Closing, and continuing within ten Business Days following the last day each calendar month thereafter until all Regulated Customer Relationships are transferred to the Purchaser pursuant to Section 2.4(1), the Purchaser shall provide the Monitor with a written statement confirming the Required Approvals obtained during the previous month and as soon as practical following receipt of such written statement the Monitor shall transfer from the Regulated Customer Relationships Escrow the amount attributable to the Regulated Customer Relationships transferred during the previous month based upon Schedule K to the Monitor, to be held in an account

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designated by the Monitor and held by the Monitor in such account or paid in accordance with the order of the Court, in satisfaction of the Purchase Price attributable to the Regulated Customer Relationships so transferred.

### **Section 3.3 Deposit**

The Vendors acknowledge receipt of a deposit (the "Deposit") of \$2 million, paid to the Escrow Agent on behalf of the Vendors and held by the Escrow Agent subject to the terms of the Escrow Agreement. If the Closing takes place, the Deposit shall be credited and set off against the Closing Cash Purchase Price. The Deposit shall be forfeited in favour of the Vendors in the event this Agreement is terminated by the Vendors pursuant to Section 8.6(2)(d). In the event that this Agreement is terminated pursuant to Section 8.6 for any reason other than by the Vendors pursuant to Section 8.6(2)(d), the Purchaser shall be entitled to a full refund of the Deposit and the Vendors and Purchaser shall provide the Escrow Agent with a written direction instructing the Escrow Agent to release the Deposit to the Purchaser in accordance with the terms of the Escrow Agreement.

### **Section 3.4 Allocation of Purchase Price**

The Purchase Price shall be allocated among the Purchased Assets and the Vendors as specified in Schedule F. Each of the Vendors and the Purchaser shall report the sale and purchase of the Purchased Assets for all tax purposes in a manner consistent with such allocation, and will complete all tax returns, designations and elections in a manner consistent with such allocation and otherwise follow such allocation for all tax purposes on and subsequent to the Closing Date and may not take any position inconsistent with such allocation.

### **Section 3.5 Section 22 Tax Election**

The Purchaser and Primus Telecommunications Canada, Inc. shall make and file, in a timely manner, a joint election to have the rules in section 22 of the Income Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable that are the subject of that election and shall designate therein that portion of the consideration allocated to the Accounts Receivable that are the subject of such election in accordance with Section 3.4 of this Agreement as consideration paid by the Purchaser to Primus Telecommunications Canada, Inc.

### **Section 3.6 Transfer Taxes**

The Parties agree that:

- (a) the Purchase Price is exclusive of all Transfer Taxes and the Purchaser shall be liable for and shall pay any and all applicable Transfer Taxes pertaining to the Purchaser's acquisition of the Purchased Assets;
- (b) the Purchaser shall indemnify the Vendors for any applicable Transfer Taxes (including any interest or penalties imposed by a Governmental Authority) for



which the Vendors may become liable as a result of any failure by the Purchaser to pay or remit such Transfer Taxes; and

- (c) Primus Telecommunications Canada, Inc. and the Purchaser shall jointly elect that no Sales Tax be payable pursuant to the Sales Tax Legislation with respect to the purchase and sale of the Purchased Assets under this Agreement and the Purchaser will file an election pursuant to section 167 of the Excise Tax Act and section 75 of *An Act Respecting the Quebec Sales Tax (Québec)*, prepared by the Purchaser and made jointly by the Purchaser and Primus Telecommunications Canada, Inc., in compliance with the requirements of the Sales Tax Legislation. Prior to the Closing, the Purchaser (or its Affiliate) shall become a registrant for purposes of the Sales Tax Legislation.

### Section 3.7 Closing Statement

- (a) Not later than ten Business Days prior to the Closing Date, the Vendors shall deliver to Purchaser a written statement (the "**Closing Statement**") setting forth Vendors' good faith estimate of (i) Total Actual Revenue, and (ii) Target Accounts Receivable, together with supporting documentation and calculations. Should the Purchaser object to any of the amounts or calculations in the Closing Statement, Purchaser and the Vendors shall cooperate in a diligent and good faith manner to resolve such objections prior to the Closing, and the Closing Statement shall be adjusted prior to the Closing to reflect any changes agreed to by the Purchaser and the Vendors prior to the Closing. In the event Purchaser and the Vendors cannot agree, the Vendors' estimate of any items in dispute shall be used for the purposes of Closing.
- (b) The Base Purchase Price shall be:
  - (i) subject to the proviso in Section 3.7(b)(ii), decreased by an amount equal to (A) (I) the amount by which Benchmark Monthly Revenue exceeds Total Actual Revenue, *divided* by (II) Benchmark Monthly Revenue, *multiplied* by (B) the Base Purchase Price;
  - (ii) decreased by the amount by which the Benchmark Accounts Receivable exceeds Target Accounts Receivable, provided that the Base Purchase Price shall be decreased in respect of Section 3.7(b)(i) and this Section 3.7(b)(ii) only to the extent the amount in Section 3.7(b)(i) and this Section 3.7(b)(ii) in the aggregate exceed \$1.5 million; and
  - (iii) increased by the amount by which the Target Accounts Receivable exceed the Benchmark Accounts Receivable.
- (c) No later than 30 days following the Closing Date, Purchaser shall deliver to the Vendors a written statement (the "**Post-Closing Statement**") setting forth Purchaser's good faith determination of (i) Total Actual Revenue, and (ii) Target Accounts Receivable. Within 15 days of the Vendors' receipt of the Post-Closing

Statement, the Vendors must notify Purchaser in writing if it objects to any of the amounts or calculations in the Post-Closing Statement and identify the objectionable amounts or calculations in its written notice to the Purchaser. The Purchaser and the Vendors shall cooperate in a diligent good faith manner to resolve such objections as soon as possible after the Purchaser's receipt of the Vendors' objections, but not later than 30 days after the Vendors' receipt of the Post-Closing Statement, and the Post-Closing Statement shall be adjusted to reflect any changes agreed to by the Purchaser and the Vendors. In the event of an unresolved dispute regarding the Post-Closing Statement, the Parties shall utilize the dispute resolution procedure set forth in Section 3.8 as the exclusive mechanism to resolve such dispute.

- (d) Following delivery and agreement, or a determination by the Accounting Referee in accordance with Section 3.8 below with respect to the Post-Closing Statement:
- (i) in the event that the aggregate adjustments to the Base Purchase Price pursuant to the Post-Closing Statement result in a Purchase Price that is greater than the Purchase Price paid at Closing, Purchaser shall pay such difference to the Monitor by wire transfer of immediately available funds within ten days following finalization of the Post-Closing Statement; or
- (ii) in the event that the aggregate adjustments to the Base Purchase Price pursuant to the Post-Closing Statement result in a Purchase Price that is less than the Purchase Price paid at Closing, the Monitor shall pay such difference to Purchaser by wire transfer of immediately available funds within ten days following finalization of the Post-Closing Statement.

### **Section 3.8 Dispute Resolution Procedure**

In the event the Parties are unable to agree upon the Post-Closing Statement, such dispute shall be submitted to, and all issues having a bearing on such dispute shall, subject to any order of the Court, be resolved by the Accounting Referee, in consultation with the Monitor. In resolving any such dispute, the Accounting Referee shall consider only those items or amounts in disagreement. Unless otherwise ordered by the Court, the Accounting Referee's determination of any of the matters set forth above shall be final and binding on the parties to this Agreement. The Accounting Referee shall use commercially reasonable efforts to complete its work within thirty (30) days following its engagement. All fees and expenses of the Accounting Referee shall be borne equally by Purchaser, on the one hand, and the Vendors on the other hand.

## **ARTICLE 4 EMPLOYEE MATTERS**

### **Section 4.1 Offer to Employees.**

- (1) The Purchaser may in its sole and absolute discretion offer employment, conditional on Closing and effective as of the Closing Time, to any or all active and inactive Employees

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in accordance with this Section 4.1 (collectively, the "Offered Employees") on or before the date the Approval and Vesting Order is obtained and each such offer will be on terms and conditions required by Applicable Law.

- (2) The Vendors shall not attempt in any way to discourage any of the Offered Employees from accepting the offer of employment made by the Purchaser.

#### **Section 4.2 Employee Plans.**

To the knowledge of the Vendors: (i) no event has occurred and there exists no condition or set of circumstances in connection with which the Vendors, the Business or the Purchaser could be subject to any material liability under the terms of any Employee Plan, ERISA or the Code; (ii) each of the Employee Plans (and each related trust or insurance contract) has been operated and administered in all material respects in accordance with Applicable Law and administrative or governmental rules and regulations, including ERISA and the Code.

#### **Section 4.3 Employee Liability.**

Without limiting the Purchaser's obligations in respect of those Offered Employees who accept the Purchaser's offer of employment (the "Transferred Employees"), the Purchaser shall be responsible for:

- (a) All liabilities (whether accrued or not) for salary, wages, bonuses, commissions, and other compensation relating to employment of all Transferred Employees, for the period after the Closing Time;
- (b) All liabilities (whether accrued or not) for vacation pay of all Transferred Employees, whether relating to any period before or after the Closing Time;
- (c) All severance payments, damages for wrongful dismissal and all related costs in respect of the termination by the Purchaser of the employment of any Transferred Employee after the Closing Time;
- (d) All liabilities for Claims for injury, disability, death or workers' compensation arising from or related to employment of the Transferred Employees arising after the Closing Time; and
- (e) All employment-related Claims, penalties and assessments in respect of the Business (but, for greater clarity, excluding with respect to such amounts related to any Employees or former Employees who are not Transferred Employees) arising out of matters which occur after the Closing Time.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES**

**Section 5.1 Purchaser's Representations**

The Purchaser represents and warrants to the Vendors as of the date hereof and as of the Closing Time that and acknowledges that the Vendors is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) The Purchaser is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation and has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder.
- (b) All necessary corporate action has been taken by the Purchaser to authorize the execution and delivery by it of, and the performance of its obligations under, this Agreement.
- (c) The Purchaser has or will have made adequate arrangements to have sufficient funds available to satisfy its obligations to pay the Purchase Price as set forth in Section 3.2.
- (d) The Purchaser is either not a non-Canadian or is controlled by a WTO investor, each within the meaning of the Investment Canada Act.
- (e) The Purchaser, together with its affiliates (as the term "affiliate" is defined under the Competition Act), neither have assets in Canada with an aggregate value in excess of \$225 million nor aggregate gross revenues from sales in, from or into Canada in excess of \$225 million, all as determined in accordance with and for the purposes of subsection 109(1) of the Competition Act.

