

APPENDIX “B”
Stalking Horse Bid

ASSET AND SHARE PURCHASE AGREEMENT

BETWEEN

RS TECHNOLOGIES INC.

– and –

WERKLUND CAPITAL CORPORATION and MELBYE SKANDINAVIA AS

– and –

FTI CONSULTING CANADA INC., IN ITS CAPACITY AS MONITOR

APRIL 11, 2013

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ASSET AND SHARE PURCHASE AGREEMENT

THIS AGREEMENT is dated as of April 11, 2013

BETWEEN:

RS TECHNOLOGIES INC., a corporation
incorporated under the laws of Alberta, by **FTI
CONSULTING CANADA INC.** in its capacity as
monitor of RS Technologies Inc. in its CCAA
Proceedings, and not in its personal capacity

(the “**Seller**”)

- and -

WERKLUND CAPITAL CORPORATION, a
corporation incorporated under the laws of Alberta,
and **MELBYE SKANDINAVIA SA**, a corporation
incorporated under the laws of Norway

(together with their respective permitted assigns,
each individually referred to as a “**Buyer**” and
collectively as the “**Buyers**”)

- and -

FTI CONSULTING CANADA INC., in its
capacity as Monitor of the Seller

CONTEXT:

- A. The Seller is an ISO 9001:2008 certified company that carries on the Business.
- B. The Seller commenced CCAA Proceedings and the Initial Order was granted by the Court on the Filing Date.
- C. The Seller and Monitor have determined that it is in the best interests of the stakeholders in the Seller for the Monitor to administer a SISP and therefore the Monitor intends to apply to the Court for the SISP Order. In order to provide customers, suppliers and Employees of the Seller with assurance that the Seller’s Business will continue to exist during and after the CCAA Proceedings, the Seller and Monitor have determined that it is in the best interests of the stakeholders of the Seller that the Monitor, for and on behalf of the Seller, enter into this Agreement which for the purposes of the SISP will constitute a stalking horse credit bid. It is intended that under the SISP Order, the Monitor for and on behalf of the Seller will be authorized to enter into this Agreement with the Buyers whereby, provided that this Agreement constitutes a Successful Bid in the SISP, the Seller will either (a) sell and issue to the Buyers all of the newly created Class A Shares

in the capital of the Seller, conditional upon, among other things, the implementation of the Buyers' CCAA Plan, or (b) sell to the Buyers all of the Purchased Assets.

- D.** The Transaction contemplated by this Agreement is subject to the approval of the Court and will be consummated only pursuant to, where the Transaction is a Share Purchase, the Sanction Order, and where the Transaction is an Asset Purchase, the Approval and Vesting Order.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, the following capitalized terms have the meanings set out or referred to below:

- 1.1.1 “**ABCA**” means the *Business Corporations Act* (Alberta).
- 1.1.2 “**Accounts Receivable**” means all accounts receivable, trade receivables, bills receivable, trade accounts, book debts, notes receivable, rebates, refunds and other amounts due, owing or accruing due to the Seller in connection with the Business, whether current or overdue, together with all interest accrued on such items, without deduction or reserve for uncollectible amounts.
- 1.1.3 “**Administration Charge**” means a charge created under the Initial Order securing the Administration Obligations, subject to the limits set out in the Initial Order or in any other Order consented to by the Buyers.
- 1.1.4 “**Administration Obligations**” means the unpaid professional fees and disbursements of the Monitor, counsel to the Monitor and counsel to the Seller in connection with the CCAA Proceedings that were and are incurred both before and after the granting of the Initial Order.
- 1.1.5 “**Affected Claim**” is defined in the Buyers' CCAA Plan but for certainty includes Claims of Creditors arising prior to the Filing Date, Claims of parties against the Seller arising from Disclaimed Contracts, and Claims of Employees against the Seller who are not Retained Employees, but excluding for greater certainty any Unaffected Claims.
- 1.1.6 “**Affected Creditor**” means a Creditor holding an Affected Claim.
- 1.1.7 “**Affiliate**” means an affiliate as that term is defined in the ABCA.

- 1.1.8 “**Agreement**” means this agreement, including all Schedules, as it may be confirmed, amended, modified, supplemented or restated by written agreement between the Parties.
- 1.1.9 “**Alternate Transaction**” means a Successful Bid made by one or more Persons other than the Buyers that is approved by the Court at the Approval Hearing and in respect of which the transactions contemplated thereby are consummated in accordance therewith.
- 1.1.10 “**Ancillary Agreements**” means any Assignment and Assumption Agreement, the Bill of Sale, such special or limited warranty deeds and additional assignment and conveyance documents and such other agreements, documents or instruments required to consummate the Transaction.
- 1.1.11 “**Applicable Law**” or “**Applicable Laws**” means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and the terms and conditions of any grant or approval, permission, authority or licence of any Governmental Authority, that apply to a Person or Persons, or its or their business, undertaking or property, and emanate from a Governmental Authority having jurisdiction over the Person or Persons or its or their business, undertaking or property.
- 1.1.12 “**Approval and Vesting Order**” is defined in Section 7.2.
- 1.1.13 “**Approval Hearing**” is defined in section 46 of the SISP.
- 1.1.14 “**Asset Purchase**” is defined in Section 2.1.2.
- 1.1.15 “**Assets**” means, if the Transaction is an Asset Purchase, the Purchased Assets, and if the Transaction is a Share Purchase, the Seller Assets.
- 1.1.16 “**Assignable Contract**” means any Contract to which the Seller is a party that the Seller is (subject only to any required consent of any Person other than any Seller or an Affiliate of any Seller) permitted under Applicable Law to sell and assign.
- 1.1.17 “**Assigned Contracts**” is defined in Section 6.3.6.3.
- 1.1.18 “**Contracts List**” has the meaning set forth in Section 6.3.1.
- 1.1.19 “**Assignee**” is defined in Section 11.3.1.
- 1.1.20 “**Assignment and Assumption Agreement**” means an assignment and assumption agreement in all material respects in the form attached as Schedule 1.1.20, evidencing the assignment to and assumption by the Buyers of the Assumed Obligations and of the rights and obligations under the specific Assigned Contracts.

- 1.1.21 “**Assumed Obligations**” has the meaning set forth in Section 2.3.1.
- 1.1.22 “**Auction**” is defined in section 37 of the SISP.
- 1.1.23 “**Back UP Bid**” is defined in section 42 of the SISP.
- 1.1.24 “**Back Up Bidder**” is defined in section 42 of the SISP.
- 1.1.25 “**Bill of Sale**” means the Bill of Sale in all material respects in the form attached as Schedule 1.1.25, conveying to the Buyers all of the Seller’s right, title and interest in and to the Purchased Assets.
- 1.1.26 “**Books and Records**” means all accounting and legal books, records, ledgers, files, lists, reports, plans, logs, correspondence, Tax returns and other data and information, including all data and information stored on computer-related or other electronic media, maintained by or at the direction of the Seller with respect to the Business.
- 1.1.27 “**Break Fee**” is defined in Section 2.5.3.
- 1.1.28 “**Buildings and Improvements**” means all of the right, title and interest of the Seller in all plants, buildings, structures, erections, improvements, fixtures and appurtenances situated on or forming part of any of the Owned Lands or Leased Premises.
- 1.1.29 “**Business**” means the business carried on by the Seller consisting of designing, engineering and manufacturing modular composite poles that are used in transmission, distribution and communication applications, and selling and distributing such poles to customers in Canada, the United States of America, the Caribbean, Scandinavia, Australia, New Zealand, Russia, Ukraine, Kazakhstan, Belarus and Guatemala.
- 1.1.30 “**Business Day**” means any day excluding a Saturday, Sunday or statutory holiday in the Province of Alberta, and also excluding any day on which the principal chartered banks located in the City of Calgary are not open for business during normal banking hours.
- 1.1.31 “**Buyer**” and “**Buyers**” are defined in the recital of the Parties above.
- 1.1.32 “**Buyers’ CCAA Plan**” is defined in Section 7.3.2.
- 1.1.33 “**Buyers’ CCAA Plan Orders**” is defined in Section 7.3.1.
- 1.1.34 “**Cash Flow Projections**” means, collectively:
 - 1.1.34.1 the statement prepared by the Seller with the assistance of the Monitor that is required under the CCAA and that sets out the projected cash flow and cash requirements of the Seller for a period of 13 weeks following the date

of the Initial Order, which will be in form and content satisfactory to the Buyers; and

- 1.1.34.2 the cash flow and cash requirement projections for further week periods together with actual cash flow results from 2 weeks prior, in form consistent with the statement referred to in Section 1.1.34.1 and in content satisfactory to the Buyers and the Monitor.
- 1.1.35 “**Cash Portion of the Purchase Price**” is defined in Section 3.2.1.2.
- 1.1.36 “**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1958, c. C-36.
- 1.1.37 “**CCAA Charges**” means the Administration Charge, the Interim Finance Facility Charge and the KERP Charge.
- 1.1.38 “**CCAA Plan**” means a plan of compromise and arrangement under the CCAA or under the CCAA and ABCA.
- 1.1.39 “**CCAA Proceedings**” means the proceedings initiated by the Seller with the Court pursuant to an originating application under the CCAA and ABCA.
- 1.1.40 “**Chatham Mortgage**” means a charge/mortgage in favour of The Corporation of the Municipality of Chatham-Kent in the original principal amount of \$1,403,500 against the Owned Land legally described as Part Lot 15, Concession 4, Geographic Township of Tilbury East in the Municipality of Chatham-Kent and municipally known as 22 Industrial Park Road, Tilbury, Ontario, containing 9.8 acres more or less.
- 1.1.41 “**Claim**” means any right or claim of any Person that may be asserted or made in whole or in part against the Seller or any of director or officer of the Seller, whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including, any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether or not any indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present or future, known or unknown, by guarantee, surety or otherwise, and whether or not any right or claim is executory or anticipatory in nature including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future, together with any other rights or claims of any kind that, if unsecured, would be a debt provable in bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* (Canada) had the Seller become bankrupt.

- 1.1.42 “**Claims Procedure Order**” is defined in Section 7.3.1.
- 1.1.43 “**Closing**” and the related term “**Close**” mean the completion of the Share Purchase or the Asset Purchase pursuant to this Agreement.
- 1.1.44 “**Closing Date**” means:
- 1.1.44.1 in the case of an Asset Purchase, five (5) Business Days after the Approval and Vesting Order is issued and entered by the Court, and in any event no later than June 28, 2013; and
 - 1.1.44.2 in the case of a Share Purchase, five (5) Business Days after the Sanction Order is issued and entered by the Court, and in any event no later than July 17, 2013,
- or in either case on such other date as the Buyers and Seller agree to in writing.
- 1.1.45 “**Closing Statement**” is defined in Section 3.3.
- 1.1.46 “**Communication**” means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party.
- 1.1.47 “**Confidential Sales Information**” means any information obtained by the Monitor in administering the SISP that, in the opinion of the Monitor acting reasonably, if disclosed to the Buyers, would give the Buyers an unfair advantage over other bidders in the SISP, which information for greater certainty will include the terms and conditions of other bids, other bid prices and the identity of other bidders, but for greater certainty will not include information relating to any Default or Event of Default under the Interim Financing Credit Agreement.
- 1.1.48 “**Contract**” means any agreement, contract, understanding, undertaking, commitment or licence to which the Seller is a party or by which the Seller is bound, including Leases, Real Property Leases, Purchase Orders, Inventory Purchase Orders, and Warranty Rights, whether written or oral, and any amendments, modifications or supplements thereto.
- 1.1.49 “**Counterparty Approval**” means any consent or approval required from the Seller’s counterparty to a Contract: (a) where the Transaction is an Asset Purchase, in order to permit the assignment to and vesting in the Buyers of a Potential Assigned Contract on Closing; and (b) where the Transaction is a Share Purchase, in order that the Closing does not constitute a breach of or default under such Remaining Contract.
- 1.1.50 “**Court**” means the Alberta Court of Queen’s Bench presiding over the CCAA Proceedings or any appeals court therefrom.
- 1.1.51 “**Creditor**” means any Person holding a Claim against the Seller.

- 1.1.52 “**Cure Amounts**” means all amounts, costs and expenses required by counterparties to be paid by or on behalf of the Seller (a) to obtain a Counterparty Approval in respect of the assignment and vesting of an Assigned Contract in favour of the Buyers pursuant to Applicable Laws, or (b) to cure any defaults or obtain a Counterparty Approval under or in respect of a Remaining Contract.
- 1.1.53 “**Debenture**” means the secured convertible debenture executed on or about July 5, 2011 by the Seller and held by the Buyers.
- 1.1.54 “**Debenture Obligations**” means the Obligations of the Seller to the Buyers under the Debenture.
- 1.1.55 “**Default**” is defined in section 1.1(v) of the Interim Financing Credit Agreement.
- 1.1.56 “**Disclaimed Contract**” is defined in Section 6.3.1.
- 1.1.57 “**Disclosure Schedule**” is defined in the introductory paragraph of Article 4.
- 1.1.58 “**Documents**” means, with respect to the Seller, all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, Web pages, etc.), cost of pricing information, business plans, quality control records and procedures, blueprints, accounting and tax files, all files, customer files and documents (including credit information), personnel files for employees, supplier lists, records, literature and correspondence, including materials relating to Inventories, services, marketing, advertising, promotional materials, Intellectual Property and other similar materials to the extent related to, used in, held for use in, or with respect to, the Business or the Assets in each case whether or not in electronic form, whether or not physically located on any of the premises of the Seller, but excluding (i) personnel files for Employees of the Seller who are not Transferred Employees and (ii) any materials exclusively related to any Excluded Assets.
- 1.1.59 “**Employees**” means all personnel and independent contractors employed, engaged or retained by the Seller in connection with the Business, including any that are on medical or long-term disability leave or other statutory or authorized leave of absence.
- 1.1.60 “**Encumbrance**” means any Security Interest, lien, restriction, option, adverse claim, right of others or other encumbrance of any kind.
- 1.1.61 “**Environment**” means the ambient air, all layers of the atmosphere, all water including surface water and underground water, all land, all living organisms and the interacting natural systems that include components of air, land, water, living organisms and organic and inorganic matter, and includes indoor spaces.

- 1.1.62 “**Environmental Laws**” means all Applicable Laws relating to the Environment and protection of the Environment, the regulation of chemical substances or products, health and safety including occupational health and safety, and the transportation of dangerous goods.
- 1.1.63 “**ETA**” means Part IX of the *Excise Tax Act* (Canada).
- 1.1.64 “**Event of Default**” is defined in section 1.1(bb) of the Interim Financing Credit Agreement.
- 1.1.65 “**Excluded Assets**” is defined in Section 2.2.
- 1.1.66 “**Excluded Obligations**” is defined in Section 2.4.
- 1.1.67 “**Execution Date**” means the date on which this Agreement is fully executed and delivered by the Parties.
- 1.1.68 “**Filing Date**” means the date on which the Initial Order was made, being March 14, 2012.
- 1.1.69 “**Fixed Assets and Equipment**” means all machinery, equipment (including motor vehicles and all manufacturing and quality control equipment and office equipment including computer equipment), boilers, electrical substations, fixtures, furniture, furnishings, vehicles, material handling equipment, implements, inventories of maintenance and spare parts, tools and tooling supplies, accessories and all other tangible or corporeal property of any kind used or held for use primarily in or in respect of the Business (other than Buildings and Improvements) whether located in or on the premises of the Seller or elsewhere and all rights, privileges, licences and entitlements to use same in the same manner as are and have been used by the Seller.
- 1.1.70 “**Goodwill**” means the goodwill of the Business, including all right, title and interest of the Seller in, to and in respect of all elements which contribute to the goodwill of the Business, including the goodwill represented by packaging, labelling, advertising, marketing and promotional materials, customer and supplier lists and any logos.
- 1.1.71 “**Governmental Authority**” means any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.
- 1.1.72 “**GST/HST**” means the goods and services tax and the harmonized sales tax imposed under the ETA.

- 1.1.73 “**Hazardous Substance**” means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, ray, heat, odour, radiation, energy vector, plasma, organic or inorganic matter which is or is deemed to be, alone or in any combination, hazardous, hazardous waste, solid or liquid waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination, regulated by any Environmental Laws.
- 1.1.74 “**IFRS**” means the international financial reporting standards applicable to publicly accountable enterprises under Part I of the CICA Handbook of the Canadian Institute of Chartered Accountants, as amended from time to time.
- 1.1.75 “**Initial Order**” means an Order of the Honourable Madam Justice J. Strekaf in the CCAA proceedings made on March 14, 2013, pursuant to which the Seller was declared to be a company to which the CCAA applies, FTI Consulting Canada Inc. was appointed as the Monitor of the Seller, any proceedings against the Seller were stayed, the Seller was permitted, upon further order of the Court, to present a plan of compromise and arrangement to its creditors, and the Monitor, for and on behalf of the Seller, was authorized to enter into the Interim Financing Credit Agreement with the Buyers as lenders.
- 1.1.76 “**Insurance Policies**” means the insurance policies maintained by the Seller with respect to the Business.
- 1.1.77 “**Intellectual Property**” means all rights of the Seller in and to (a) patents, patent applications and patent disclosures, together with all re-issuances, continuations, continuations in part, revisions, extensions, re-examinations, provisionals, divisions, renewals, revivals, and foreign counterparts thereof and all registrations and renewals in connection therewith, (b) trademarks, service marks, trade dress, logos, trade names and corporate names and other indicia of origin and corporate branding, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (c) works of authorship, copyrightable works, copyrights and all applications, registrations and renewals in connection therewith, (d) mask works and all applications, registrations and renewals in connection therewith, (e) trade secrets, inventions and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, assembly, test, installation, service and inspection instructions and procedures, technical, operating and service and maintenance manuals and data, hardware reference manuals and engineering, programming, service and maintenance notes and logs), (f) Software, (g) Internet addresses, uniform resource locaters, domain names, Websites and Web pages, (h) any and all other intellectual property and proprietary rights, (i) facility and company-wide telephone numbers, and CD goodwill related to any of the foregoing, in each case to the extent used or useful in the operation of the Business or related to the Purchased Assets.

- 1.1.78 “**Interim Financing Credit Agreement**” means an interim financing credit agreement dated as of March 14, 2013 between the Seller (executed on behalf of the Seller by the Monitor) as borrower and the Buyers as lenders.
- 1.1.79 “**Interim Financing Obligations**” means the Obligations of the Seller to the Buyers under the Interim Financing Credit Agreement.
- 1.1.80 “**Inventories**” means all inventories of every kind owned by the Seller and pertaining to the Business including raw materials, supplies, packaging materials, work-in progress, finished goods, tooling, serviced parts now owned or hereafter acquired by the Seller.
- 1.1.81 “**Inventory Purchase Orders**” means the outstanding orders or Contracts on the date of this Agreement relating to the Business for the purchase or sale, as applicable, of Inventories.
- 1.1.82 “**Investment Canada Act**” means the *Investment Canada Act* (Canada).
- 1.1.83 “**ITA**” means the *Income Tax Act* (Canada).
- 1.1.84 “**KERP**” means the key employee retention plan of the Seller in favour of its Employees.
- 1.1.85 “**KERP Charge**” means the charge created under the KERP Order securing the KERP Obligations, subject to the limits set out in the KERP Order or in any other Order consented to by the Buyers.
- 1.1.86 “**KERP Obligations**” means the Obligations of the Seller to the Employees under the KERP.
- 1.1.87 “**KERP Order**” means the Order of the Honourable Madam Justice K.M. Eidsvik of the Court made on March 27, 2013 approving the KERP.
- 1.1.88 “**Knowledge of the Seller**” means the knowledge that the senior officers of the Seller either have, or would have obtained, after having made or caused to be made all reasonable inquiries necessary to obtain informed knowledge, including inquiries of the records and management Employees, who are reasonably likely to have knowledge of the relevant matter.
- 1.1.89 “**Leased Premises**” means all of the lands and premises which are leased by the Seller in connection with the Business, including without limitation those lands and premises listed on the Disclosure Schedule.
- 1.1.90 “**Leases**” means the leases relating to the Business other than the Real Property Leases.
- 1.1.91 “**Material Adverse Effect**” or “**Material Adverse Change**” means a state of facts, event, change or effect with respect to the Business, Assets, the Assumed Obligations

or the enforceability of any Assigned Contract or Remaining Contract that results in a material adverse effect on the value of the Purchased Assets, Purchased Shares or the Business, taken as a whole, but excludes any state of facts, event, change or effect caused by events, changes or developments relating to (a) economic, regulatory or political conditions generally; (b) the usual, customary or ordinary consequences of the filing by a debtor of a proceeding under the CCAA contemplating a reorganization, compromise or liquidation of the debtor's assets; or (c) any consequences to the Business resulting from the announcement of the SISP and the sale transaction contemplated by this Agreement and the procedures to obtain approval thereof, except to the extent that the foregoing clause (a) has a materially disproportionate impact on the Assets, Purchased Shares or the Business.

- 1.1.92 “**Material Contract**” means a Contract that:
- 1.1.92.1 involves or may result in the payment of money or money's worth by or to the Seller in relation to the Business in an amount in excess of \$50,000;
 - 1.1.92.2 has an unexpired term of more than one (1) year (including renewals);
 - 1.1.92.3 cannot be terminated by the Seller without penalty upon less than 45 days' notice;
 - 1.1.92.4 is a Real Property Lease; or
 - 1.1.92.5 the termination of which, or under which the loss of rights, would constitute a Material Adverse Effect.
- 1.1.93 “**Material Permit**” means any Permit the loss or revocation of which would result in a Material Adverse Effect.
- 1.1.94 “**Monitor**” means FTI Consulting Canada Inc., in its capacity as Court appointed monitor of the Seller in the CCAA Proceedings.
- 1.1.95 “**Monitor's Certificate**” means the certificate filed with the Court by the Monitor certifying that all conditions of Closing in favour of the Seller have been satisfied by the Buyers or waived by the Seller.
- 1.1.96 “**Obligations**” means any indebtedness, liabilities and obligations, whether present, future, direct, indirect, liquidated or contingent, whether due or to become due, owed by the Seller to any Person.
- 1.1.97 “**Order**” means an order of a Court in the CCAA Proceedings.
- 1.1.98 “**Owned Lands**” means all of the lands and premises owned by the Seller, including without limitation those lands and premises listed on the Disclosure Schedule.

- 1.1.99 “**Parties**” means, collectively, the Seller and the Buyers, and for the purposes of Section 1.1.8, Article 7 and Sections 10.1.1, 10.1.4 and 11.14, the Monitor, and “**Party**” means any of them.
- 1.1.100 “**Permits**” means all authorizations, registrations, permits, certificates of approval, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to the Intellectual Property) issued or granted by any Governmental Authority to the Seller in respect of the Business.
- 1.1.101 “**Permitted Encumbrances**” means:
- 1.1.101.1 unregistered liens for municipal Taxes, assessments or similar charges incurred by the Seller in the ordinary course of the Business that are not yet due and payable;
 - 1.1.101.2 inchoate mechanic’s, construction and carrier’s liens and other similar liens arising by operation of law or statute in the ordinary course of the Business for obligations which are not delinquent and will be paid or discharged in the ordinary course of the Business;
 - 1.1.101.3 unregistered Encumbrances of any nature claimed or held by Her Majesty The Queen in Right of Canada, Her Majesty The Queen in right of any province of Canada in which the Owned Lands or Leased Premises are located, or by any Governmental Authority under any Applicable Law, except for unregistered liens for unpaid realty Taxes, assessments and public utilities;
 - 1.1.101.4 title defects which are of a minor nature and in the aggregate do not materially impair the value or use of the Owned Lands or the Leased Premises;
 - 1.1.101.5 any right of expropriation conferred upon, reserved to or vested in Her Majesty The Queen in Right of Canada, Her Majesty The Queen in right of any province of Canada in which the Owned Lands or the Leased Premises are located, or by any Governmental Authority under any Applicable Law;
 - 1.1.101.6 zoning restrictions, easements and rights of way or other similar Encumbrances or privileges in respect of real property which in the aggregate do not materially impair the value or use of the Owned Lands or the Leased Premises for the Business and which are not violated in any respect by existing or proposed structures or land use;
 - 1.1.101.7 Encumbrances created by others upon other lands over which there are easements, rights-of-way, licences or other rights of user in favour of the Owned Lands or Leased Premises and which do not materially impede the use of the easements, rights-of-way, licences or other rights of user for the purposes for which they are held;

- 1.1.101.8 any Encumbrance which the Buyers have expressly agreed to assume or accept pursuant to this Agreement;
- 1.1.101.9 the reservations, limitations, provisos, conditions, restrictions and exceptions in the letters patent or grant, as the case may be, from the Crown and statutory exceptions to title;
- 1.1.101.10 the Chatham Mortgage;
- 1.1.101.11 those instruments registered on title to the Owned Lands or against the leasehold interest of the Seller in the Leased Premises and described in the Disclosure Schedule.
- 1.1.102 **“Person”** will be broadly interpreted and includes: a natural person, whether acting in his or her own capacity, or in his or her capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person; a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind; and a Governmental Authority.
- 1.1.103 **“Personal Information”** means information about an individual who can be identified by the Person who holds that information, or as defined by Privacy Laws.
- 1.1.104 **“Phase 1 Bid Deadline”** is defined in section 20 of the SISP.
- 1.1.105 **“Plans”** means all plans that provide pension benefits for the benefit of Employees or former Employees, and their respective beneficiaries, and all Employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, compensation, retirement, salary continuation, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, accident, disability, life insurance and other plans, arrangements, agreements, programs, policies, practices or undertakings, whether oral or written, funded or unfunded, registered or unregistered, insured or self-insured:
 - 1.1.105.1 that are sponsored or maintained or funded, in whole or in part, by the Seller, or to which the Seller contributes or is obligated to contribute for the benefit of Employees or former Employees, and their respective beneficiaries; or
 - 1.1.105.2 under which the Seller has any liability or contingent liability.
- 1.1.106 **“Potential Assigned Contract”** is defined in Section 6.3.1.
- 1.1.107 **“Prepaid Amounts”** means all prepaid expenses, other current assets of ongoing benefit to the Buyers, and deposits relating to the Business including all prepaid

Taxes and water charges, all prepaid purchases of gas, oil and hydro, all prepaid Lease payments and prepaid Real Property Lease payments.