**Section 5.2 Vendors' Representations**

Each Vendor represents and warrants to the Purchaser as of the date hereof and as of the Closing Time as follows and acknowledge that the Purchaser is relying on such representations and warranties in connection with entering into this Agreement and performing its obligations hereunder:

- (a) Each Vendor is a corporation duly incorporated, organized and subsisting under the laws of its jurisdiction of incorporation.
- (b) Each Vendor has provided the Purchaser with true and complete copies of all Benefit Plans relating to employees of the Business. Such Vendor does not and has never sponsored or participated in a "registered pension plan" as such term is defined in the Income Tax Act.

- (c) Subject to obtaining the Approval and Vesting Order and, if applicable, the Assignment Orders, each Vendor has the requisite power and authority to enter into this Agreement and to complete the transactions contemplated hereunder.
- (d) The Vendors, together with their affiliates (as the term "affiliate" is defined under the Competition Act), neither have assets in Canada with an aggregate value in excess of \$175 million nor aggregate gross revenues from sales in, from or into Canada in excess of \$175 million, all as determined in accordance with and for the purposes of subsection 109(1) of the Competition Act.
- (e) In respect of the Purchased Assets and related business in Canada, no Required Approvals are required to complete the transactions contemplated herein, including pursuant to the Competition Act and the Investment Canada Act, other than obtaining the Orders referenced in Section 5.2(c) above.
- (f) Each Vendor has good and marketable title to the Purchased Assets that it owns.

### **Section 5.3 Limitations**

With the exception of the Vendors' representations and warranties in Section 5.2 and the Purchaser's representations and warranties in Section 5.1, neither the Vendors nor the Purchaser, or their respective Representatives, nor any of their respective officers, directors or Employees make, have made or shall be deemed to have made any other representation or warranty, express or implied, at law or in equity, in respect of the Vendors, the Purchaser, or the Purchased Assets or the sale and purchase of the Purchased Assets pursuant to this Agreement.

## **ARTICLE 6 COVENANTS**

### **Section 6.1 Conduct of Business in the Ordinary Course**

- (1) Each Vendor shall use commercially reasonable efforts to conduct the Business in the Ordinary Course of Business, except to the extent required to allow any Vendor to comply with its obligations under this Agreement, subject in all cases to any limitation imposed by being subject to CCAA Proceedings, the chapter 15 Proceedings and any order of the Court or the U.S. Court.
- (2) Without limiting the generality of Section 6.1(1) and subject to any order of the Court or the U.S. Court, each Vendor shall use its commercially reasonable efforts to:
  - (a) remain in possession of the Purchased Assets until Closing, use the Purchased Assets only in the Ordinary Course of Business and maintain, preserve and protect the Purchased Assets in the condition in which they exist on the date hereof, other than ordinary wear and tear and other than replacements, dispositions, modifications or maintenance in the Ordinary Course of Business;

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- (b) not dispose of any of the Purchased Assets;
  - (c) not acquire or agree to acquire any material additional assets for the operation of the Business;
  - (d) not amend in any material respect or in a manner outside the ordinary course of business any Assumed Contract or waive any material rights thereunder, or disclaim any Essential Contract without the consent of the Purchaser, not to be unreasonably withheld or delayed; and
  - (e) not enter into any material contract or other material written agreement in respect of any of the Purchased Assets other than in the Ordinary Course of Business; except, in each case, with the prior written consent of the Purchaser, such consent not to be unreasonably withheld, or an order of the Court, and provided that such consent of the Purchaser shall be deemed to have been given with respect to any request for such a consent to which the Purchaser fails to respond within two Business Days after such request is made.
- (3) No Vendor will, except as required by Applicable Law, change recurring rates, non-recurring rates, promotions, sales incentives, commission plans, accounting policies, credit policies or collection procedures, in each case without the prior written consent of Purchaser or an order of the Court.

#### **Section 6.2 Actions to Satisfy Closing Conditions**

- (1) Each Vendor agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.1 and Section 7.3.
- (2) The Purchaser agrees to take all such actions as are within its power to control and shall use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with all of the conditions set forth in Section 7.2 and Section 7.3.

#### **Section 6.3 Access Rights**

Upon reasonable prior notice by the Purchaser to the Vendors and at any time prior to the Closing Date, the Purchaser may have reasonable access to the Purchased Assets and Employees during normal business hours and in each case prior to Closing for the purpose of enabling the Purchaser to conduct such inspections of the Purchased Assets as it deems appropriate, acting reasonably. Such inspection shall only be conducted in the presence of a representative of the Vendors, if so required at the discretion of the Vendors. The Purchaser agrees to indemnify and save the Vendors and its Representatives harmless from and against all Claims incurred or arising from or in any way directly related to physical harm to property or people caused by the Purchaser's inspection of the Purchased Assets or the attendance of the Purchaser, its employees or agents at properties comprising part of the Purchased Assets or at

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which any of the Purchased Assets are situate. For greater certainty, other than a breach or violation of this Agreement by any Vendor, the Vendors shall not be responsible to indemnify and save the Purchaser harmless from or against the findings of the Purchaser's inspection.

#### **Section 6.4 Regulatory Approvals**

- (1) From the date hereof until the earlier of (i) the date all Required Approvals have been obtained and (ii) the date that is six months after the date hereof, each Vendor shall cooperate with the Purchaser and use commercially reasonable efforts to render all necessary and reasonable assistance required by the Purchaser in connection with any application, notification or filing of the Purchaser in connection with the Transaction or for the purposes of obtaining any Required Approval, or any registration or certification of the Canadian Radio-television and Telecommunications Commission required to allow the Purchaser to continue to provide services to the acquired customers on substantially the same terms as they were provided by the Vendors prior to Closing. In addition, without limiting the foregoing, prior to the Closing the Vendors shall use commercially reasonable efforts to obtain a comfort letter or other communication from the Canadian Radio-television and Telecommunications Commission as to whether the Purchaser may use, on an interim basis, Primus Telecommunications Canada Inc.'s status as a "Competitive Local Exchange Carrier", until the Purchaser obtains such status after Closing.
- (2) The Purchaser shall cooperate with the Vendors and use commercially reasonable efforts to render all necessary and reasonable assistance required by the Vendors in connection with any application, notification or filing of the Purchaser in connection with the Transaction or for the purposes of obtaining any Required Approval, including any necessary authorizations to make any necessary filings with the FCC or any State PUC, or any registration or certification of the Canadian Radio-television and Telecommunications Commission required to allow the Purchaser to continue to provide services to the acquired customers on substantially the same terms as they were provided by the Vendors prior to the Closing. The Purchaser's obligations under this Section 6.4(1) shall survive the Closing.
- (3) The Purchaser shall use its commercially reasonable efforts to obtain, as quickly as possible after the date of this Agreement all Required Approvals from the FCC and each State PUC. Without limiting the generality of the foregoing, the Purchaser shall file its applications for the Required Approvals from the FCC and from the State PUCs for California, Florida, New York and Texas within 14 days after the date of the Initial Order and shall file its applications for the Required Approvals from rest of the State PUCs within 30 days after the date of the Initial Order.
- (4) The Purchaser shall use its commercially reasonable efforts to obtain, as quickly as possible following the date of this Agreement, "Competitive Local Exchange Carrier" status from the Canadian Radio-television and Telecommunications Commission. The Purchaser's obligations under this Section 6.4(2) shall survive the Closing. Without

limiting the generality of the foregoing, the Purchaser shall file its application for such status within 14 days after the date of the Initial Order.

**Section 6.5 CCAA**

- (1) As promptly as practicable after execution of this Agreement, the Vendors shall: (i) file motions for the issuances of the Initial CCAA Order, the Approval and Vesting Order and the Assignment Orders, respectively; and (ii) serve such parties as the Court requires for the motion seeking the issuance of the Approval and Vesting Order and the Assignment Orders, and will consult with the Purchaser regarding the parties to be so served.
- (2) The Vendors shall ensure that all motion materials and form of Approval and Vesting Order and for of Assignment Orders are provided sufficiently in advance to the Purchaser for review and comment.
- (3) In the event that the Court orders that a post-filing sale process be conducted by the Vendors, subject to the Purchaser's termination right pursuant to Section 8.6, in the event that the Purchaser in its sole discretion is willing to do so, the Vender agree that this Agreement shall serve as the stalking horse offer for any such sale process, pursuant to sales procedures in form and substance acceptable to the Purchaser acting reasonably, including with respect to customary stalking horse protections for the Purchaser (including, without limitation, a 3% break-up fee to be paid to the Purchaser solely from the proceeds of any overbid).

**Section 6.6 Confidentiality**

In addition to the obligations under the non-disclosure agreement between the Vendors and the Purchaser dated September 15, 2015, as amended, the Parties shall keep confidential and shall not disclose to any other Person the existence or terms of this Agreement except with the prior written consent of the other Party, not to be unreasonably withheld, provided that the Vendors may disclose this Agreement to the Court, and to its secured lenders, and as otherwise may be required under the CCAA, in connection with filing and obtaining the Approval and Vesting Order or the Assignment Order, as may be required by the U.S. Court in connection with the chapter 15 Proceedings, as required by the FCC or any State PUC in connection with any Required Approval or as otherwise may be required by the Court or the U.S. Court. Until the Initial Order has been granted, the Purchaser shall not, directly or indirectly, solicit, correspond with or otherwise communicate with any party to any Assumed Contract (other than the Vendors) without the prior written consent of the Vendors in respect of any issues relating to the Vendors, the Purchased Assets or any of the transactions contemplated by this Agreement. After the Initial Order has been granted, the Purchaser may communicate with any party to any Assumed Contract (other than the Vendor) in accordance with Section 2.3(3).



**Section 6.7 Customer Notices**

Each Vendor will work together with Purchaser to send a joint letter to all customers affected by the Transaction at or before Closing, the costs and expenses of which shall be shared equally by the Vendors, on the one hand, and Purchaser, on the other hand.