- 1.1.108 “**Priority Payables**” means any Obligations of the Seller secured by any Encumbrance that ranks in priority to the Security Interests securing the Debenture Obligations and the Interim Financing Obligations, but for certainty excluding the Chatham Mortgage.
- 1.1.109 “**Privacy Laws**” means any Applicable Laws that regulate the collection, use or disclosure of Personal Information.
- 1.1.110 “**Purchase Orders**” means the outstanding orders or Contracts (other than Excluded Assets and Disclaimed Contracts) for the purchase or sale of personal property (other than Inventories) relating to the Business.
- 1.1.111 “**Purchase Price**” is defined in Section 3.1.
- 1.1.112 “**Purchased Assets**” means all of the Seller Assets, including the following properties, assets and rights:
- 1.1.112.1 all cash, bank balances, money in possession of banks and other depositories, term or time deposits and similar cash or cash equivalents of, owned or held by or for the account of the Seller;
 - 1.1.112.2 all Shares, notes, bonds or debentures of or issued by corporations or other Persons and all certificates or other evidences of ownership of the Shares, notes, bonds or debentures owned or held by or for the account of the Seller, including any Shares in the capital of the Seller’s Subsidiaries;
 - 1.1.112.3 Accounts Receivable;
 - 1.1.112.4 Books and Records;
 - 1.1.112.5 Documents;
 - 1.1.112.6 Buildings and Improvements;
 - 1.1.112.7 Assigned Contracts;
 - 1.1.112.8 Fixed Assets and Equipment owned by the Seller;
 - 1.1.112.9 any interest of the Seller in any Fixed Assets and Equipment subject to a Lease that is an Assigned Contract;
 - 1.1.112.10 Goodwill;
 - 1.1.112.11 Intellectual Property;
 - 1.1.112.12 Inventories;

1.1.112.13 Owned Lands;

1.1.112.14 Permits;

1.1.112.15 Prepaid Amounts; and

1.1.112.16 Real Property Leases,

but excluding any property and assets that are Excluded Assets.

- 1.1.113 “**Purchased Shares**” means all of the Class A voting shares in the capital of the Seller to be created pursuant to the Buyers’ CCAA Plan.
- 1.1.114 “**Qualified Bid**” is defined in section 30 of the SISP.
- 1.1.115 “**Real Property Leases**” is defined in Section 4.13.2.
- 1.1.116 “**Release**” means to release, spill, leak, pump, pour, emit, empty, discharge, deposit, inject, leach, dispose, dump or permit to escape.
- 1.1.117 “**Remaining Contracts**” is defined in Section 6.3.1.
- 1.1.118 “**Remedial Order**” means any remedial order, including any notice of non-compliance, order, other complaint, direction or sanction issued, filed or imposed by any Governmental Authority pursuant to Environmental Laws, with respect to the existence of Hazardous Substances on, in or under Owned Lands, Leased Premises, or neighbouring or adjoining properties, or the Release of any Hazardous Substance from, at or on the Owned Lands or Leased Premises, or with respect to any failure or neglect to comply with Environmental Laws.
- 1.1.119 “**Related Persons**” means any director, officer or employee or representative of a Buyer.
- 1.1.120 “**Representatives**” means the advisors, agents, consultants, directors, officers, management, employees, subcontractors, and other representatives, including accountants, auditors, financial advisors, lenders and lawyers of a Party and of that Party’s Affiliates.
- 1.1.121 “**Retained Employees**” is defined in Section 6.4.3.
- 1.1.122 “**Sanction Order**” means an Order under the CCAA and ABCA which, among other things, will approve and sanction the Buyers’ CCAA Plan and will include provisions necessary or appropriate to give effect to the Buyers’ CCAA Plan, including issuing to and vesting in the Buyers the Purchased Shares, free and clear of any Encumbrances or Claims, which Order will be substantially in the form agreed to by the Buyers, the Seller and the Monitor, each acting reasonably (with such changes thereto as the Buyers, Seller and the Monitor approve in writing, such approval not to be unreasonably withheld, conditioned or delayed).

- 1.1.123 “**Security Interest**” means any mortgage, charge, security interest, pledge, assignment, hypothecation, title retention, finance lease or trust securing payment or performance of any Obligation.
- 1.1.124 “**Seller**” is defined in the recital of the Parties above.
- 1.1.125 “**Seller Assets**” means all of the present and after acquired undertaking, property and assets, real and personal, and all rights, privileges, benefits in respect thereof, of the Seller of any nature or kind whatsoever and wherever situated, whether owned, leased, licensed or used by the Seller.
- 1.1.126 “**SISP**” means the sale and investor solicitation procedures, including the procedure for the submission of Qualified Bids and the procedure for the conduct of the Auction should Qualified Bids be received, which are established by the Monitor in respect of the Seller and are substantially in the form attached as Schedule 1.1.126, with any material changes subject to the approval of the Buyers, such approval not to be unreasonably withheld, delayed or conditioned.
- 1.1.127 “**SISP Motion**” means a motion to approve the SISP Order, which will be acceptable to the Buyers and Seller, acting reasonably.
- 1.1.128 “**SISP Order**” is defined in Section 7.1.
- 1.1.129 “**Share Purchase**” is defined in Section 2.1.1.
- 1.1.130 “**Share Register**” means the register of shares maintained by Computershare Trust Company of Canada, the registrar and transfer agent for the Seller.
- 1.1.131 “**Shares**” means any and all shares, securities, interests, participations or other equivalents of capital in a corporation and any and all ownership interests in a Person (other than a corporation), including membership interests, partnership interests, joint venture interests and beneficial interests, and any and all warrants, options or other rights to purchase any of the forgoing.
- 1.1.132 “**Software**” means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active, under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software.

- 1.1.133 “**Subsidiary**” means, with respect to any Person (in this Section 1.1.133, the “**Parent**”), at any time, any corporation, limited liability company, trust, partnership, limited partnership, association or other entity the accounts of which would be consolidated with those of the Parent in the Parent’s consolidated financial statements if those financial statements were prepared in accordance with IFRS as of that date, as well as any other corporation, limited liability company, trust, partnership, limited partnership, association or other entity:
- 1.1.133.1 of which Shares representing more than 50% of the equity or economic interest in them or more than 50% of the ordinary voting power, or, in the case of a partnership, more than 50% of the general or limited partnership interests or the economic interest in them are, as at that time, owned, controlled or held by any combination of the Parent and one or more Subsidiaries of the Parent; or
- 1.1.133.2 that is, as at that time, otherwise controlled by any combination of the Parent and one or more Subsidiaries of the Parent.
- 1.1.134 “**Successful Bid**” is defined in section 42 of the SISP.
- 1.1.135 “**Successful Bidder**” is defined in section 42 of the SISP.
- 1.1.136 “**Tax**” means all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions and other charges of any kind whatsoever, whether direct or indirect, together with all interest, penalties, fines, additions to tax or other additional amounts, imposed by any Governmental Authority.
- 1.1.137 “**Tax Law**” means any Applicable Law including the ITA and ETA that imposes Taxes or that deals with the administration or enforcement of liabilities for Taxes.
- 1.1.138 “**Trade Liabilities**” is defined in Section 2.3.1.2
- 1.1.139 “**Transferred Employees**” is defined in Section 6.4.2.
- 1.1.140 “**Transaction Tax**” is defined in Section 3.5.1.
- 1.1.141 “**Transaction**” means either the transactions contemplated under this Agreement in connection with the Closing of the Share Purchase or the transactions contemplated under this Agreement in connection with the Closing of the Asset Purchase.
- 1.1.142 “**2011 Annual Financial Statements**” is defined in Section 4.8.1.
- 1.1.143 “**2012 Annual Financial Statements**” is defined in Section 4.8.2.
- 1.1.144 “**Unaffected Claims**” is defined in the Buyers’ CCAA Plan but includes, for certainty, the Priority Payables, the Obligations of the Seller under the Chatham Mortgage, and any Claims for unpaid wages by Retained Employees.

1.1.145 “**Warranty Obligations**” means any Obligations under any warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) in favour of any customers of the Seller or any direct or indirect purchasers of products or services of the Seller.

1.1.146 “**Warranty Rights**” means the full benefit of all warranties, warranty rights, performance bonds and indemnities (implied, express or otherwise) against manufacturers, sellers or contractors which apply to any of the Assets to the extent the same are capable of being assigned.

1.2 Certain Rules of Interpretation

1.2.1 In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders. Every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.

1.2.2 The division of this Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.

1.2.3 References in this Agreement to an Article, Section or Schedule are to be construed as references to an Article, Section or Schedule of or to this Agreement unless otherwise specified.

1.2.4 Unless otherwise specified in this Agreement, time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.

1.2.5 Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, modified, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

1.3 Schedules

The following is a list of Schedules to this Agreement:

Schedule	Subject Matter
1.1.25	Form of Bill of Sale
1.1.126	SISP

Schedule	Subject Matter
4	Disclosure Schedule
7.1	SISP Order
7.3.2	Summary of Buyers' CCAA Plan

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement of Purchase and Sale

On the terms and subject to the conditions set forth in this Agreement, on Closing:

- 2.1.1 if the conditions set out in Sections 8.1, 8.3 and 8.4 have been satisfied or waived, the Buyers will purchase, acquire and accept from the Seller, and the Seller will issue, sell, transfer, convey and deliver to the Buyers, the Purchased Shares, free and clear of all Encumbrances and Claims (the “**Share Purchase**”), which Purchased Shares will be registered in the Share Register as follows: 50% of the Purchased Shares will be in the name of one of the Buyers and 50% will be in the name of the other Buyer, or in such other manner that the Buyers direct the Seller in writing prior to Closing; and
- 2.1.2 if the conditions set out in Sections 8.4 have not been satisfied or waived, but the conditions set out in Sections 8.1, 8.3 and 8.5 have been satisfied or waived, the Buyers will purchase, acquire and accept from the Seller, each as to a 50% undivided interest, or as the Buyers may otherwise direct prior to Closing, and the Seller will sell, transfer, convey and deliver to the Buyers, all the right, title and interest of the Seller in, to and under the Purchased Assets, free and clear of all Encumbrances and Claims other than Permitted Encumbrances (the “**Asset Purchase**”).

For greater certainty, it is the intention of the Buyers that the Transaction will be a Share Purchase unless the conditions contained in Section 8.4 are not satisfied or waived, or the Buyers have determined that there is no reasonable prospect that such conditions will be satisfied or waived, in which event the Transaction will be an Asset Purchase, provided that the conditions set out in Sections 8.1, 8.3 and 8.5 are satisfied or waived.

2.2 Excluded Assets

If the Transaction is an Asset Purchase, then notwithstanding anything to the contrary in this Agreement, the following property and assets will be excluded from and not form part of the Purchased Assets (such excluded property and assets being, collectively, the “**Excluded Assets**”):

- 2.2.1 any Asset that otherwise would constitute a Purchased Asset but for the fact that it is conveyed, leased or otherwise disposed of in the ordinary course of Business prior to the Closing Date and not in violation of this Agreement (provided that any proceeds arising from such conveyance, lease or other disposal shall not be an Excluded Asset);
- 2.2.2 any Books and Records that the Seller, acting reasonably, is required by Applicable Law to retain, and has advised the Buyers of its obligation to retain such Books and Records, provided, however, that at the request of the Buyers copies of such Books and Records will be provided by the Seller to the Buyers ;
- 2.2.3 all Contracts that are not Assigned Contracts, and any Accounts Receivable arising therefrom; and
- 2.2.4 any interest of the Seller in any Fixed Assets and Equipment subject to a Lease that is not an Assigned Contract.

2.3 Assumption of Obligations

- 2.3.1 If the Transaction is an Asset Purchase, then upon the terms and subject to the conditions of this Agreement, the Buyers agree, effective at the time of the Closing, to assume and be responsible for and thereafter pay, perform, honor and discharge, as and when due, the following Obligations (collectively, the “**Assumed Obligations**”):
 - 2.3.1.1 the Obligations of the Seller under the Assignable Contracts that the Buyers have agreed assume as of Closing pursuant to Assignment and Assumption Agreements pertaining to such Assignable Contracts;
 - 2.3.1.2 all non-contingent trade liabilities incurred by the Seller in the ordinary course of business for the supply of goods and services to the Seller in relation to the Business and in amounts appearing in the Books and Records and disclosed to the Buyers in the Closing Statement (collectively, the “**Trade Liabilities**”);
 - 2.3.1.3 all Obligations accruing or arising with respect to the Transferred Employees after the Closing Date;
 - 2.3.1.4 all commitments as of the Closing to sell and deliver Inventory in connection with the Assigned Contracts; and
 - 2.3.1.5 the Obligations of the Seller under the Chatham Mortgage.
- 2.3.2 If the Transaction is a Share Purchase, for greater certainty:
 - 2.3.2.1 the Seller will continue to be liable for Unaffected Claims; and
 - 2.3.2.2 Affected Claims will be dealt with in accordance with the Buyers’ CCAA Plan.

2.4 Excluded Obligations

2.4.1 If the Transaction is an Asset Purchase, then other than the Assumed Obligations, the Buyers are not assuming or agreeing to assume and will not from and after Closing be obligated to pay, perform or discharge any Obligations of or Claims against the Seller of any kind whatsoever (collectively, the “**Excluded Obligations**”), including for certainty any of the following Obligations:

2.4.1.1 any Obligations under or in connection with an Excluded Asset;

2.4.1.2 any Obligations owing in respect of any Employees who are not Transferred Employees, including liabilities for wages, vacation pay, termination and severance pay or benefit payments to insurers;

2.4.1.3 any KERP Obligations or Administration Obligations; and

2.4.1.4 any Obligations for Taxes payable or remittable by the Seller.

2.4.2 If the Transaction is a Share Purchase, then all Affected Claims will be compromised and discharged in the manner specified in the Buyers’ CCAA Plan.

2.5 SISP

2.5.1 This Agreement will constitute a stalking horse credit bid for the purposes of the SISP Order and a Qualified Bid for the purposes of section 30 of the SISP.

2.5.2 The Seller will comply with the procedures and time lines set out in the SISP and will not apply to the Court to materially amend, or consent to any application by any Person for a material amendment of, the SISP without the prior written consent of the Buyers.

2.5.3 In consideration for:

2.5.3.1 the Buyers’ expenditures of time and money in acting as the bidder under the SISP, in preparing this Agreement and the Ancillary Agreements, and in performing due diligence pursuant to this Agreement; and

2.5.3.2 the Buyers, by virtue of entering into this Agreement, providing assurance to the suppliers, customers, Employees and other stakeholders of the Seller that the Business will continue notwithstanding the outcome of the CCAA Proceedings or the SISP,

the Seller will pay to the Buyers a breakage fee equal to 3.5% of the Purchase Price (the “**Break Fee**”) in the event that:

2.5.3.3 an Alternate Transaction is completed; or

- 2.5.3.4 the Transaction is not completed for any other reason other than as a result of a breach by the Buyers; or
- 2.5.3.5 the non-satisfaction or waiver of the conditions contained in Sections 8.1, 8.3, 8.4 (other than the condition in Section 8.4.4), if the Transaction is a Share Purchase, or in Sections 8.1, 8.3, and 8.5, if the Transaction is an Asset Purchase.

The Seller will indefeasibly pay to the Buyers the Break Fee upon the earlier of the completion of the Successful Bid in accordance with Section 2.5.3.3 or upon the Buyers and the Monitor, acting reasonably, determining that the Transaction has failed to Close for the reasons set out in Sections 2.5.3.4 or 2.5.3.5. This Section 2.5.3 will survive the termination of this Agreement under Sections 10.1.2 and 10.1.3.

- 2.5.4 In the event that the SISP is terminated in accordance with sections 14, 24 or 35 of the SISP, or this Agreement is the Successful Bid, or a Successful Bid by a bidder other than the Buyers is not approved by the Court or completed and this Agreement constitutes the Backup Bid, each of the Seller and Buyers will:
 - 2.5.4.1 if the Transaction is an Asset Purchase, take all actions necessary to have this Agreement and the Transaction approved pursuant to the Approval and Vesting Order and to Close the Transaction within five (5) Business Days of the Approval and Vesting Order being made; and
 - 2.5.4.2 if the Transaction is a Share Purchase, take all actions necessary to have this Agreement and the Transaction approved pursuant to the Sanction Order and to Close the Transaction within five (5) Business Days of the Sanction Order being made.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The purchase price payable by the Buyers to the Seller for the Purchased Assets, if the Transaction is an Asset Purchase, and the Purchased Shares, if the Transaction is a Share Purchase, is the aggregate of:

- 3.1.1 the accrued and unpaid Debenture Obligations as of the Closing Date;
- 3.1.2 the accrued and unpaid Interim Financing Obligations as of the Closing Date;
- 3.1.3 the accrued and unpaid Priority Payables as of the Closing Date which have been itemized on the Closing Statement;
- 3.1.4 the accrued and unpaid Administration Obligations and KERP Obligations as of the Closing Date which have been itemized on the Closing Statement;

- 3.1.5 the Cure Amounts in respect of Assigned Contracts, if the Transaction is an Asset Purchase, or in respect of Remaining Contracts, if the Transaction is a Share Purchase;
- 3.1.6 if the Transaction is an Asset Purchase, the accrued and unpaid Assumed Obligations as of the Closing Date; and
- 3.1.7 if the Transaction is a Share Purchase, the accrued and unpaid Unaffected Claims, (collectively, the “**Purchase Price**”).

3.2 Payment of the Purchase Price

- 3.2.1 The Purchase Price will be satisfied by the Buyers (each as to 50% thereof) on Closing as follows:
 - 3.2.1.1 by way of set off of the Purchase Price against the Debenture Obligations and the Interim Financing Obligations on a dollar for dollar basis, in full and final payment of the Debenture Obligations and Interim Financing Obligations;
 - 3.2.1.2 by paying to the Seller by certified cheque or bank draft, or by effecting a wire transfer in immediately available funds, an amount equal to the amounts itemized on the Closing Statement as payable on account of the Cure Amount and the accrued and unpaid, unpaid Trade Liabilities, Administration Obligations and KERP Obligations (the “**Cash Portion of the Purchase Price**”);
 - 3.2.1.3 by agreeing to pay, as and when they become due, but not to assume, all accrued and unpaid Priority Payables;
 - 3.2.1.4 if the Transaction is an Asset Purchase, by assuming the Assumed Obligations pursuant to an Assignment and Assumption Agreement; and
 - 3.2.1.5 if the Transaction is a Share Purchase, by the Buyers agreeing to provide sufficient funding to the Seller in order to permit the Seller to repay the Unaffected Claims as they become due and payable.
- 3.2.2 The Seller will pay on Closing from the Cash Portion of the Purchase Price, if the Transaction is:
 - 3.2.2.1 an Asset Purchase, any Cure Amounts in respect of Assigned Contracts and the accrued and unpaid Trade Liabilities, Administration Obligations and KERP Obligations; and
 - 3.2.2.2 a Share Purchase, any Cure Amounts in respect of the Remaining Contracts and the accrued and unpaid Trade Liabilities, Administration Obligations and KERP Obligations,

and on Closing the Seller will irrevocably direct payment to each of the Persons who are payees in respect of the forgoing Obligations, to the extent itemized on the Closing Statement.

3.3 Closing Statement

Not less than ten (10) Business Days before the Closing Date, the Seller will deliver to the Buyers a statement which will itemize good faith estimates by the Seller of the following as of the Closing Date:

- 3.3.1 the Cure Amounts;
- 3.3.2 the Trade Liabilities;
- 3.3.3 the accrued and unpaid Administration Obligations and KERP Obligations; and
- 3.3.4 the unpaid Priority Payables,

(such statement being the “**Closing Statement**”). The Closing Statement will be accompanied by a certificate of the chief financial officer of the Seller, or other senior officer of the Seller acceptable to the Buyers, to the effect that the officer and the Monitor have reviewed the Closing Statement and that the Closing Statement represents the best estimate, made in good faith, of the items summarized therein, and that the officer has no reason to believe that this estimate cannot be relied upon for purposes of the Closing. The Closing Statement will also be accompanied by a copy of the working papers of the Seller used in its preparation, together with any other evidence supporting the amounts specified in the Closing Statement as the Buyers may reasonably request.

3.4 Allocation of Purchase Price

If the Transaction is an Asset Purchase, the Parties agree that Purchase Price will be allocated among the Purchased Assets the manner specified by the Buyers in a written notice to the Seller and the Monitor prior to Closing, acting reasonably. The Seller and the Buyer will cooperate in the filing of all elections under Tax Laws as required to give effect to that allocation for Tax purposes. The Seller and the Buyers will prepare and file their respective Tax returns in a manner consistent with that allocation and those elections and will take no position inconsistent with such allocations for any Tax purpose (including in any audit, judicial or administrative proceeding).

For greater certainty, if the Transaction is a Share Purchase, the Purchase Price shall be allocated to the Purchased Shares.

3.5 Taxes and Tax Elections

If the Transaction is an Asset Purchase:

- 3.5.1 All sales, use, goods and services, value-added and similar transfer Taxes in connection with the transfer of the Purchased Assets, and all recording and filing fees

(collectively, “**Transaction Taxes**”), that are imposed by reason of the sale, transfer, assignment and delivery of the Purchased Assets will be borne by the Buyers. The Buyers and Seller will cooperate to (a) determine the amount of Transaction Taxes payable in connection with the Transaction, (b) provide all requisite exemption certificates, and (c) prepare and file any and all required Tax Returns for or with respect to such Transaction Taxes with any and all appropriate taxing Governmental Authorities.

- 3.5.2 To the extent that the Seller has received any amount in respect of an obligation to deliver goods or services, and the Buyers have agreed to assume that obligation under this Agreement, Purchased Assets having a fair market value equal to that amount are being transferred to the Buyers under this Agreement as payment by the Seller for the Buyer’s agreement to assume that obligation, and the Parties will file an election pursuant to the provisions of subsections 20(24) and 20(25) of the ITA, and any corresponding provisions of any other applicable Tax Law, within the prescribed time period.
- 3.5.3 If applicable, at the Closing, the Seller and Buyers will execute jointly an election under section 167 of the ETA to have the purchase and sale of the Purchased Assets take place on a goods and services tax-free basis under Part IX of the ETA. The Buyers will file the elections in the manner and within the time prescribed by the relevant Tax Laws. Notwithstanding anything to the contrary in this Agreement, the Buyers will indemnify and hold the Seller harmless in respect of any goods and services tax, penalties, interest and other amounts which may be assessed against the Seller as a result of the Transaction not being eligible for such elections or as a result of a Buyer’s failure to file the elections within the prescribed time.
- 3.5.4 The Seller and Buyers will execute and file, within the prescribed time limits, a joint election with respect to the Accounts Receivable under section 22 of the ITA and any corresponding provisions of any other applicable Tax Law and will designate in that election the portion of the Purchase Price allocated to the Accounts Receivable as the consideration paid by the Buyers to the Seller for the Accounts Receivable for the purposes of the election.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Buyers as follows, and acknowledges that the Buyers are relying upon these representations and warranties in connection with the purchase of the Purchased Assets or the Purchased Shares, as the case may be, despite any investigation made by or on behalf of the Buyers. Each exception to the following representations and warranties that is set out in a disclosure schedule to be delivered by the Seller to the Buyers within ten (10) Business Days of the Execution Date (such schedule, as amended from time to time, being the “**Disclosure Schedule**”, which will be attached to and form part of this Agreement as Schedule 4) is identified by reference to one or more specific individual Sections of this Agreement and is only effective to create an exception to each specific individual Section listed. Any statement in

this Agreement that is not expressly qualified by a reference to an exception in the Disclosure Schedule will prevail, despite anything to the contrary that is disclosed in the Disclosure Schedule.