**Section 6.8 Data Migration**

Each Vendor shall use commercially reasonable efforts to cooperate with Purchaser to migrate all data related to the Purchased Assets into the Purchaser's BSS and OSS systems, to Purchaser's satisfaction, such that such data is migrated upon the Closing.

**Section 6.9 Redesignation**

Each Vendor will use commercially reasonable efforts to work together with Purchaser to redesignate or transfer to the extent applicable and only with respect to the Business pertaining to U.S. and Puerto Rico customers, such Vendor's customers and network services to contracts of Purchaser such that such customers and network services, to the extent applicable, are redesignated upon the Closing.

**ARTICLE 7  
CONDITIONS PRECEDENT****Section 7.1 Conditions Precedent in favour of the Purchaser**

- (1) The obligation of the Purchaser to complete the Transaction is subject to the following conditions being fulfilled or performed:
  - (a) all representations and warranties of the Vendors contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
  - (b) the Vendors shall have performed, in all material respects, each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.3;
  - (c) the Purchaser shall have received at or before the Closing Time duly executed copies of the documents listed in Section 8.3;
  - (d) the Vendors shall, as of the Closing Time, have given those notices or obtain those consents, approvals or waivers required for the assignment of the Essential Contracts or such Essential Contracts shall have been assigned pursuant to the Approval and Vesting Order or an Assignment Order subject to the payment of Cure Costs by the Purchaser and the Vendors shall not be in breach should the Purchaser fail to pay such Cure Costs;

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- (e) all stays of proceedings contained in the Initial Order shall have remained in effect as at the Closing Time except where any such stay is terminated or lifted or amended in a manner which is not prejudicial to the Purchaser or which does not adversely affect the Purchaser's rights under this Agreement or the Purchased Assets and the Initial Order has not been amended or modified in any manner prejudicial to the Purchaser as at the Closing Time;
  - (f) the Purchaser shall have received, at or before the Closing Time duly executed copies of the documents listed in Section 8.3;
  - (g) the Purchaser shall have obtained "Competitive Local Exchange Carrier" status with the Canadian Radio-television and Telecommunications Commission in those exchanges where Primus Telecommunications Canada Inc. has such status, or the Canadian Radio-television and Telecommunications Commission shall have provided to the Purchaser a comfort letter or other written communication prior to Closing confirming the Purchaser may, without any material condition or restriction, use, on an interim basis, Primus Telecommunications Canada Inc.'s status in those exchanges as a "Competitive Local Exchange Carrier" in the Purchaser's operation of the Business until the Purchaser obtains such status after Closing (in which case the Parties hereto shall amend the form of the Management Agreement such that it provides for such a license to the Purchaser in form and substance acceptable to the Parties, acting reasonably); and
  - (h) the Purchaser shall have obtained all Required Approvals required by a Governmental Authority in Canada or any province or territory thereof, other than as contemplated by Section 7.1(1)(g), which the Purchaser has advised the Vendors of in writing (which notice shall be provided by the Purchaser as soon as possible after the date of this Agreement); provided that this condition (h) shall be deemed to have been waived at the close of business on January 29, 2016 other than for Required Approvals for which notice has been received as above by the Purchaser by the close of business on January 29, 2016.
- (2) The foregoing conditions are for the exclusive benefit of the Purchaser. Any condition in Section 7.1(1) may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. The Purchaser may elect on written notice to the Vendors to terminate this Agreement at any time after 5:00 p.m. eastern time on the Outside Date if any condition in Section 7.1(1) has not been satisfied as at such time (other than a condition which, by its nature, can only be satisfied at the Closing) and satisfaction of such condition has not been waived by the Purchaser.

#### **Section 7.2 Conditions Precedent in favour of the Vendors**

- (1) The obligation of the Vendors to complete the Transaction is subject to the following conditions being fulfilled or performed:

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- (a) all representations and warranties of the Purchaser contained in this Agreement shall be true in all material respects as of the Closing Time with the same effect as though made on and as of that date;
  - (b) the Purchaser shall have performed in all material respects each of its obligations under this Agreement to the extent required to be performed at or before the Closing Time, including the delivery of each of the items required pursuant to Section 8.2; and
  - (c) the Vendors shall have received at or before the Closing Time duly executed copies of the documents listed in Section 8.2.
- (2) The foregoing conditions are for the exclusive benefit of the Vendors. Any condition in Section 7.2(1) may be waived by the Vendors, in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. The Vendors may elect on written notice to the Purchaser to terminate this Agreement at any time after 5:00 p.m. eastern time on the Outside Date if any condition in Section 7.2(1) has not been satisfied as at such time (other than a condition which, by its nature, can only be satisfied at the Closing) and satisfaction of such condition has not been waived by the Vendors and the Monitor.

**Section 7.3 Conditions Precedent in favour of both the Purchaser and the Vendor**

- (1) The obligations of the Vendors and the Purchaser to complete the Transaction are subject to the following conditions being fulfilled or performed:
- (a) the Approval and Vesting Order shall have been obtained and is final and shall not have been stayed or varied in a manner prejudicial to the Purchaser, or vacated or appealed, unless the Purchaser has provided written consent that Closing occur despite such appeal;
  - (b) the U.S. Recognition Order shall have been obtained and is final and shall not have been stayed or varied in a manner prejudicial to the Purchaser, or vacated or appealed, unless the Purchaser has provided written consent that Closing occur despite such appeal;
  - (c) no order shall have been issued by a Governmental Authority which restrains or prohibits the completion of the Transaction;
  - (d) no motion, action or proceedings shall be pending by or before a Governmental Authority to restrain or prohibit the completion of the Transaction contemplated by this Agreement.
- (2) The Parties hereto acknowledge that the foregoing conditions are for the mutual benefit of the Vendors and the Purchaser. Either Party may elect on written notice to the other of them and the Monitor to terminate this Agreement at any time after 5:00 p.m. eastern

time on the Outside Date if any condition in Section 7.3(1) is not satisfied as at such time (other than a condition which, by its nature, can only be satisfied at Closing) and satisfaction of such condition has not been waived by both Parties.

## ARTICLE 8 CLOSING

### Section 8.1 Closing

Subject to the conditions set out in this Agreement, the completion of the Transaction shall take place at the Closing Time at the offices of Stikeman Elliott LLP, 5300 Commerce Court West, 199 Bay Street, Toronto, Ontario, M5L 1B9, or as otherwise determined by mutual agreement of the Parties in writing and the Parties shall exercise commercially reasonable efforts to cause Closing to occur at the Closing Time and, in any event, prior to the Outside Date.

### Section 8.2 Purchaser's Deliveries on Closing

At or before the Closing Time, the Purchaser shall execute and deliver, or arrange for the delivery, as the case may be, to the Vendors the following, each of which shall be in form and substance satisfactory to the Vendors, acting reasonably:

- (a) the Closing Cash Payment in accordance with Section 3.2(b);
- (b) payment of Transfer Taxes required by Applicable Law to be collected by any Vendors;
- (c) the election(s) referred to in Section 3.5 and Section 3.6(c) executed by the Purchaser;
- (d) evidence of payment of all Cure Costs;
- (e) a written direction to the Escrow Agent instructing the Escrow Agent to release Deposit to the Vendors in accordance with the Escrow Agreement;
- (f) an assumption agreement evidencing the assumption by the Purchaser of the Assumed Obligations (other than in respect of Assumed Contracts);
- (g) an assignment and assumption agreement evidencing the assignment to the Purchaser, and assumption by the Purchaser, of Assumed Obligations with respect to (i) all Assumed Contracts which are not Consent Required Contracts and (ii) all Consent Required Contracts for which any required consent, approval or waiver to the assignment, or Assignment Orders, thereof has been obtained;
- (h) an assignment agreement evidencing the assumption by the Purchaser of all Purchased Intellectual Property;
- (i) the Management Agreement;

- (j) a certificate dated as of the Closing Date confirming that all of the representations and warranties of the Purchaser contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as though made at and as of the Closing Time, and that the Purchaser has performed in all respects the covenants to be performed by it prior to the Closing Time; and
- (k) such further and other documentation as is referred to in this Agreement or as the Vendors may reasonably require to give effect to this Agreement.

### Section 8.3 Vendors' Deliveries on Closing

At or before the Closing Time, the Vendors shall execute and deliver, or arrange for the delivery, as the case may be, to the Purchaser the following, each of which shall be in form and substance satisfactory to the Purchaser, acting reasonably:

- (a) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Closing;
- (b) a copy of the Approval and Vesting Order that has been issued and entered, is final and shall not have been stayed or varied in a manner prejudicial to the Purchaser, or vacated or appealed, unless the Purchaser has provided written consent that Closing occur despite such appeal;
- (c) a copy of the U.S. Recognition Order has been issued and entered, is final and shall not have been stayed or varied in a manner prejudicial to the Purchaser, or vacated or appealed, unless the Purchaser has provided written consent that Closing occur despite such appeal;
- (d) a written direction to the Escrow Agent instructing the Escrow Agent to release Deposit to the Vendors in accordance with the Escrow Agreement;
- (e) an assignment and assumption agreement evidencing the assignment to the Purchaser, and assumption by the Purchaser, of (i) all Assumed Contracts which are not Consent Required Contracts and (ii) all Consent Required Contracts for which any required consent, approval or waiver to the assignment, or Assignment Orders, thereof has been obtained;
- (f) an assignment agreement evidencing the assumption by the Purchaser of all Purchased Intellectual Property;
- (g) a true and complete copy of all Assignment Orders, if any, entered by the Court and, if applicable, the U.S. Court;
- (h) a certificate dated as of the Closing Date confirming that all of the representations and warranties of each Vendor contained in this Agreement are true in all material respects as of the Closing Time, with the same effect as

though made at and as of the Closing Time, and that each Vendor has performed in all material respects the covenants to be performed by them prior to the Closing Time;

- (i) the election(s) referred to in Section 3.5 and Section 3.6(c) executed by the applicable Vendor;
- (j) the executed Monitor's Certificate;
- (k) the Management Agreement;
- (l) such other necessary deeds, conveyances, assurances, transfers and assignments and any other instruments necessary to transfer the Purchased Assets to the Purchaser; and
- (m) such further and other documentation as is referred to in this Agreement or as the Purchaser may reasonably require to give effect to this Agreement.