Except as expressly set forth in this Agreement, the Seller makes no representation or warranty, express or implied, at law or in equity, in respect of the Assets, the Purchased Shares, its Obligations (including the Assumed Obligations) or its operations, including, with respect to merchantability or fitness for any particular purpose, or non-infringement, and any such other representations or warranties are hereby expressly disclaimed and none will be implied at law or in equity. The Buyers hereby acknowledge and agree that the Buyers are purchasing the Purchased Assets or Purchased Shares, as the case may be, on an “as is, where is” basis after giving effect to the terms contained herein.

4.1 Corporate Status

- 4.1.1 The Seller is a corporation duly incorporated and validly existing and in good standing under the laws of Alberta and has all necessary corporate power and authority to own, lease and operate its properties and to conduct its Business in the manner in which its Business is currently being conducted.
- 4.1.2 Subject to the CCAA and the CCAA Proceedings, the Seller is qualified to do business and is in good standing in all jurisdictions where it owns or leases real property in connection with the operation of the Business or otherwise conducts the Business, except where the failure to so qualify or to so be in good standing has not had and would not reasonably be expected to have a Material Adverse Effect.
- 4.1.3 The jurisdictions in which the Seller is qualified, licensed or registered to carry on the Business are listed in the Disclosure Schedule.

4.2 Authorization of Agreement

Subject to issue and entry of the SISP Order, the Approval and Vesting Order and the Sanction Order:

- 4.2.1 The Monitor has or will have the necessary authority to execute and deliver this Agreement and the Ancillary Agreements for and on behalf of the Seller, and the Seller has, or at the time of execution will have, all necessary corporate power and authority to perform its obligations under this Agreement and each of the Ancillary Agreements.
- 4.2.2 The execution and delivery of this Agreement and each Ancillary Agreement by the Monitor for and on behalf of the Seller, and the performance by the Seller of its obligations thereunder and the consummation of the Transaction, and the transactions contemplated by the Ancillary Agreements, will be fully authorized upon the making of the SISP Order and the Approval and Vesting Order, if the Transaction is an Asset Purchase, and Sanction Order, if the Transaction is a Share Purchase.

4.2.3 This Agreement has been, and each Ancillary Agreement will be, duly and validly executed and delivered by the Monitor for and on behalf of the Seller.

4.2.4 This Agreement and each Ancillary Agreement constitutes, or will constitute, when executed and delivered, valid and binding obligations of the Seller enforceable against the Seller in accordance with their respective terms, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

4.3 Absence of Conflict

4.3.1 The execution and delivery by the Monitor for and on behalf of the Seller of this Agreement and each Ancillary Agreement, the performance by the Seller of its obligations under this Agreement and each Ancillary Agreement, and the completion or consummation of the Transaction and of the transactions contemplated by the Ancillary Agreements, do not, or will not at the time of execution and delivery, result in the creation of any Encumbrance upon the Purchased Assets, the Purchased Shares or the Seller Assets, as applicable, and do not conflict with, result in any breach of, default under or violation of, or give rise to a right of termination or cancellation under:

4.3.1.1 the Seller's articles, by-laws or other constating or organizational documents;

4.3.1.2 subject to the issue and entry of the Approval and Vesting Order or Sanction Order, as applicable, any Assigned Contract, Remaining Contract or Permit in favour of the Seller;

4.3.1.3 subject to the issue and entry of the SISP Order and either the Approval and Vesting Order or Sanction Order, as applicable, any order, writ, injunction, judgment or decree of any Governmental Authority applicable to the Seller or any of the Purchased Assets or the Purchased Shares or Seller Assets; or

4.3.1.4 subject to the issue and entry of the SISP Order and either the Approval and Vesting Order or Sanction Order, as applicable, contravene any Applicable Law.

4.3.2 Subject to entry of the SISP Order and either the Approval and Vesting Order or Sanction Order, as applicable, except as set forth on the Disclosure Schedule, or as required in accordance with Applicable Laws regulating securities, no consent, waiver, approval, order or authorization of, or notification to, any Person, or Permit from declaration or filing with, or notification to any Governmental Authority is required on the part of the Seller in connection with the execution and delivery of this Agreement or the Ancillary Agreement by the Monitor for and on behalf of the Seller,

the performance by the Seller of its obligations thereunder and the consummation of the Transaction and the transactions contemplated by the Ancillary Agreements.

4.4 Ownership of the Assets

The Seller has and at Closing will have good and valid title to all of the Assets that are owned by it, and a valid and enforceable right to possess and use all Assets leased by or licensed to it. If the Transaction is an Asset Purchase, upon delivery of the Monitor's Certificate to the Buyers in accordance with the Approval and Vesting Order, all right, title and interest of the Seller in and to the Purchased Assets, wherever located, will vest in the Buyers free and clear of all Encumbrances and Claims other than the Permitted Encumbrances. If the Transaction is a Share Purchase, upon their creation pursuant to the Buyers' CCAA Plan and the implementation of the Transaction pursuant to the Sanction Order, the Purchased Shares will be issued to and vest in the Buyers free and clear of all Encumbrances and Claims.

4.5 Residence of Seller

The Seller is not a non-resident of Canada for purposes of the ITA.

4.6 Compliance with Applicable Laws, Permits

4.6.1 The Seller is and at Closing will be in compliance with all Applicable Laws, except where the failure to comply could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

4.6.2 All Permits are listed in the Disclosure Schedule. The Permits are the only material authorizations, registrations, permits, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to Intellectual Property) required to enable the Seller to carry on the Business as currently conducted and to enable it to own, lease and operate the Assets. All Permits are valid, subsisting, in full force and effect and unamended, and the Seller is not in default or breach of any Permit. No proceeding is pending or threatened to revoke or limit any Permit, and the completion of the Transaction will not result in the revocation of any Permit or the breach of any term, provision, condition or limitation affecting the ongoing validity of any Permit. All Permits are renewable by their terms or in the ordinary course of the Business without the need for the Seller to comply with any special qualifications or procedures or to pay amounts other than routine filing fees.

4.7 Priority Payables and Taxes

Except as set forth in the Disclosure Schedule, as of the Execution Date:

4.7.1 the Seller has timely paid or caused to be paid in full all Priority Payables which are or have become due and payable to any Governmental Authority; and

4.7.2 there are no Claims either in progress, pending or threatened, in connection with any Taxes in respect of the Business or the Assets.

4.8 Financial Matters

4.8.1 Attached to the Disclosure Schedule is a copy of the Seller's consolidated audited income statement, statement of cash flows and balance sheet as at December 31, 2011 (the "**2011 Annual Financial Statements**"). The 2011 Annual Financial Statements have been prepared in conformity with IFRS, and fairly present the financial condition of the Seller as of the date thereof, except: (i) for the absence of notes to the 2011 Financial Statements that, if presented, would not differ materially from those included in the 2011 Annual Financial Statements, (ii) as to be set forth in the 2012 Annual Financial Statements, and (iii) as set forth in the Disclosure Schedule.

4.8.2 The Seller's consolidated audited income statement, statement of cash flows and balance sheet for the financial year ending as at December 31, 2012 (the "**2012 Annual Financial Statements**") and for the quarter ending as at March 30, 2013 (the "**Quarterly Statements**") are being prepared by the Seller and are due to be filed under Applicable Laws, as a result of the Seller's status as a venture issuer, by the end of May, 2013 respectively.

4.8.3 The Cash Flow Projections have been or will be prepared in accordance with IFRS and disclose all payments that constitute or could constitute Priority Payables and the Trade Liabilities.

4.8.4 The Seller has no known liabilities of a nature required by IFRS to be disclosed on a balance sheet except for liabilities (including Taxes), commitments or obligations incurred subsequent to the date of the 2011 Annual Financial Statements that are disclosed on the Disclosure Schedule and that do not exceed \$500,000 in the aggregate (excluding Trade Liabilities).

4.8.5 The Disclosure Schedule sets forth the Inventories as at March 31, 2013, which are properly stated therein with value determined in accordance with IFRS, as consistently applied in accordance with the Seller's past practices. Since March 31, 2013, the Inventories have been maintained in the ordinary course of business. All such Inventories are owned by the Seller free and clear of any Encumbrances, other than Permitted Encumbrances.

4.8.6 The Accounts Receivable as at March 31, 2013 are as set out on the Disclosure Schedule. Such Accounts Receivable (a) will not, to the Knowledge of the Seller, be subject to any contests, claims, counterclaims or setoffs, (b) arose from bona fide transactions in the ordinary course of business, (c) represent valid obligations arising from sales actually made or services actually performed in the operation of the Business in the ordinary course, (d) to the Knowledge of the Seller, are collectible. There have not been any write-offs as uncollectible of any customer accounts receivable of the Seller since March 31, 2013, except for write-offs in the ordinary course of business.

4.8.7 The Books and Records of the Seller, copies of which have all been made available to Buyers, are true and complete in all material respects and have been maintained in accordance with Applicable Law and consistent with the Seller's historical practice.

4.9 Information

The information prepared or furnished by or on behalf of the Seller in connection with this Agreement and the CCAA Proceedings, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances when made, not misleading; provided, however, that projections contained therein are not to be viewed as factual and that actual results during the periods covered thereby may differ from the results set forth in such projections by a material amount. All projections that are part of such information (including those set forth in any Cash Flow Projections) are based upon good faith estimates and stated assumptions believed to be reasonable and fair as of the date made in light of conditions and facts then known and, as of such date, reflect good faith, reasonable and fair estimates of the information projected for the periods set forth therein. All facts known to the Seller and material to an understanding of the financial condition, Business, property or prospects of the Seller have been disclosed to the Buyers.

4.10 GST/HST Registration

The Seller is registered for purposes of the GST/HST levied under the ETA and its registration number is 894593060RT0001.

4.11 Absence of Material Adverse Effect

Except as disclosed in the Disclosure Schedule, since December 31, 2012, there has not been any Material Adverse Effect or Material Adverse Change.

4.12 Absence of Unusual Transactions

Except as disclosed in the Disclosure Schedule, since December 31, 2012 the Seller has not:

- 4.12.1 subjected any of Assets, or permitted any Assets to be subjected, to any Encumbrance other than the Permitted Encumbrances;
- 4.12.2 acquired, sold, leased or otherwise disposed of or transferred any Assets other than in the ordinary course of the Business;
- 4.12.3 made or committed to any capital expenditures, except as disclosed in the Cash Flow Projections;
- 4.12.4 entered into or become bound by any Contract, except in the ordinary course of the Business;

- 4.12.5 modified, amended or terminated any Contract, except (a) in the ordinary course of the Business, (b) in accordance with the CCAA, or (c) for Contracts which expire by the passage of time;
- 4.12.6 released, waived or settled any material Account Receivable;
- 4.12.7 made any change in any method of accounting or auditing practice other than in accordance with, and with the agreement of, the Seller's auditors as a result of the Seller's CCAA Proceedings, including the possibility of ceasing to conduct quarterly reviews; or
- 4.12.8 agreed or offered to do any of the things described in this Section 4.12.

4.13 Real Property

- 4.13.1 The Disclosure Schedule contains a complete and accurate list of all Owned Lands, including complete legal descriptions.
- 4.13.2 The Disclosure Schedule contains a complete and accurate list of Leased Premises, including the legal descriptions and particulars of the Leased Premises. True, correct and complete copies of all leases for all of the Leased Premises, with any amendments, modifications, supplements, renewals, letter agreements and assignments relating thereto (the "**Real Property Leases**") have been made available to the Buyers and there are no written or oral amendments or modifications except as listed in the Disclosure Schedule. Each Real Property Lease remains in full force and effect in accordance with its terms and none of the Real Property Leases is under threat of termination.
- 4.13.3 With respect to each parcel of the Owned Lands or the Leased Premises, except as set forth on the Disclosure Schedule:
 - 4.13.3.1 the Seller has received no written notification from any Governmental Authority that any of the Owned Property or the Leased Premises is in violation of any Applicable Laws, including those relating to zoning, subdivision, landmark preservation, building, land use or other ordinances, laws, codes or regulations, where such violation would materially interfere with the use of the Owned Property or the Leased Premises as currently operated;
 - 4.13.3.2 the Seller has received no written notification of any expropriation or condemnation proceedings or eminent domain proceedings of any kind pending against the Owned Property or the Leased Premises; and
 - 4.13.3.3 other than as registered on title to the Owned Property or as otherwise disclosed by Seller to Buyers in writing, the Seller is not a party to any written agreements or undertakings with owners or users of properties adjacent to any Owned Property or the Leased Premises relating to the

use, operation or maintenance thereof which materially interfere with the use of the Owned Property or the Leased Premises as currently operated.

4.14 Intellectual Property

- 4.14.1 The Disclosure Schedule includes a list of all Intellectual Property owned by the Seller, including that which is the subject of a registration or application with any Governmental Authority, the jurisdictions (if any) in which that Intellectual Property is registered (or in which application for registration has been made) and the applicable expiry dates of all listed registrations. All necessary legal steps have been taken by the Seller to preserve its rights to the Intellectual Property listed in the Disclosure Schedule. The Seller owns, without payment to a third party except as set forth in the Disclosure Schedule, all Intellectual Property which is material to the conduct of the Business as conducted on the date hereof, and as to be conducted at the time of Closing.
- 4.14.2 There are no material licence agreements pursuant to which the Seller has been granted a right to use, or otherwise exploit Intellectual Property owned by third parties.
- 4.14.3 The consummation of the Transaction will not impair any right by the Seller to own the Intellectual Property referred to in Section 4.14.1. The Seller will not, as a result of the execution or delivery of this Agreement and the Ancillary Agreements and the consummation of the Transaction, be in violation of any Contract relating to the Intellectual Property, nor will execution or delivery of this Agreement or any Ancillary Agreement cause the termination or forfeiture of any Intellectual Property or any rights therein or thereto.
- 4.14.4 Except as set out in the Disclosure Schedule, to the Knowledge of the Seller, no third party is misappropriating, infringing, diluting or violating in any material respect any Intellectual Property owned or used by the Seller and no Claims have been brought, asserted or threatened by Seller against any third party with regard to the foregoing. No Intellectual Property owned or used by the Seller is the subject of any written notices of breach, default, termination or infringement of any third party during the last three (3) years.
- 4.14.5 No Person other than the Seller has any right to use that Intellectual Property except as disclosed in the Disclosure Schedule.

4.15 Material Contracts

- 4.15.1 The Disclosure Schedule contains a list of all Material Contracts to which the Seller is a party or bound. Except as disclosed in the Disclosure Schedule or as a result of the Seller's insolvency or the CCAA Proceedings, the Seller is not in default or breach of any Material Contract, and there exists no state of facts which, after notice or lapse of time or both, would constitute a default or breach (other than the Seller's insolvency or the Seller having initiated the CCAA Proceedings). To the Knowledge of the

Seller, no counterparty to any Material Contract is in default of any of its obligations under any Material Contract, the Seller is entitled to all benefits under each Material Contract, and the Seller has not received any notice of termination of any Material Contract.

- 4.15.2 Except as disclosed in the Disclosure Schedule, all of the Material Contracts were entered into on an arm's length basis, on normal market and commercial terms (having regard to the industry) and in the ordinary and normal course of the Business.
- 4.15.3 The Seller does not retain any holdbacks under any of the Material Contracts.
- 4.15.4 Except as disclosed in the Disclosure Schedule, the Seller has not received or made any deposits, prepayments or payments in respect of any of the Inventory Purchase Orders and Purchase Orders.

4.16 Environmental Conditions

Without limiting the generality of Section 4.6, and except as disclosed in the Disclosure Schedule and to the Knowledge of the Seller:

- 4.16.1 the Seller, the conduct of the Business by the Seller, and the current use and condition of each of the Leased Premises and Owned Lands have been and are in compliance with all applicable Environmental Laws, and there are no facts which would give rise to non-compliance of the Seller with any Environmental Laws, either in the conduct by the Seller of the Business, or in the current uses and condition of each of the Leased Premises and the Owned Lands;
- 4.16.2 the Seller has all Permits required by all Environmental Laws for the conduct of the Business, and the Seller is in compliance with all those Permits;
- 4.16.3 the Seller and any Person for whom the Seller is responsible pursuant to Environmental Laws, has imported, manufactured, processed, distributed, used, treated, stored, disposed of, transported, exported or handled Hazardous Substances in strict compliance with all Environmental Laws;
- 4.16.4 there has been no Release of any Hazardous Substance in the course of the Business from, at, on, or under, or any disposal of any Hazardous Substance on, the Leased Premises or the Owned Lands or from or on to any other properties adjacent thereto, except in compliance with all Environmental Laws, and the Seller has received no notice in respect of the forgoing;
- 4.16.5 there has been no Remedial Order issued to the Seller in respect of the Business, or with respect to any of the Leased Premises or the Owned Lands and no Remedial Orders are threatened, and there are no facts which could rise to any Remedial Orders;

- 4.16.6 the Seller has received no notice of Claim, summons, order, direction or other communication relating to non-compliance with Environmental Laws from any Governmental Authority or other third party; and
- 4.16.7 there is no pending or threatened matter, act or fact which could cause the Seller, the Business, or any of the Leased Premises or Owned Lands, to no longer be in compliance with all applicable Environmental Laws.

4.17 Suppliers and Customers

- 4.17.1 The Disclosure Schedule lists each material supplier of goods and services from whom the Seller has purchased goods or services in connection with the Business since January 1, 2012.
- 4.17.2 The Disclosure Schedule lists the Seller's sales orders as at the Execution Date and, with respect to each customer, contains order details and revenue figures for given orders for the Business for each of the fiscal years ended 2011, 2012 and 2013 year-to-date. None of the customers listed on the Disclosure Schedule has advised the Seller, orally or in writing, that it is terminating or considering terminating its relationship with the Seller, or considering negotiating its relationship with the Seller on terms different from and materially less attractive than those which they currently enjoy, whether as a result of the completion of the transactions contemplated by this Agreement or otherwise.

4.18 Rights to Use Personal Information

- 4.18.1 All Personal Information in the possession of the Seller in connection with the Business has been collected, used and disclosed in compliance with all applicable Privacy Laws in those jurisdictions in which the Seller conducts, or is deemed by operation of law in those jurisdictions to conduct, the Business.
- 4.18.2 The Seller has disclosed to the Buyers all Contracts and facts concerning the collection, use, retention, destruction and disclosure of Personal Information, and there are no other Contracts, or facts which would restrict the ability of the Seller to transfer Personal Information to the Buyers in connection with the Transaction, or which, on completion of the Transaction, would restrict or interfere with the use of any Personal Information by the Buyers in the continued operation of the Business as conducted before the Closing.
- 4.18.3 Except as disclosed in the Disclosure Schedule, there are no Claims pending or, to the Knowledge of the Seller, threatened, with respect to the Seller's collection, use or disclosure of Personal Information.

4.19 Warranty Obligations

The Disclosure Schedule lists all Warranty Obligations given to buyers of products or services supplied by the Seller. Except as disclosed in the Disclosure Schedule, there are no Claims against the Seller in connection with such Warranty Obligations or with respect to the production or sale of defective or inferior products or the provision of services, nor is there any basis for any liability of or Claim against the Seller arising from, relating to, or in connection with the production or sale of the products or the provision of services in connection with the Business before the Execution Date.

4.20 Employees and Employment Contracts

- 4.20.1 The Disclosure Schedule lists the names, titles and status (active or non-active, and if not active, reason why and period of time not active) of all Employees, together with particulars of the material terms and conditions of their employment or engagement, including current rates of remuneration, perquisites, commissions, bonus or other incentive compensation (monetary or otherwise), most recent hire date, cumulative years of service, start and end dates of all previous periods of service, benefits, vacation or personal time off entitlements, current positions held and, if available, projected rates of remuneration.
- 4.20.2 To the Knowledge of the Seller, no Employee, including any consultant with whom the Seller has contracted, is in violation of any term of any employment contract, contract of engagement, services agreement, proprietary information agreement or any other agreement relating to the right of that individual to be employed, engaged or retained by the Seller, and, to the Knowledge of the Seller, the continued employment or engagement by the Buyers of the Seller's current Employees will not result in any violation. The Seller has not received any notice alleging that any violation has occurred.
- 4.20.3 Except as disclosed in the Disclosure Schedule, all of the Employees are employed, engaged or retained for an indefinite term and none are subject to written employment agreements, contracts of engagement or services agreements. The material terms and conditions of any employment agreements, contracts of engagement or services agreements listed in the Disclosure Schedule have been provided to the Buyers.
- 4.20.4 Except as confidentially disclosed by the Seller to the Buyers in writing, and to the Knowledge of the Seller, no Employee has given notice, oral or written, of an intention to cease being employed with the Seller, and the Seller has no intention to terminate the employment of any Employee.
- 4.20.5 Except as disclosed in the Disclosure Schedule, there are no change of control or like Contracts or arrangements with any Employees.
- 4.20.6 Except as disclosed in the Disclosure Schedule or provided for in the KERP, neither the execution and delivery of this Agreement nor the completion of the Transaction

will result in any cash or other compensation or benefits becoming payable to any Employees.

- 4.20.7 Except as disclosed in the Disclosure Schedule, there are no Claims or outstanding orders, awards or rulings under any Applicable Laws relating to employment or the protection of employees against the Seller or, to the Knowledge of the Seller, pending or threatened.

4.21 Labour Relations

There are no apparent or, to the Knowledge of the Seller, threatened union organizing activities involving Employees. The Seller does not have any labour problems that might result in a Material Adverse Effect, or lead to any interruption of operations at any location. The Seller is not bound by or a party to, either directly or by operation of law, any collective bargaining agreement (a “**Collective Agreement**”) with any trade union or association which might qualify as a trade union, and no trade union, association, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, designation or successor rights, has, to the Knowledge of the Seller, applied to be certified or requested to be voluntarily recognized as the bargaining agent of any of the Employees, has, to the Knowledge of the Seller, applied to have the Buyers declared a related or successor employer under provincial labour or employment Applicable Law, or has, to the Knowledge of the Seller, filed a complaint or charge under labour or employment Applicable Law.

4.22 Pension and Benefit Plans

Except as listed in the Disclosure Schedule, the Seller is not a party to or bound by any Plans, other than the Canada Pension Plan and workplace safety and compensation insurance provided pursuant to Applicable Law.

4.23 Insurance Policies

The Disclosure Schedule lists all Insurance Policies, and also specifies the insurer, the amount of the coverage, the type of insurance, the policy number and any pending Claims with respect to each Insurance Policy. The Insurance Policies insure all the Purchased Assets against any loss, liability, damage, cost, expense or charge by all insurable hazards of risk on a replacement cost basis. All Insurance Policies are in full force and effect, and the Seller is not in default, whether as to the payment of premiums or otherwise, under any material term or condition of any of the Insurance Policies and has not failed to give notice or present any Claim under any of the Insurance Policies in a due and timely fashion.

4.24 Subsidiaries

The only Subsidiaries of the Seller are RS Advanced Structures Inc. and Resin Systems (USA) Inc., neither of which (a) has any material assets or liabilities, other than a standard upright lift truck leased by RS Advanced Structures Inc. from Roynat Inc.; (b) has any employees or

consultants; (c) is party to any material contract other than the contract referred to in Section 4.24(a).

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BUYERS

The Buyers represent and warrant to the Seller as follows, and acknowledge that the Seller is relying upon these representations and warranties in connection with the sale of the Purchased Assets or the Purchased Shares (which representations and warranties are several in nature, such that each Buyer will only have responsibility for representations and warranties that pertain to it) despite any investigation made by or on behalf of the Seller.

Except for the representations and warranties contained in this Article 5, neither Buyer makes any other express or implied representation or warranty and any such other representations and warranties are hereby expressly disclaimed and none will be implied at law or in equity.

5.1 Corporate Status

The Buyers are corporations duly organized, validly existing and in good standing under the laws of their respective jurisdictions of incorporation and have all requisite power and authority to own their properties and assets and to conduct their businesses as now conducted.