#### **Section 8.4 Possession of Assets**

- (1) On Closing, the Purchaser shall take possession of the Purchased Assets where situate at Closing. The Purchaser acknowledges that the Vendors have no obligation to deliver physical possession of the Purchased Assets to the Purchaser. In no event shall the Purchased Assets be sold, assigned, transferred or set over to the Purchaser until the conditions set out in the Approval and Vesting Order have been satisfied and the Purchaser has satisfied all delivery requirements outlined in Section 8.2. The Purchaser shall promptly notify the Vendors of any Excluded Assets which may come into the possession or control of the Purchaser, whether before or after Closing, and thereupon shall promptly release such Excluded Assets to the Vendors, or to such other Person as the Vendors may direct in writing and, for greater certainty, title shall not be deemed to vest to the Purchaser in respect of any Excluded Assets.
- (2) The Purchased Assets shall be and remain until Closing at the risk of the Vendors. In the event of material damage by fire or other hazard to the Purchased Assets or any material part thereof occurring before the Closing Date, the Vendors shall immediately advise the Purchaser thereof by notice in writing. Notwithstanding the occurrence of any of the foregoing, the Purchaser shall complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price and the proceeds of any insurance available or actually paid or payable to the Vendors, to a maximum of that portion of the Purchase Price allocated in Schedule F for the Purchased Assets which are so damaged, shall be paid or assigned, as the case may be, to the Purchaser.

**Section 8.5 Dispute Resolution**

If any dispute arises with respect to any matter related to the Transaction or the interpretation or enforcement of this Agreement such dispute will be determined by the Court, or by such other Person or in such other manner as the Court may direct.

**Section 8.6 Termination**

- (1) This Agreement shall automatically terminate at any time prior to the Closing Time by mutual written agreement of the Vendors and the Purchaser and on consent of the Monitor.
- (2) This Agreement may be terminated at any time prior to the Closing Time upon the occurrence of any of the following:
  - (a) a condition precedent in favour of a Party has not been satisfied or waived by such Party pursuant to and in accordance with Article 7 and such Party otherwise entitled to terminate this Agreement as a result thereof has delivered written notice of termination pursuant to Article 7 (provided that the terminating Party has not failed to satisfy a closing condition under or otherwise breached this Agreement);
  - (b) by the Purchaser if the Court orders a post-filing sale process and the Purchaser, in its sole and absolute discretion, elects not to have this Agreement serve as the stalking horse offer for such sale process;
  - (c) Closing shall not have occurred on or prior to the Outside Date in accordance with Section 7.3 and any of the Parties shall have delivered written notice of termination to the other Parties terminating this Agreement as a result thereof (provided that the terminating Party has not failed to satisfy a closing condition under this Agreement);
  - (d) by the Vendors upon notice to the Purchaser if a material breach by the Purchaser of its obligations under this Agreement has occurred (including without limitation any action or inaction by Purchaser contrary to its obligations hereunder as reasonably necessary to cause the fulfillment of the conditions to closing in favour of Vendors) and Purchaser has failed to cure such breach within 20 days after receipt of written notice thereof; or
  - (e) by the Purchaser upon notice to the Vendors if a material breach by a Vendor of its obligations under this Agreement has occurred (including without limitation any action or inaction by a Vendor contrary to its obligations hereunder as reasonably necessary to cause the fulfillment of the conditions to closing in favour of Purchaser) and any of the Vendors has failed to cure such breach within 20 days after receipt of written notice thereof.

**Section 8.7 Effects of Termination and Closing**

- (1) If this Agreement is terminated pursuant to Section 8.6, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of: (i) Section 3.3 (Deposit); and (ii) this Section 8.7 (Effects of Termination and Closing), each of which will survive termination.
- (2) If this Agreement is terminated by the Vendors pursuant Section 8.6(2)(d), then the Deposit shall be forfeited to the Vendors in accordance with Section 3.3 (Deposit), as liquidated damages, and not as penalty, and the Vendors shall have no other rights and remedies against the Purchaser available at law or in equity.
- (3) Under no circumstance shall any of the Parties, their Representatives or their respective directors, officers, employees or agents be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the transactions contemplated herein.

**ARTICLE 9  
GENERAL****Section 9.1 Access to Books and Records**

- (1) For a period of three years from the Closing Date or for such longer period as may be reasonably required for the Vendors to comply with Applicable Law, the Purchaser will retain all original Books and Records that are transferred to the Purchaser under this Agreement. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement and subject to Section 9.1(2), the Vendors (and any representative, agent, former director or officer or trustee in bankruptcy of the estate of the Vendors, including the Monitor) has the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser.
- (2) If the Vendors or its Affiliates are engaged in any business that competes, directly or indirectly, with the business carried on by Purchaser, then the Purchaser shall only be required to provide the right to inspect as contemplated in Section 9.1(1) to the Vendors if the sole purpose is of evaluating or preparing any of its tax returns, the sale of the remaining assets of the Vendors, in respect of any third party claim against such Person or in connection with any bankruptcy and insolvency proceeding. For greater certainty, the right of the Monitor, any former director or officer or any trustee in bankruptcy of the estate of the Vendors to inspect Books and Records and make copies thereof shall not be restricted under this Section 9.1(2).



**Section 9.2 Notice**

(1) Any notice or other communication under this Agreement shall be in writing and may be delivered personally, by courier or by email, addressed:

(a) in the case of the Purchaser, as follows:

Birch Communications, Inc.  
3060 Peachtree Road, NW  
Suite 1065  
Atlanta, Georgia 30305  
Attn: Vincent M. Oddo  
Email: vincent.oddo@Birch.com

with a copy to:

Jones Day  
1420 Peachtree Street, NE  
Suite 800  
Atlanta, Georgia 30309  
Attn: William B. Rowland  
Email: wbrowland@jonesday.com

(b) in the case of any Vendor, as follows:

c/o FTI Consulting Canada Inc.  
TD South Tower.  
79 Wellington Street West  
Toronto Dominion Centre, Suite 2010  
Toronto, ON M5K 1G8

Attention: Nigel Meakin

Email: nigel.meakin@fticonsulting.com

with a copy to:

Stikeman Elliott LLP  
5300 Commerce Court West  
199 Bay Street  
Toronto, Ontario M5L 1B9

Attention: Samantha Horn

Email: sghorn@stikeman.com

- (c) in each case, with a further copy to the Monitor, as follows:

FTI Consulting Canada Inc.  
 TD South Tower  
 79 Wellington Street West  
 Toronto Dominion Centre, Suite 2010  
 Toronto, ON M5K 1G8

**Attention:** Nigel Meakin  
**Email:** nigel.meakin@fticonsulting.com

with a copy to:

Blake, Cassels & Graydon LLP  
 Suite 4000, Commerce Court West  
 199 Bay Street  
 Toronto, Ontario M5L 1B9

**Attention:** Linc Rogers  
**Email:** linc.rogers@blakes.com

- (2) Any such notice or other communication, if given by personal delivery or by courier, will be deemed to have been given on the day of actual delivery thereof and, if transmitted by email before 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on such Business Day, and if transmitted by email after 5:00 p.m. (Toronto time) on a Business Day, will be deemed to have been given on the Business Day after the date of the transmission.
- (3) Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

**Section 9.3 Time**

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing signed by the Vendors and the Purchaser.

**Section 9.4 Survival**

The representations and warranties of the Parties contained in this Agreement shall merge on Closing and the covenants of the Parties contained herein to be performed after the Closing shall survive Closing and remain in full force and effect.

**Section 9.5 Announcements**

No press release, public statement or announcement or other public disclosure (a "Public Statement") with respect to this Agreement or the transactions contemplated in this Agreement may be made prior to the Initial Order having been granted except with the prior written consent and joint approval of the Vendors and the Purchaser with a copy of such Public Statement being provided to the Monitor in advance.

**Section 9.6 Personal Information**

Purchaser hereby acknowledges that it is aware, and that it will advise its Representatives, that privacy legislation, including the *Personal Information Protection and Electronic Documents Act* (Canada), applies to certain information that may be disclosed to the Purchaser and its Representatives pursuant to this Agreement and/or the Transaction. The Purchaser agrees to comply, and cause its Representatives to comply, with such privacy legislation in connection with any such information disclosed to it or any of them. To the extent that any personally identifiable information of any customers is transferred from a Vendor to the Purchaser prior to the filing of the Initial Order, the Purchaser agrees to abide by the Vendors' privacy policy with respect to such personally identifiable information.

**Section 9.7 Benefit of Agreement**

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Except as otherwise provided in Section 3.6(b), Section 6.3 and Section 9.11, each Party intends that this Agreement shall not benefit or create any right or cause of action in or on behalf of any Person other than the Parties and their successors and permitted assigns, and, except for the Indemnified Parties, no Person other than the Parties and their successors and their permitted assigns shall be entitled to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. Despite the foregoing, the Vendors acknowledge to each of the Purchaser's Indemnified Parties their direct rights against it under Section 9.11 of this Agreement and the Purchaser acknowledges to each of the Vendors' Indemnified Parties their direct rights against it under Section 3.6(b), Section 6.3 and Section 9.11 of this Agreement. To the extent required by law to give full effect to these direct rights, the Vendors and the Purchaser each agree and acknowledge that it is acting as agent and/or as trustee of its Indemnified Parties. The Parties reserve their right to vary or rescind the rights, granted by or under this Agreement to any Person who is not a Party, at any time and in any way whatsoever, without notice to or consent of that Person, including any Indemnified Party.

**Section 9.8 Entire Agreement**

This Agreement, the attached Schedules hereto, constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior negotiations, understandings and agreements. This Agreement may not be amended or modified in any respect except by written instrument executed by all of the Parties.

**Section 9.9 Paramountcy**

In the event of any conflict or inconsistency between the provisions of this Agreement, and any other agreement, document or instrument executed or delivered in connection with this Transaction or this Agreement, the provisions of this Agreement shall prevail to the extent of such conflict or inconsistency.

**Section 9.10 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the Parties irrevocably attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

**Section 9.11 Commission**

The Purchaser agrees to indemnify each Vendor and its Representatives against any claim for compensation or commission by any third party or agent retained by the Purchaser in connection with, or in contemplation of, the Transaction and the Vendors shall indemnify the Purchaser and its Representatives for any third party or agent or broker fees or other commissions payable by the Vendors on the Purchase Price or otherwise in connection with the Transaction.