5.2 Authorization and Validity

The Buyers have, or at the time of Closing will have, all necessary corporate power and authority to execute and deliver this Agreement and any Ancillary Agreements to which the Buyers are or will become a party and to perform their obligations hereunder and thereunder. The execution and delivery of this Agreement and any Ancillary Agreements to which the Buyers are or will become a party, and the performance of the Buyers' obligations hereunder and thereunder, have been, or at the time of execution will be, duly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Buyers are necessary to authorized such execution, delivery and performance. This Agreement and each Ancillary Agreement to which the Buyers are or will become a party have been, or at the time of execution will be, duly executed by the Buyers and constitute, or will constitute, when executed and delivered, the Buyers' valid and binding obligations, enforceable against each of them in accordance with their respective terms except as may be limited by bankruptcy or other Applicable Laws affecting creditors' rights and by equitable principles.

5.3 Absence of Conflict

None of the execution and delivery of this Agreement, the performance by each Buyer of its obligations under this Agreement, or the completion of the Transaction, will result in or constitute a breach of any term or provision of, or constitute a default under, or violation of, (a) the articles or by-laws of such Buyer, (b) any provision of any Applicable Laws, or (c) any

agreement to which such Buyer is a party which could reasonably be expected to adversely affect such Buyer's ability to perform its obligations under this Agreement on a timely basis.

5.4 Consents and Approvals

No consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Buyers of this Agreement and each Ancillary Agreement to which the Buyers are or will become a party, or the performance by the Buyers of their obligations hereunder or thereunder, other than a post-closing filing by Melbye Skandinavia AS under the Investment Canada Act.

5.5 Litigation

There is no action, suit, proceeding or claim that is pending or, to the Buyers' knowledge, threatened in any court or by or before any Governmental Authority that would adversely affect the Buyers' ability to perform their obligations under this Agreement on a timely basis.

5.6 GST Registration

In the event that the Transaction is an Asset Purchase, the Buyers (or the Assignee or Assignees, as applicable) are or will be registered for goods and services tax purposes under Part IX of the *Excise Tax Act* (Canada).

5.7 Investment Canada Act

Werklund Capital Corporation is a Canadian within the meaning of the Investment Canada Act. Melbye Skandinavia AS qualifies as a WTO investor within the meaning of the Investment Canada Act.

ARTICLE 6 COVENANTS

6.1 Conduct of Business Before Closing

The Seller covenants to the Buyers that, during the period from and including the Execution Date through and including the Closing Date or the earlier termination of this Agreement:

- 6.1.1 **Cooperation.** The Seller will take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or proper, consistent with Applicable Law, to consummate and make effective as soon as possible the Transaction. The Seller will consult and cooperate with the Buyers in connection with proceedings under or relating to any filings, submissions, responses to information requests or the like made hereunder to a Governmental Authority in connection with the Transaction.

6.1.2 **Permits.** The Seller will, without payment of funds to the issuers of Permits required to own or operate the Assets and the Business under Applicable Laws, use reasonable best efforts:

6.1.2.1 if the Transaction is an Asset Purchase, to obtain, and assist the Buyers, at no cost to them, in obtaining such consents, waivers, releases or approvals of any such issuers that are required in order to transfer the Permits to the Buyers, or in obtaining replacement Permits where such consents, waivers, releases or approvals are unavailable; and

6.1.2.2 if the Transaction is a Share Purchase, where the Transaction or the Closing would make a Permit terminable by an issuer thereof, to obtain any consents, waivers or approvals of any issuer of any Permits required to maintain such Permit, or to obtain any replacement Permits where such consents, waivers or approvals are unavailable.

6.1.3 **Access to Records and Properties.**

6.1.3.1 The Seller will, subject to the execution of confidentiality agreements mutually acceptable to the Seller and the Buyers, and subject to the Seller's and Monitor's right to withhold Confidential Sales Information from the Buyers:

6.1.3.1.1 permit the Buyers and their authorized Representatives reasonable access during normal business hours to the Assets and the Seller's senior management and other Employees, and to the Books and Records of the Seller, including access to perform field examinations and inspections of the Assets;

6.1.3.1.2 furnish the Buyers with any financial and operating data and other information with respect to the Seller, the Business or the Assets as the Buyers will reasonably request;

6.1.3.1.3 furnish to the Buyers promptly when prepared the 2012 Annual Financial Statements and the Quarterly Statements;

6.1.3.1.4 provide the Buyers and their Representatives reasonable access to personnel files of Employees; and

6.1.3.1.5 permit the Buyers to make such reasonable inspections and copies thereof as the Buyers may require; provided, however, that the Buyers will use their reasonable best efforts to prevent any such inspection from interfering with the operation of the Business or the duties of any Employee.

6.1.3.2 The Seller authorizes all Governmental Authorities having jurisdiction to release all information in their possession respecting the Business, the Leased Premises, and the Owned Lands to the Buyers, and further

authorizes each of them to carry out inspections of the Leased Premises and Owned Lands upon the request of the Buyers. The Seller will execute any specific authorization pursuant to this Section 6.1.3.2 within three (3) Business Days after being requested to do so by the Buyer.

6.1.4 **Conduct of Business Prior to Closing.** During the period from the Execution Date and until the earlier of the Closing Date and the termination of this Agreement in accordance with Article 10, except as expressly contemplated by this Agreement, and except to the extent expressly required under the Interim Financing Credit Agreement, the CCAA, Applicable Law or any Order of the Court:

6.1.4.1 without the Buyers' prior written consent, the Seller will not directly or indirectly sell or otherwise transfer, or offer, agree or commit to sell or otherwise transfer (in writing or otherwise), any Assets, other than the sale of Inventory in the ordinary course of the Business;

6.1.4.2 without the Buyers' prior written consent, the Seller will not grant or suffer to exist any Encumbrance against any of the Assets other than Permitted Encumbrances;

6.1.4.3 the Seller will notify the Buyers promptly in writing of any Material Adverse Effect or Material Adverse Change;

6.1.4.4 without the Buyers' prior written consent, except as provided for in the KERP, the Seller will not:

6.1.4.4.1 increase the annual level of compensation payable or to become payable by the Seller to any Employee;

6.1.4.4.2 take any action to materially amend any Contract with any Employee;

6.1.4.4.3 grant, or establish or modify any targets, goals, pools or similar provisions in respect of, any bonus, benefit or other direct or indirect compensation to or for any Employee, or increase the coverage or benefits available under any (or create any new) Employee Benefit Plan;

6.1.4.4.4 enter into any employment, deferred compensation, severance, consulting, non-competition or similar agreement (or amend any such agreement) to which the Seller is a party or involving an Employee,

6.1.4.4.5 terminate any Employee or transfer any Employee to any other position;

6.1.4.4.6 hire, engage or retain any new employees or independent contractors to be employed, engaged or retained in connection

with the Business, other than as previously agreed to by the Buyers;

or make any promise or representation, oral or written, or otherwise, in respect of the forgoing;

- 6.1.4.5 subject to the Initial Order and any other Order, the Seller will comply in all material respects with Applicable Laws;
- 6.1.4.6 without the Buyers' prior written consent, and except in the ordinary course of the Business, and in accordance with the Cash Flow Projections, the Seller will not enter into any Contract having a cumulative value, obligation or liability in excess of \$50,000 or that is a Material Contract or amend or modify any Material Contract;
- 6.1.4.7 without the Buyers' prior written consent, the Seller will not cancel or compromise any material Account Receivable or waive or release any right of the Seller that constitutes part of the Assets;
- 6.1.4.8 without the Buyers' prior written consent, the Seller will not enter into any commitment for capital expenditures except pursuant to any Cash Flow Projections approved by the Buyers under the Interim Financing Credit Agreement;
- 6.1.4.9 the Seller will use reasonable best efforts to (1) conduct the Business in substantially the same manner as conducted as of the Execution Date and in accordance with the CCAA, the Initial Order and all other Orders, (2) preserve the existing organization and management of the Business intact, (3) keep available the services of the current Employees, to the extent reasonably feasible, (4) maintain the existing relations with customers, distributors, suppliers and others having business dealings with the Business, to the extent reasonably feasible, (5) refrain from changing in any material respect any of the Seller's product prices or pricing policies (e.g., discount policies) for any of its products except as will be necessary to meet competition or customer requirements, and (6) continue to pay all ordinary course liabilities and obligations including Trade Liabilities arising after the Filing Date;
- 6.1.4.10 the Seller will at all times maintain, preserve and protect all of its Intellectual Property, and preserve all the remainder of the Assets and keep the same in good repair, working order and condition (taking into consideration ordinary wear and tear);
- 6.1.4.11 the Seller will comply with and continue in full force the Insurance Policies; and
- 6.1.4.12 the Seller will maintain in good standing and renew all Permits.

6.1.5 **Disclosure Schedules.** The Seller will notify the Buyers of, and will supplement or amend the Disclosure Schedule with respect to, any matter that (a) arises after the initial delivery of the Disclosure Schedule in accordance with this Agreement and that, if existing or occurring at or prior to such delivery of the Disclosure Schedule would have been required to be set forth or described therein, or (b) makes it necessary to correct any information in the Disclosure Schedule or any representation and warranty of Seller that has been rendered inaccurate thereby. Each such notification and supplementation, to the extent known, will be made no later than two (2) Business Days after discovery thereof and no later than three (3) Business Days before the date set for the Closing by the Parties. Notwithstanding the foregoing, any amendment, deletion or supplement to the Disclosure Schedule that is made by the Seller is required to be satisfactory to the Buyers, in their sole discretion.

6.2 Pre-Closing Covenants of the Buyers

The Buyers covenant to the Seller that, during the period from the Execution Date through and including the Closing Date or the earlier termination of this Agreement:

6.2.1 **Cooperation.** The Buyers will take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or proper, consistent with Applicable Law, to consummate and make effective as soon as possible the Transaction; provided, that the foregoing will not require the Buyers to participate in the Auction.

6.2.2 **Orders.** The Buyers will take such actions as may be reasonably requested by the Seller to assist Seller in obtaining the Court's entry of the SISP Order, the Approval and Vesting Order, the Buyers' CCAA Orders, the Sanction Order and any other Order reasonably necessary to consummate the Transaction.

6.2.3 **Permits.**

6.2.3.1 The Buyers will use reasonable commercial efforts to cooperate with the Seller in the performance by the Seller of its obligations under Section 6.1.2 in respect of any Permits. To the extent that the Seller is unable to assign, transfer or replace a Material Permit, the Buyers will use their reasonable commercial efforts to obtain a replacement Permit, on terms no less materially favorable than such Permit, so as to permit the Buyer to operate the Business as a whole as currently operated in all material respects. If the Buyers are unable to do so by June 5, 2013, and such Permit constitutes a Material Permit, the Buyers in their discretion will have the option of terminating this Agreement pursuant to Section 10.1.3.7 or 10.1.3.8.

6.2.3.2 If the Buyers have the option of terminating this Agreement pursuant to Section 10.1.3.7 or 10.1.3.8 in the circumstances described in Section 6.2.3.1, and the Buyers do not exercise such right within five (5) Business Days of such right arising, then the Buyers will be deemed to have waived

their right to terminate this Agreement under Section 10.1.3.7 or 10.1.3.8, as applicable, and neither the Seller nor the Buyers will be in breach of this Agreement nor will the Purchase Price be adjusted or the Closing delayed.

6.3 Assignment and Assumption of Contracts

- 6.3.1 On or before May 3, 2013, the Buyers will provide to the Seller a list of all Assignable Contracts that the Buyers wish to obtain an assignment of and assume pursuant to an Asset Purchase (the “**Potential Assigned Contracts**”), and the Contracts that the Buyers require the Seller to disclaim under section 32 of the CCAA in a Share Purchase (such Contracts being the “**Disclaimed Contracts**” and the Contracts other than the Disclaimed Contracts being the “**Remaining Contracts**”), identifying the name, parties and date of each such Contract (the “**Contracts List**”), provided that:
- 6.3.1.1 at any time prior to the earlier of May 31, 2013 or the Seller giving notice to its counterparty under a Disclaimed Contract under section 32(1) of the CCAA disclaiming such Disclaimed Contract, the Buyers will be entitled to amend the Contracts List to re-categorize a Contract as a Potential Assigned Contract or Remaining Contract; and
- 6.3.1.2 at any time prior to Closing, the Buyers will be entitled to amend the Contracts List to re-categorize a Contract as a Disclaimed Contract, in which event the Seller will promptly send a notice to the counterparty of such Disclaimed Contract under section 32(1) of the CCAA, provided further that the condition in Section 8.4.3 will not apply to such Disclaimed Contract.
- 6.3.2 Within ten (10) Business Days of the Execution Date, the Seller will provide the Buyers with a schedule setting forth all estimated Cure Amounts in respect of any Assignable Contracts and any other Contracts.
- 6.3.3 Notwithstanding anything contained herein to the contrary, this Agreement will not constitute an agreement to assign any Contract, to the extent that such Contract is not assignable under Applicable Law without a Counterparty Approval. If a Counterparty Approval is required in connection with a Contract, then Sections 6.3.6.1.2, 6.3.6.3 and 6.3.6.4 will apply to such Contract.
- 6.3.4 From and after the Execution Date, the Seller will not disclaim or repudiate any Contract unless listed as a Disclaimed Contract or unless otherwise agreed to in writing by the Buyers.
- 6.3.5 By no later than May 31, 2013, the Seller will give notice to the counterparties to any Disclaimed Contracts under section 32(1) of the CCAA disclaiming the Disclaimed Contracts. If the counterparty to a Disclaimed Contract applies to the Court under section 32(2) of the CCAA for an Order that the Disclaimed Contract is not to be

disclaimed, the Seller will use its reasonable best efforts to prosecute such application, with the reasonable assistance and cooperation of the Buyers, to obtain a dismissal by the Court of such application.