**Section 9.12 Assignment by Purchaser**

This Agreement may not be assigned by the Purchaser without the prior written consent of the Vendors, which consent may be withheld in the Vendors' sole and absolute discretion; provided, however that the Purchaser shall be permitted to assign the benefit of all or a portion of this Agreement prior to the issuance of the Approval and Vesting Order to an Affiliate thereof in circumstances where (i) prior notice of such assignment is provided to the Vendors, (ii) such assignee agrees to be bound by the terms of this Agreement to the extent of the assignment, and (iii) such assignment shall not release the Purchaser from any obligation or liability hereunder in favour of the Vendors and the Purchaser shall acknowledge and confirm their continuing obligations and liabilities in favour of the Vendors in form and substance satisfactory to the Vendors; for greater certainty, the Purchaser shall be permitted to assign the right to buy all or a portion of the Purchased Assets to one or more Affiliates and such assignment shall be permitted so long as the requirements of this Section 9.12 are complied with. The Parties acknowledge and agree that a Canadian Affiliate of Purchaser will acquire all of the Purchased Assets located in Canada or used in carrying out the Business in Canada. This Agreement may not be assigned by the Vendors without the consent of the Purchaser.

**Section 9.13 Further Assurances**

Each of the Parties shall, at the request and expense of the requesting Party, take or cause to be taken such action and execute and deliver or cause to be executed and delivered to the other such conveyances, transfers, documents and further assurances as may be reasonably necessary or desirable to give effect to this Agreement.

**Section 9.14 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. Transmission by facsimile or by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

**Section 9.15 Severability**

Notwithstanding any provision herein, if a condition to complete the Transaction, or a covenant or an agreement herein, other than those contained in Section 3.1, Section 3.6 or Article 8, is prohibited or unenforceable pursuant to Applicable Law, then such condition, covenant or agreement shall be ineffective to the extent of such prohibition or unenforceability without invalidating the other provisions hereof.

**Section 9.16 Monitor's Certificate**

The Parties acknowledge and agree that the Monitor shall be entitled to deliver to the Purchaser, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no liability to the Parties in connection therewith. The Parties further acknowledge and agree that (i) upon written confirmation from both Parties that all conditions of Closing in favour of such Party have been satisfied or waived (other than the payments contemplated in Section 3.2 and the delivery of the executed Monitor's Certificate), the Monitor may deliver the executed Monitor's Certificate to the Purchaser's counsel in escrow, with the sole condition of its release from escrow being the Monitor's written confirmation of receipt of the payments contemplated in Section 3.2 to be delivered to it, and (ii) upon the Monitor's written confirmation that all such funds have been received, the Monitor's Certificate will be released from escrow to the Purchaser, and the Closing shall be deemed to have occurred.

**Section 9.17 Monitor's Capacity**


The Vendors and the Purchaser acknowledge and agree that the Monitor, acting in its capacity as Monitor of the Vendors, will have no liability, in its personal capacity or otherwise, in connection with this Agreement whatsoever as Monitor.

**[THE REMAINDER OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the Parties have executed this Agreement.

PURCHASER:

BIRCH COMMUNICATIONS, INC.

By:   
Name: Vincent M. Oddo  
Title: President & CEO

VENDORS:

PRIMUS TELECOMMUNICATIONS  
CANADA INC.

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

PRIMUS TELECOMMUNICATIONS, INC.

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

LINGO, INC.

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

IN WITNESS WHEREOF, the Parties have executed this Agreement.

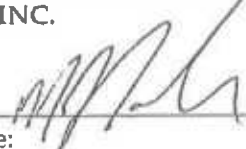
PURCHASER:

BIRCH COMMUNICATIONS, INC.

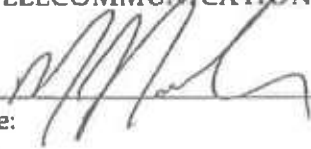
By: \_\_\_\_\_  
Name:  
Title:

VENDORS:

PRIMUS TELECOMMUNICATIONS  
CANADA INC.

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

PRIMUS TELECOMMUNICATIONS, INC.

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

LINGO, INC.

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

### Schedule A – Purchased Assets

- (1) all movable property, leasehold improvements and equipment, furniture, fixtures, computer hardware network equipment, inventory and other fixed assets (excluding those that are subject to capital leases that are not Assumed Contracts);
- (2) all Books and Records;
- (3) all inventory used in the carrying on of the Business, including all wireless phones and devices, modems, IAD's, VoIP phones and similar equipment located at customer premises or Vendor's facilities, and all other finished goods and goods in transit to be sold or leased to customers in the operation of the Business;
- (4) all vehicles owned or used in the operation of the Business;
- (5) all BSS and OSS systems and data related thereto;
- (6) the benefit of the Assumed Contracts;
- (7) all Accounts Receivable and Unbilled Revenue (including all checks and other forms of customer payments received by any Vendor following Closing);
- (8) all prepaid expenses to the extent necessary for the operation of the Business from and after the Closing;
- (9) all supplies owned and used in connection with the Business;
- (10) all Purchased Intellectual Property;
- (11) all customer and CABS accounts and the relationship associated therewith, including all contracts and other rights to provide telecom services to such customers, customer guarantees, customer notes, security agreements, financing statements under applicable personal property security legislation, customer deposits or collateral, filings or property securing customer obligations;
- (12) all government licenses, approvals, permits or similar used in connection with the Business, to the extent transferable;
- (13) all goodwill associated with the Business or the Purchased Assets, including the right to carry on the Business;
- (14) all rights, claims, credits, causes of action or rights of set off against third parties relating to the Purchased Assets, including rights under vendors' and manufacturers' warranties, indemnities and guarantees;
- (15) for greater clarity, all assets of Primus Telecommunications, Inc. and Lingo, Inc.; and
- (16) Any assignable or transferrable license, permit, or other authorization issued by the FCC or a State PUC and necessary for the Purchaser to operate the Business after Closing.



### Schedule B – Essential Contracts

In addition to the contracts listed below, “Essential Contracts” includes any master agreement into which any contract listed below is incorporated by reference, and any other (i) interconnection agreements with local exchange carriers and interexchange carriers in Canada, and (ii) 911 service agreements and message relay service agreements with incumbent local exchange carriers in Canada to which Vendors are a party.

Ref.	Location/ Vender	Description
<b>Office Leases</b>		
5.3.1.3.3	Vancouver	Vancouver 555 W Hastings - Renewal Offer August 2012 - May 1, 2012 to Dec 31, 2017
5.3.1.4.1	151 Front	151 Front Street - Lease Amending Agreement - Sept 14, 2014 to Aug 31, 2019
5.3.1.8	New York	Primus Canada 60Hudson
5.3.1.1.2	Edmunston	Edmundston Lease Renewal Letter and Fully Executed Lease (Apr 1/14to Mar 31/17
<b>Carrier Contracts</b>		
<b>Allstream</b>		
5.3.2.1.1	Allstream	Allstream Capacity IRU 2000
5.3.2.1.2	Allstream	Allstream Capacity IRU Addendum 2013
5.3.2.1.3	Allstream	Allstream LOI Memo 2012
5.3.2.1.8	Allstream	Allstream 2 5G SWON ring
5.3.2.10.11	Allstream	Allstream Primus Executed Outbound SIP Contracts
5.3.2.10.12	Allstream	Inbound SIP - 201504
5.3.7.1.2	Allstream	MWA Addendum_Hash_1 Oct2004
5.3.7.1.3	Allstream	MWA Addendum_Hash_2 July2006
5.3.7.1.4	Allstream	MWA Addendum_Hash_3 Oct2007
5.3.7.1.5	Allstream	MWA Addendum_Hash_4 Oct2009
5.3.7.1.6	Allstream	Original MWA 2001
5.3.7.1.7	Allstream	Sch5 International LD 200701
5.3.7.3	Allstream	TPO Quote - Primus - 205 5 Ave SW new 503K cage (v2 120601).xls
	Allstream	Master Agreement for CLEC-IXC Interconnection
	Allstream	GCC - Interconnection Agreement for the Provision of 911 Service to a CLEC_MTS Allstream_070705
	Allstream	GCC - Master Agreement for Local Network Interconnection_Allstream_120403
<b>Bell</b>		
5.3.2.2.4	Bell Canada	2105 Ignite_Primus - Bell
5.3.2.2.5	Bell Canada	Bell 2.5G Toronto - Windsor 20111202_executed

5.3.2.2.6	Bell Canada	Bell 10Gs Toronto-NYC
5.3.2.2.7	Bell Canada	Bell DS1 Toronto-Oakville for 911 20130228
5.3.2.2.8	Bell Canada	Bell DS3 Barrie 1-292430451-223 20111014 executed
5.3.2.2.9	Bell Canada	Bell EIP augments 20140905
5.3.2.2.10	Bell Canada	Bell FTTN resale - 2015 Ignite_Primus - Bell Signed
5.3.2.2.11	Bell Canada	Bell GigE ENNI Ottawa 20131106
5.3.2.2.12	Bell Canada	Bell GigE ENNI Toronto 20131106
5.3.2.2.13	Bell Canada	Bell GigE wave Dundas-Front 1-292430451-561
5.3.2.2.14	Bell Canada	Bell OC3 Pharmacy IntraExchange 20111024
5.3.2.2.17	Bell Canada	Bell Wholesale Digital Network Service FEB2013_executed Bell Wholesale Ethernet Connect Svc Schedule 10G AGAS TOR 1-4 201412
5.3.2.2.18	Bell Canada	
5.3.2.2.19	Bell Canada	Bell Wholesale GAS (IGNITE)
5.3.2.2.20	Bell Canada	GCC - Central Office License Agreement _Bell Canada_040805
5.3.2.2.21	Bell Canada	Primus - Net Gain Incentive Offer Letter - Feb 1st to Apr 30th
5.3.2.2.22	Bell Canada	Bell Altantic BWS Schedule Dec 18 2012
5.3.2.2.23	Bell Canada	Bell EIP augments - Phase 2
5.3.2.2.24	Bell Canada	Bell EIP augments - Phase 3
5.3.2.2.25	Bell Canada	Bell EIP augments 20140915
5.3.2.2.26	Bell Canada	Bell IP Relay and MRS svc MCAT124463-49_1_81028
5.3.2.10.1	Bell Canada	Primus - Net Gain Incentive Offer Letter - Feb 1st to Apr 30th
5.3.2.10.7	Bell Canada	1-334088971-13 BWS Maritimes 201504 exec
5.3.2.10.10	Bell Canada	2105 Ignite_Primus - Bell Signed
5.3.7.7	Bell Canada	2012-0259DC - Primus EIP Amendment 1 - Dec 19, 2012(executed) 2012-0259DC - Primus Settlement BWS (Maritimes) - 1-334088971- 11(executed)
5.3.7.8	Bell Canada	
5.3.7.9	Bell Canada	EIP 201109 executed
5.3.9.1	Bell Canada	Centrex Amendment_Hash_1
5.3.9.2	Bell Canada	PRIMUS-CENTREX LOC R2_signed
	Bell Canada	Master Agreement for CLEC-IXC Interconnection
	Bell Canada	GCC - Interconnection Agreement for the Provision of 911 Service to a CLEC_Bell Canada_062202
	Bell Canada	CRTC_Primus Telecommunications Canada Inc_Bell Canada MRS Agreement_cvr/tr_27Sep13
	Bell Canada	Primus and Bell_MRS and IP Relay Contract_7Apr11_CONFIDENTIAL
	Bell Canada	GCC - Master Agreement for Local Network Interconnection + Sched C REVISED_Bell Canada_110804
	Bell Canada	GCC - Master Agreement for Local Network Interconnection + Sched C_Bell Canada_010103
	Bell Canada	GCC - Master Agreement for Local Network Interconnection + Sched C_Bell Canada_010103 - SIGNED
	Bell Canada	Local PAM 1-292430451-192 Primus Allstream migration-resi
	Bell Canada	Local PAM 1-292430451-193 Primus Allstream migration commercial
	Bell Canada	Local WLSF MCAT 124463-35 PES Resi

Bell Canada	Local RCM 1-292430451-100
Bell Canada	Local RCM 1-292430451-101
Bell Canada	Local RCM 1-292430451-174
Bell Canada	Local Business 1-292430451-371

#### Other Network Agreements

5.3.2.4.1	Other Network Agreements	382 Dialer Services Addendum
5.3.2.4.2	Other Network Agreements	382 Terminations Agreement
5.3.2.4.3	Other Network Agreements	Cogeco 2.5G Toronto to Windsor 20120319
5.3.2.4.4	Other Network Agreements	Cogent IP Transit Toronto _And_ Vancouver 201402
5.3.2.4.5	Other Network Agreements	Cogent IP Transit Toronto
5.3.2.4.6	Other Network Agreements	Cogent Vancouver x-connect
5.3.2.4.7	Other Network Agreements	Data Access Solutions Reciprocal Service Agreement 20120604 exec
5.3.2.4.8	Other Network Agreements	Equinix 10G PAIX 20130913
5.3.2.4.9	Other Network Agreements	Equinix 60Hudson space_And_power
5.3.2.4.10	Other Network Agreements	Fibernetics MSA
5.3.2.4.11	Other Network Agreements	IDT Service Agreement
5.3.2.4.12	Other Network Agreements	Iristel Inbound (DIDs) agreement 201304
5.3.2.4.13	Other Network Agreements	Iristel N11 service 201501
5.3.2.4.14	Other Network Agreements	Iristel Telecommunicaton Svcs Agreement (Toll) 20150127
5.3.2.4.15	Other Network Agreements	Navigata Colocation Service Schedule_Power
5.3.2.4.16	Other Network Agreements	Navigata Master Telecom Svcs Agmt 201010
5.3.2.4.17	Other Network Agreements	Phonetime Agreement
5.3.2.4.19	Other Network Agreements	Smartbox LD Agreement 20120430
5.3.2.4.20	Other Network Agreements	Telehouse NYIX 10G 201303 exec
5.3.2.4.21	Other Network Agreements	Teliasonera Signed Agreement
5.3.2.4.22	Other Network Agreements	US Matrix Agreement

	Agreements	
	Other Network	
5.3.2.4.23	Agreements	Uniserve WSA 20131011
	Other Network	
5.3.2.4.24	Agreements	Verizon - Advanced Toll Free (ATF) Standard Rates (04.2014)_539947
	Other Network	
5.3.2.4.25	Agreements	Verizon - WTSA
	Other Network	
5.3.2.4.26	Agreements	Verizon - WTSA addendum 20140516
	Other Network	
5.3.2.4.27	Agreements	Verizon - WTSA attachment for ATF 20140516 executed
	Other Network	
5.3.2.4.28	Agreements	Videotron Local Resell Agmt 20111024
	Other Network	
5.3.2.4.29	Agreements	Videotron PRI St.Nicolas 20111028
	Other Network	
5.3.2.4.30	Agreements	Videotron PRI Victoriaville 20111024
	Other Network	Agreement for Membership with the Canadian Local Number
	Agreements	Portability Consortium
	Other Network	GCC - Interconnection Agreement for the Provision of 911 Service to a
	Agreements	CLEC_SaskTel_112006

### Rogers

5.3.2.5.1	Rogers	Rogers 10Gig TOM
5.3.2.5.2	Rogers	Rogers 10Mbps 8000 Jane - 151 Front
5.3.2.5.3	Rogers	Rogers DS3 Van-NewWest, Ham-St.Cath
5.3.2.5.4	Rogers	Rogers GigE NNI Toronto 20110915
5.3.2.5.5	Rogers	Rogers TPIA And CSG Agreement Executed
5.3.2.5.6	Rogers	Rogers TPIA 2nd GigE backhaul 201501
5.3.2.5.7	Rogers	Rogers TPIA 10Gig CNI
5.3.2.5.8	Rogers	Rogers TPIA Agreement Signed
5.3.2.5.9	Rogers	Rogers TPIA Application 201412 (2nd GigE)
5.3.2.5.10	Rogers	Rogers TPIA POI subsequent report 201412
5.3.2.5.11	Rogers	Cityfone Wireless - Primus Affinity April 2012
5.3.2.10.2	Rogers	Rogers IPVPN 1G EVPL Dundas-Front
5.3.2.10.3	Rogers	Rogers TPIA 10G wave to York Mills POI router 20150302
5.3.7.2	Rogers	Rogers TPIA _And_ CSG Agreement_executed
5.3.10.1	Rogers TSA	Transition Services Agreement -Rogers and Primus re Black Iron
5.3.10.3	Rogers TSA	Primus-Rogers TSA - Proposed Addendum draft 092915
	Rogers	GCC - Master Agreement for Local Network
	Rogers	Interconnection_Rogers_021405

### Shaw

5.3.2.6.1	Shaw	Shaw 10G wave Toronto to Chicago 201412
5.3.2.6.2	Shaw	Shaw IP Transit 201402 exec

5.3.2.6.3	Shaw	Shaw Private Line (2.5G Sea-Van-Edm-Tor) 20120516. executed
5.3.2.6.4	Shaw	Shaw TPIA EVPL 201402
5.3.2.6.5	Shaw	Shaw Vancouver ENNI 201407
5.3.2.6.6	Shaw	Shaw Wholesale Cable Gateway Service
5.3.2.10.8	Shaw	10G wave Toronto to Chicago 201412 exec
5.3.7.10	Shaw	IP Peering upgrade to 10G 201303 exec
5.3.7.11	Shaw	Primus Telecommunications Canada Inc dated Nov 16 2001 MSA
<b>Telus</b>		
5.3.2.7.1	Telus	TELUS 10G CES NNI 20141008
5.3.2.7.2	Telus	TELUS 10G CES NNI SLA 20140825
5.3.2.7.4	Telus	TELUS Ethernet Access Svc Agmt 20141008 (2nd 1G AGAS)
5.3.2.7.5	Telus	TELUS LBL Amendment 2014_executed
5.3.2.7.6	Telus	TELUS Local Centrex Amendment 2014_executed
5.3.2.7.7	Telus	TELUS NNI_2006
5.3.2.7.8	Telus	TELUS PRI Agreement 200304
5.3.2.10.5	Telus	WSA Amendment 8 (CES Phase3) executed- 20150806
5.3.2.10.6	Telus	WSA Amendment 9 - 20150619 executed
5.3.7.5	Telus	Vancouver NNI EAS 20141008 (2nd 1G AGAS).
	Telus	Master Agreement for CLEC-IXC Interconnection
	Telus	GCC - Interconnection Agreement for the Provision of 911 Service to a CLEC_TELUS_04
	Telus	GCC - Interconnection Agreement for the Provision of 911 Service to a CLEC_TELUS_CVR_033104
	Telus	CRTC_Primus Telecommunications Canada Inc._TELUS MRS Agreement_cvrltr_27Sep13_CONFIDENTIAL
	Telus	Primus and TELUS_Definitive Agreement for Operator Services_1Nov05
	Telus	GCC - Master Agreement for Local Network Interconnection + Sched C_Original_Sched C App 4_TELUS_083004
	Telus	GCC - Master Agreement for Local Network Interconnection + Sched C_Original_Sched C App 5_TELUS_083004
	Telus	GCC - Master Agreement for Local Network Interconnection + Sched C_Original_Sched C Revised App 2_TELUS_121906
	Telus	GCC - Master Agreement for Local Network Interconnection + Sched C_Original_TELUS_070104
	Telus	GCC - Master Agreement for Local Network Interconnection + Sched C_REVISIED LIR_Sched Cs_TELUS_070108
	Telus	GCC - Master Agreement for Local Network Interconnection + Sched C_REVISIED LIR_TELUS_070108
	Telus	GCC - Master Agreement for Local Network Interconnection + Sched C_REVISIED TRANSIT_TELUS_070108
	Telus	Primus SMALI Sched C.TELUS.201412051437.FINAL
	Telus	Special MALI Schedule C_Telus_12.5.2014
	Telus	Special MALI_Telus_12.5.2014

**Contract Update From February to August 2015**

5.3.2.10.4	Iristel	Telecommunicaton Services Agreement (Toll) 20150127
5.3.2.10.9	Level 3	10M IPVPN Toronto to Carmel 20150326
5.3.2.10.13	Equinox	Lingo Chicago-IX 10G upgade
5.3.10.2	BID MSA	Blackiron Master Service Agreement_signed
5.3.10.4	PTCI MSA	PTCI Master Service Agreement_Final
	Northern	911 Agreement - February 2013
	Comtrust	LDDA - May 2005
	Excel Micro	Spam Filter June 2013
	Bell Canada	Unlimitel PRI # 261124987-3
	Neustar	MSA - October 22, 2009
	Premier Global	Conferencing - Amended September 2014
	Telus	DS1's to Rimouski & Ste Marie de Beauce November 2015

**Network and Systems Agreements**

		Primus On-Prem SW Support Renewal for 2016 for 100K Subscribers
5.3.3.1	SmartRG	License Block Oct132015
		SmartRG - Support Services for Onsite Deployment Agreement -
5.3.3.2	SmartRG	Primus - 20151013
5.3.4.2		Signed Oracle Agreement - Feb 27 2015
5.6.1	Allot	Allot Communications Invoice for PTCI011504
		2015-16 GENBANDCare Renewal Proposal OP-0064770-GBC-01 Primus
5.6.9	Genband	Jun9_15
	Long View	Various hardware support agreements with Long View
	Telcordia	Telcordia TPM License fees
	Vertex	Vertex - tax modules update
	Cisco	Cisco Smartnet
	Smart RG	Smart RG support Agreement
	Ericson	Ericson Support Agreement
	Enghouse	Enghouse Networks -LCR
5.3.7.4	Cogent	Transit Toronto and Vancouver 201402
5.3.7.6	Cogent	2 x 10G Transit Toronto
		GCC - Agreement for the Provision of E911_Calgary AB_020805
		GCC - Agreement for the Provision of E911_Edmonton AB_060607
		GCC - Agreement for the Provision of E911_Edmonton AB_060607 -2
		GCC - Agreement for the Provision of E911_Edmonton
		AB_REVISION_081307
		GCC - Agreement for the Provision of E911_Toronto_120202
		CLNPC Shareholders Representative - Aug 2015
		GCC - CLNPC - CLNPC-USA Amended and Restated May 27 2011
		GCC - CLNPC - CLNPC-USA Amended and Restated May 27
		2011_Instructions
		GCC - CNA+SAIC_Service User Agreement_091405

GCC - Membership Agreement\_CLNP\_080502  
GCC - Service User Agreement\_CNA + SAIC\_091405  
GCC - Shareholder Agreement\_CLNP Amended and Restated\_012006  
Primus Tel\_ASA Statement\_July 2015  
2015-11-18 - TekSavvy-Primus MALI - final  
2015-11-18 - TekSavvy-Primus MALI - signature pages - executed  
Beanfield MALI  
Beanfield MALI BPAGMALI291  
Beanfield MALI BPAGMALI291 - Signed GCC  
Beanfield MALI Pages signed  
Beanfield Sched C 20130221  
CDS and Globility MALI Pages\_ Cover Signature and Notices  
CDS-Globility - Schedule C - CONFIDENTIAL  
Fibernetics Primus MALI  
Fibernetics Primus Sched C  
Final Fido signed agreement  
Final Fido signed Schedule C.FINAL  
GCC - Cogeco Data - MALI - Signed  
GCC - Master Agreement for Local Network  
Interconnection\_Distributel\_061607  
GCC - Master Agreement for Local Network  
Interconnection\_Eastlink\_31Oct12  
GCC - Master Agreement for Local Network  
Interconnection\_Execulink\_071507  
GCC - Master Agreement for Local Network  
Interconnection\_FlexITY\_090308  
GCC - Master Agreement for Local Network  
Interconnection\_MSNI\_051710  
GCC - Master Service Agreement + Data Colocation Schedule -  
Navigate-Next Layer - 032907  
GCC - Master Service Agreement + Data Colocation Schedule - Renewal  
- Navigate-Next Layer - 070112  
GCC - Navigata\_Master Telecommunication Services  
Agreement\_Executed\_032907  
Kimcot-Primus Schedule C  
LES NET-PRIMUS-MALI-FINAL  
LES NET-PRIMUS-MALI-Schedule C-FINAL  
LES NET-PRIMUS-MALI-Schedule C-Signing  
LES NET-PRIMUS-MALI-Signing  
Primus - Seaside - schedule c  
Standard MALI\_Innsys MALI BPAGMALI30\_12.17.2014  
Standard MALI\_Innsys Sched C\_12.22.2014  
Final signed schedule C for Nor-Del Cablevision Limited  
Final signed schedule C from Câble-Axion Digital inc

Final signed schedule C with Câble-Axion Digitel inc  
 Final signed Schedule-C for O.N.Tel Inc  
 Final signed Schedule-C for Wightman Communications Ltd  
 Final signed SMALI for Nor-Del Cablevision Limited  
 Final signed SMALI for O.N.Tel Inc  
 Final signed SMALI for Wightman Communications Ltd  
 Final signed SMALI with Câble-Axion Digitel inc  
 Primus SMALI .TELUS.201412051437.FINAL  
 Primus SMALI Sched C.ACCESSCOMMUN ICATIONS.FINAL  
 Primus SMALI Sched C.BRUCETELECOM.FINAL  
 Primus SMALI Sched C.CABLE-AXION.FINAL1doc  
 Primus SMALI Sched C.CABLE-AXION.FINAL2doc  
 Primus SMALI Sched C.DERYTELECOM.FINAL  
 Primus SMALI Sched C.GOSFIELD.FINAL.doc  
 Primus SMALI Sched C.GREATERSUDBURY.FINAL  
 Primus SMALI Sched C.HURON.FINAL.doc  
 Primus SMALI Sched C.NOR-DEL.FINAL  
 Primus SMALI Sched C.ONTERA.FINAL  
 Primus SMALI Sched C.ROXBOROUGH.FINAL  
 Primus SMALI Sched C.SHANNONVISION.FINAL.doc  
 Primus SMALI Sched C.SOGETEL.FINAL  
 Primus SMALI Sched C.TUCKERSMITH.FINAL.doc  
 Primus SMALI Sched C.WIGHTMAN.FINAL  
 SMALI - Xplornet - Schedule C- Primus  
 Special MALI - Primus

#### US Co-Location Agreements

		Space _And_ power 900 N.Alameda, LA 1st cabinet LN04 renewal 20150326.pdf
6.2.1	Coresite	
6.2.2	Coresite	Space _And_ power 900 N.Alameda, LA 2nd cabinet 20130802.pdf
6.2.3	Coresite	Space _And_ power 900 N.Alameda, LA 2nd cabinet 20130802exec.pdf
6.2.4	Coresite	Space _And_ power 900 N.Alameda, LA 20130412.pdf
6.2.5	Equinix	Lingo 60Hudson colo lease
6.2.6	Equinix	Lingo Chicago colo lease
6.2.7	Equinix	Lingo master service agreement
6.2.8	Coresite	Nat'l MSA 20130416 (Alameda)
6.2.9	ICS-PTCI	Carrier Services Agreement ICS-PTCI -
	ICS and	
	Newport Office	
6.2.10	Center 1LP	Colocation Agreement - ICS New Jersey

#### Network and IT Support Agreements

5.6.2	Allot	Allot Maintenance Agreement
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5.6.5	Meta	Metaswitch Support Service Level Agreement
5.6.7	Broadsoft	US BroadSoft License Agreements
5.6.10	ACME	Acme Oracle APKT-RN-24315-2
5.6.11	Allot	Allot Communications Hardware Warranty Certificate SGT1412000076
	Acme	Acme - Canada
	Acme	Acme – US
	Broadsoft	Broadsoft – Canada (C10746)
	Allot	Allot - Tera
	Allot	Allot - SigmaE, SPS/SPX, NX-STC, & SMP
	CDW	VMware vSphere 5 Standard for 1 processor x 4
	CDW	VMware vSphere 5 Standard for 1 processor x 8
	CTI Tech	CTI - Call Recording
	Dell	ADMINDB2
	Enghouse Networks	Pulse Voice (LCR)
	Equinix	Protector 10.x Mtce Fee Monito up to 3.5 Million CDRs Per Day
	Ericsson	Primus Canada - Pricelist of Ericsson SSRs SWUS
	Five9	Agent Licenses
	FusionCharts Interactive Intelligence	Add-On for PBS Charting in Admin3
	Longview	Hosted ACD
	Longview	VMware vSphere 6 Standard for 1 processor x 16
	Longview	VMware vSphere 6 Standard for 1 processor x 14
	Longview	VMware vCenter Server6 Standard for vSphere 5 (Per Instance) x 1
	Longview	VMware vSphere 6 Standard for 1 processor x 2
	Metaswitch	Meta support
	Onx	Cisco Support, NEW-Q16034490
	Onx	Cisco Smartnet
	Onx	Vmware, 50 x Vsphere ( 3year enterprise license and support)
	Oracle (Pillar Data Systems)	AXIOM 600
	Red Hat	Red Hat - A/C #1051751
	Sonus	Sonus (Performance Technologies, SS7 signaling)
	TeraSpan	TeraSpan Networks (Vancouver Fibre Ring)
	Zhone	Zhone (MALC, MXK, 1U, ETHX, ZNID, & ZMS)
	F5 Networks	F5 Service Agreement
<b>Other</b>		
5.3.8	Rimhub	Rimhub
5.3.8.1	Rimhub	Rimhub Proposal_29Sep2012_PTGi_FINALrates.pdf
5.3.8.2	Rimhub	MSA RibHub PTCI Part 1.pdf
	Infosys	Letter of Engagement dated August 1, 2015

**Marketing Agreements**

2.9.3		MDM Rate Schedule.xlsx
5.3.2.3.1	Costco	Costco Contract Apr 2015-16 renewal
5.3.2.3.2	Costco	KnewSalesGroupAgencyAgreementJan1515
5.3.2.8.1	Aeroplan	Primus - Aeroplan 2013-17 Renewal Amendment FINAL
5.3.2.9.1	LoyaltyOne	Primus_Air Miles Agreement - Primus Comments - July 13

**Consulting Agreements**

5.7.1	Consultant	Mohammed Ikram_PSA
5.7.2	Consultant	MondaytoSunday Services India Private Inc_Raja Domalla_PSA
5.7.3	Consultant	Padmaja Challa_PSA
5.7.4	Consultant	Bhadkar Pandian PSA 2011
5.7.5	Consultant	Bhaskar Pandian Task Order
5.7.6	Consultant	Jain Abhishek_PSA
	Consultant	Nice Consulting
	Consultant	David Pigott
	Consultant	Benlin Xu
	Consultant	Laker You
	Consultant	Ted Taylor
	Consultant	Matthew Gamble
	Consultant	Ted Taylor
	Consultant	Dommala Rajavardhan

**Equipment Contracts**

Onx	NetApp 2240s (Van)
Onx	DS22246 for Call Rec
Onx	NetApp 3140s (Old Tor)
Onx	NetApp 3210 (snapvault0-01)
Onx	NetApp 8020s (New Tor)
Onx	NetApp SW Support (FCP, iSCSI 8020A)
F5 Networks, Inc.	Service Agreement Acknowledgment (ID: 363746)

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**Schedule C – Other Assumed Contracts**

To be mutually agreed on.

**Schedule D – Excluded Assets**

- (1) Any and all shares and other securities owned by any Vendor, including all shares of Primus Telecommunications, Inc. and Lingo, Inc. held by Primus Telecommunications Canada, Inc.
- (2) Any deposits paid or other security posted by Vendors or amounts set off or held back from the Vendors in respect of goods or services to be supplied after the CCAA Proceedings have commenced.

## Schedule E – Excluded Contracts

Ref.	Location/ Vender	Description
<b>Office Leases</b>		
5.3.1.2.2	Ottawa	31 Auriga Lease Dec 1, 2010 to Nov 30., 2020.pdf
5.3.1.5.3	Toronto	Amendment to Lease - July 25, 2013
5.3.1.5.4	Toronto	Primus Manulife Lease - 5343 Dundas
	Edmonton	Edmonton office lease
	Markham, Ontario	60 Renfrew Drive
	London, Ontario	1069 Wellington Road South
	Cedar Rapids, Iowa	Office lease for Suite 1, 805 Wright Brothers Blvd. SW Cedar Rapids, Iowa, 52404
	Coralville, Iowa	Office lease for 625 First Avenue, Coralville, Iowa
	Tampa, Florida	Office lease for Suite 220E, 3903 Northdale Boulevard, Tampa, Florida, 33624
<b>Carrier Contracts</b>		
5.3.2.2.1	Bell Canada	1-796366479(Primus-Loop Letter-Globility Gov_Hash_2011-0247DC)
5.3.2.2.2	Bell Canada	2012-0259DC - Primus Loops Amendment 1 - Dec 19, 2012(executed)
5.3.2.2.3	Bell Canada	2015 Bell Resolution of data spend agreement
5.3.2.2.16	Bell Canada	Bell ULLs - 1-796366479(Primus-Loop Letter-Globility Gov_Hash_2011-0247DC)
		Bell Local resale - Primus Amendment No 1 MCAT124463-35
5.3.2.2.27	Bell Canada	Amendment
5.3.2.2.28	Bell Canada	Primus Amendment No 1 MCAT124463-35 Amendment
<b>Other Network Agreements</b>		
	Other Network Agreements	Bell ULL Agreement 1-796366479
<b>Telus</b>		
5.3.2.7.3	Telus	TELUS Direct Connect LD Agmt (2014-10-23)
5.3.2.7.9	Telus	telus amendment #9 to wholesale services agreement -foreborne and tarriffed
5.3.2.7.10	Telus	Telus Wireline - Primus WSA (TELUS Redline) June 30 11
<b>Network and Systems Agreements</b>		
5.3.4.1	Microsoft	Microsoft Agreement
5.6.3	CA Interactive	CA Perpetual License Agreement
5.6.4	Intelligence	I3 Contract
5.6.6	OnX	OnX Support Agreement for various network components and VM

5.6.8	Zhone Salesforce.com	Ware Zhone Service Guide Contract in place with Salesforce.com
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**Other Contracts**

Primus	All Executive employment contracts
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**Schedule F – Purchase Price Allocation**

To be mutually agreed upon prior to Closing.

### Schedule G – Permitted Encumbrances

All Encumbrances relating to the registrations listed below and any registrations made in other jurisdictions in connection with the same Encumbrances to the extent any such Encumbrances relate to equipment that is leased pursuant to an Assumed Contract:

#### CANADA

A. Ontario

File No. Registration No. Registration Period Expiry Date	Debtor Name	Secured Party (Creditor)	Collateral Classification	Other Changes
709482663 20150831140314627082 5 years August 31, 2020	Primus Telecommunications Canada Inc. Primus Canada Ltd. Primus Telecommunications Canada Inc	Xerox Canada Ltd	Equipment Other	
697522572 20140627141214621457 5 years June 27, 2019	Primus Telecommunications Canada Inc. Primus Canada Ltd.	Xerox Canada Ltd	Equipment Other	
683592579 20121214 1703 1462 2176 4 years December 14, 2016	Primus Telecommunications Canada Inc.	Gould Leasing Ltd.	Equipment	
681490494 20120917140214628536 4 years September 17, 2016	Primus Telecommunications Canada Inc. Primus Telecommunications	Xerox Canada Ltd	Equipment Other	
674093097 20111102170214626299 4 years November 2, 2015	Primus Telecommunications Canada Inc.	Xerox Canada Ltd	Equipment Other	
711845838 20151117 1350 1902 8220 5 years November 17, 2020	Primus Telecommunications Canada Inc.	Cicso Systems Capital Canada Co.	Equipment Accounts Other	All present and future goods (including, without limitation, routers, router components, switches, servers, other computer networking and telecommunications equipment and other information technology and computer equipment (including, without limitation,



			<p>security, voice, video, collaboration, conferencing, wireless and ancillary equipment) and other goods (whether similar or dissimilar to the foregoing)) leased from time to time by the Secured Party to the Debtor, together with, in each case, all present and future software and software license rights relating to any of the foregoing, and all present and future substitutions, replacements, upgrades, repairs, parts and attachments, improvements and accessions thereto (collectively, the "Equipment"), as well as, (1) all present and future insurance, warranty, rental and other claims and right to payment and chattel paper arising out of all or any of the Equipment, (2) all present and future books and records relating to all or any of the foregoing and (3) all proceed of or relating to any of the foregoing.</p>
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B. British Columbia

Base Registration No. Control No. Registration Period Registration Date Expiry Date	Debtor Name	Secured Party (Creditor)	General Collateral Description
8123161 D3295665 5 years August 31, 2015 August 31, 2020	Primus Telecommunic-ations Canada Inc. Primus Telecommunications Canada Inc.	Xerox Canada Ltd	Equipment, other all present and future office equipment and software supplied or financed from time to time by the secured party (whether by lease, conditional sale or otherwise), whether or not manufactured by the secured party or any affiliate thereof.
958440I D3445051 5 years November 17, 2015 November 17, 2020	Primus Telecommunications Canada Inc.	Cisco Systems Capital Canada Co.	All present and future goods (including, without limitation, routers, router components, switches, services, other computer networking and telecommunications equipment (including, without limitation, security, voice, video, collaboration, wireless and ancillary equipment) and other goods (whether similar or dissimilar of the foregoing)) leased from time to time by the Secured Party to the Debtor,

			together with, in each case, all present and future software and software license rights relating to any of the foregoing, and all present and future substitutions, replacements, upgrades, repairs, parts and attachments, improvements and accessions thereto (collectively, the "Equipment"), as well as, (1) all present and future insurance, warranty, rental and other claims and rights to payment and chattel paper arising out of all or any of the equipment, (2) all present and future books and records relating to all or any of the foregoing and (3) all proceeds of or relating to any of the foregoing.
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C. Alberta

Registration No. Expiry Date	Debtor	Secured Party	General Collateral Description
12091718764 2012-Sep-17	Primus Telecommunications  Primus Telecommunications Canada Inc.	Xerox Canada Ltd.	Equipment, other all present and future office equipment and software supplied or financed from time to time by the secured party (whether by lease, conditional sale or otherwise), whether or not manufactured by the secured party or any affiliate thereof.
15111720605 2015-Nov-17	Primus Telecommunications Canada Inc.	Cisco Systems Capital Canada Co.	All present and future goods (including, without limitation, routers, router components, switches, servers, other computer networking and telecommunications equipment and other information technology and computer equipment (including, without limitation, security, voice, video, collaboration, conferencing, wireless and ancillary equipment) and other goods (whether similar or dissimilar to the foregoing)) leased from time to time by the secured party to the debtor, together with, in each case, all present and future software and software license rights relating to any of the

			foregoing, and all present and future substitutions, replacements, upgrades, repairs, parts and attachments, improvements and accessions thereto (collectively, the "equipment"), as well as, (1) all present and future insurance, warranty, rental and other claims and rights to payment and chattel paper arising out of all or any of the equipment, (2) all present and future books and records relating to all or any of the foregoing and (3) all proceeds of or relating to any of the foregoing.
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D. New Brunswick

Registration No. Expiry Date	Debtor	Secured Party	General Collateral Description
24586547 2014-06-27	Primus Canada Ltd.  Primus Telecommunications Canada Inc.	Xerox Canada Ltd.	Equipment, other all present and future office equipment and software supplied or financed from time to time by the secured party (whether by lease, conditional sale or otherwise), whether or not manufactured by the secured party or any affiliate thereof.
26345074 2015-08-31	Primus Canada Ltd.  Primus Telecommunications Canada Inc.  Primus Telecommunications Canada Inc.	Xerox Canada Ltd.	Equipment, other all present and future office equipment and software supplied or financed from time to time by the secured party (whether by lease, conditional sale or otherwise), whether or not manufactured by the secured party or any affiliate thereof.
26706424 2015-11-17	Primus Telecommunications Canada Inc.	Cisco Systems Capital Canada Co.	All present and future goods (including, without limitation, routers, router components, switches, servers, other computer networking and telecommunications equipment and other information technology and computer equipment (including, without limitation, security, voice, video,

			collaboration, conferencing, wireless and ancillary , equipment) and other goods (whether similar or dissimilar to the foregoing)) leased from time to time by the secured party to the debtor, together with, in each case, all present and future software and software license rights relating to any of the foregoing, and all present and future substitutions, replacements, upgrades, repairs, parts and attachments, improvements and accessions thereto (collectively, the "equipment"), as well as, (1) all present and future insurance, warranty, rental and other claims and rights to payment and chattel paper arising out of all or any of the equipment, (2) all present and future books and records relating to all or any of the foregoing and (3) all proceeds of or relating to any of the foregoing.
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