6.3.6 If the Transaction is an Asset Purchase:

6.3.6.1 Subject to the terms and conditions of this Section 6.3 and the Approval and Vesting Order:

6.3.6.1.1 if no Counterparty Approval is required in order to assign to and vest in the Buyers a Potential Assigned Contract, on Closing such Potential Assigned Contract will constitute an Assigned Contract forming part of the Purchased Assets assigned to and vested in the Buyers; and

6.3.6.1.2 if a Counterparty Approval is required in order to assign to and vest in the Buyers a Potential Assigned Contract to the Buyers, then upon the Seller, in accordance with Section 6.3.6.3, either obtaining the Counter-Party Approval or an Order under section 11.3 of the CCAA assigning the rights and obligations under such Potential Assigned Contract, on Closing such Potential Assigned Contract will constitute an Assigned Contract forming part of the Purchased Assets assigned to and vested in the Buyers.

6.3.6.2 The Buyers will have the option of assuming the Assumed Obligations under the Assigned Contracts pursuant to one or more general Assignment and Assumption Agreements to which the counterparties to Assigned Contracts are not party or pursuant to specific Assignment and Assumption Agreements relating to one or more Assigned Contract with the counterparties thereto.

6.3.6.3 In the circumstances contemplated by Section 6.3.6.1.2, the Seller will use reasonable best efforts to obtain all necessary Counterparty Approvals in respect of Potential Assigned Contracts. If the Seller is unable to obtain a necessary Counterparty Approval by no later than May 17, 2013, then the Buyers may, but will not be obliged to, direct the Seller to apply under section 11.3 of the CCAA for an Order of the Court assigning to the Buyers on Closing the rights and obligations of the Seller under such Potential Assigned Contract, which application may form part of the motion for the Approval and Vesting Order. The Seller will provide timely and proper written notice of the motion seeking such Order to all counterparties to any such Potential Assigned Contract and will take all commercially reasonable actions necessary to cause such Potential Assigned Contracts to be assigned to Buyers as of the Closing.

6.3.6.4 In the circumstances contemplated by Section 6.3.6.1.2, the Buyers will use reasonable commercial efforts, without being required to expend monies, to cooperate with the Seller to obtain or consummate the assignment to the Buyers of any Potential Assigned Contracts and will support any motion by the Seller under section 11.3 of the CCAA necessary to obtain such assignment. To the extent that a Potential Assigned Contract is not assignable by the Court under section 11.3 by reason of its nature, or by reason that it is entered into after the Filing Date as contemplated by section 11.3(2)(a), and the Seller is unable to obtain any necessary Counterparty Approval, and such Potential Assigned Contract constitutes a Material Contract, the Buyers will use their reasonable commercial efforts to obtain a replacement Contract on terms no less materially favorable than such Potential Assigned Contract that would permit the Buyer to operate the Business as a whole as currently operated in all material respects. If the Buyers are unable to do so by June 5, 2013, the Buyers in their discretion will have the option of terminating this Agreement pursuant to Section 10.1.3.7.

6.3.7 If the Transaction is a Share Purchase:

6.3.7.1 For greater certainty, upon the completion and consummation of the Transaction, the Seller will continue to be party to the Remaining Contracts.

6.3.7.2 If a Remaining Contract is terminable by the counterparty thereto as a result of the Seller entering into this Agreement or the Closing, the Seller will use reasonable best efforts to obtain the necessary Counterparty Approval in respect of such Remaining Contract. If the Seller is unable to obtain the necessary Counterparty Approval, the Remaining Contract is a Material Contract, and the Buyers are unable to replace such Remaining Contract on terms acceptable to them by no later than June 5, 2013, then the Buyers will have the option of terminating this Agreement pursuant to Section 10.1.3.8.

6.3.8 If the Buyers have the option of terminating this Agreement pursuant to Section 10.1.3.7 or 10.1.3.8, in the circumstances described in Section 6.3.6.4 or 6.3.7.2, and the Buyers do not exercise such right within five (5) Business Days of being able to do so under Section 6.3.6.4 or 6.3.7.2, then the Buyers will be deemed to have waived their right to terminate this Agreement under Section 10.1.3.7 or 10.1.3.8 and neither the Seller nor the Buyers will be in breach of this Agreement nor will the Purchase Price be adjusted or the Closing delayed.

6.4 Employment

6.4.1 The Buyers will deliver to the Seller a list of Employees they intend to hire or retain no later than the Phase 1 Bid Deadline. The Buyers, subject to the KERP Order, have the right, but not the obligation, to offer employment or engage as contractors any or

all of the Employees, on terms and conditions that are substantially similar to those that are presently applicable to such Employees as of the Execution Date, in the case of an Asset Purchase, or require the Seller to terminate any Employees that the Buyers do not wish to retain, in the case of a Share Purchase.

- 6.4.2 If the Transaction is an Asset Purchase, any Employees who accept an offer of employment or engagement as contractors are referred to as “**Transferred Employees**”. The initial terms of employment offered or applicable to any Transferred Employees will be the same in terms of current title, compensation, benefits, hours of work and location, and with duties that are similar to the duties now being performed by such Employees. Prior to Closing, the Seller will terminate all Employees.
- 6.4.3 If the Transaction is a Share Purchase, any Employees who remain in the employ of the Seller and are listed by the Buyers as Employees they wish to retain pursuant to Section 6.4.1 are referred to as the “**Retained Employees**”. Prior to Closing, the Seller will terminate all Employees who are not Retained Employees.
- 6.4.4 The Seller will deliver to the Buyers on or before the Closing Date all personnel files and employment records relating to the Transferred Employees or Retained Employees, as applicable.
- 6.4.5 The Buyers reserve the right in their sole and absolute discretion, subject only to Applicable Law, to establish their own Employee Benefit Plans for Transferred Employees on terms and subject to conditions that are substantially similar to any Employee Benefit Plan of the Seller in existence as of the Execution Date, in which event, at the request of the Buyers, the Seller will terminate any Employee Benefit Plan of the Seller prior to Closing.
- 6.4.6 Except as specified in this Agreement, or otherwise agreed in writing by the Buyers, the Buyers will not be obligated to provide any severance, separation pay, or other payments or benefits, including any KERP Obligations, to any Employee who is not a Transferred Employee or Remaining Employee on account of any termination of such Employee’s employment on or before the Closing, and such payments and benefits (if any) will remain obligations of the Seller to be dealt with in accordance with the CCAA Proceedings.

6.5 Personally Identifiable Information

The Buyers will honor and observe, in connection with the Transaction, all applicable Privacy Laws with respect to the collection, use, transfer and disclosure of personal information about the Employees. In particular:

- 6.5.1 the collection, use and disclosure of Personal Information by the Buyers before the Closing is restricted to those purposes that relate to the Transaction;

- 6.5.2 the Buyers will use and disclose the Personal Information transferred to them under the terms of this Agreement solely for the purposes for which that Personal Information was collected or permitted to be used or disclosed before the Transaction was completed;
- 6.5.3 the Buyers will neither use nor disclose any of that Personal Information for any purpose other than carrying on the Business;
- 6.5.4 the Buyers will protect that Personal Information by security safeguards appropriate to the sensitivity of the information; and
- 6.5.5 the Buyers will give effect to any withdrawal of consent made in accordance with Privacy Laws.

6.6 Post-Closing Access to Records and Accounts Receivable

- 6.6.1 If the Transaction is an Asset Purchase, following Closing, the Buyers and Seller agree to permit their respective Representatives to have access, at reasonable times and in a manner so as not to unreasonably interfere with their normal business operations, to the Books and Records acquired pursuant to this Agreement so as to enable the Buyers and Seller to prepare Tax, financial or court filings or reports, to respond to court orders, subpoenas or inquiries, investigations, audits or other proceedings of Governmental Authorities, to prosecute and defend legal actions or for other like purposes, and for the purposes of winding-down or administering the estate of the Seller. If a Party desires to dispose of any such records, such Party will, prior to such disposition, provide the other Parties with a reasonable opportunity to remove such of the records to be disposed of at the removing Party's expense.
- 6.6.2 If the Transaction is an Asset Purchase, any Accounts Receivable related to the Business collected by the Seller (or other proceeds collected or derived from a Purchased Asset by the Seller) from and after the Closing will be held in trust for the benefit of the Buyers, and such funds will not form part of the Seller's property or assets or otherwise be made available to Seller's stakeholders, and will promptly be paid to, and for the benefit of, the Buyers.

6.7 Casualty

If, between the date of this Agreement and the Closing, any of the Seller Assets will be destroyed, damaged or rendered inoperable in whole or in a material part by fire, earthquake, flood, other casualty or any other cause (a "**Casualty**"), then the Buyers will either:

- 6.7.1 if as the result of a material Casualty where the Buyers cannot operate the Business as a whole as currently operated in all material respects, notify the Seller that such Casualty is material, in which case the Buyers will have the right to terminate this Agreement pursuant to Section 10.1.3.10 of this Agreement; or

- 6.7.2 acquire the Purchased Assets or Purchased Shares, as applicable, on an “as is” basis and in the case of an Asset Purchase take an assignment from the Seller of all insurance proceeds payable to the Seller in respect of the Casualty.

ARTICLE 7 COURT APPLICATIONS

7.1 **SISP Order**

As promptly as practicable after the Execution Date, the Seller will file with the Court a motion, served on such Persons as agreed to by the Seller, the Monitor and the Buyers, each acting reasonably, seeking an Order approving of the execution and delivery of this Agreement and the performance of those provisions applicable prior to Closing (with the intent that the performance of the provisions applicable on Closing be approved by the Approval and Vesting Order, if the Transaction is an Asset Purchase, or the Sanction Order, if the Transaction is a Share Purchase), approving the Break Fee and its payment in accordance with Section 2.5.3, and approving the SISP, which Order will be substantially in the form attached as Schedule 7.1 (with such changes thereto as the Buyers, Seller and Monitor approve in writing, such approval not to be unreasonably withheld, conditioned or delayed) (such order as approved being the “**SISP Order**”).

7.2 **Approval and Vesting Order**

If the Transaction is an Asset Purchase, within three (3) Business Days of the termination of the SISP pursuant to sections 14, 24 or 35 of the SISP, or three (3) Business Days of this Agreement being identified by the Monitor as the Successful Bid, the Monitor will file with the Court a motion, served on such Persons as agreed to by the Seller, the Monitor and the Buyers, each acting reasonably, to be heard as soon as practicable thereafter, seeking an Order approving the Transaction and the performance of those provisions of this Agreement applicable to Closing, and conveying and assigning to and vesting in the Buyers all of the right, title and interest of the Seller in and to the Purchased Assets, free and clear of any Encumbrances or Claims other than Permitted Encumbrances, which Order will be substantially in the form agreed to by the Buyers, the Seller and the Monitor, each acting reasonably (with such changes thereto as the Buyers, Seller and Monitor approve in writing, such approval not to be unreasonably withheld, conditioned or delayed) (such order as approved being the “**Approval and Asset Order**”).

7.3 **Buyers’ CCAA Plan**

- 7.3.1 Within a reasonable time subsequent to the Execution Date, the Monitor will apply for an Order establishing a procedure for identifying and quantifying any Affected Claims against the Seller and setting the last date by which a proof of an Affected Claim or a dispute or notice of an Affected Claim can be filed, which Order will be substantially in the form agreed to by the Buyers, the Seller and the Monitor, each acting reasonably (with such changes thereto as the Buyers, Seller and Monitor

approve in writing, such approval not to be unreasonably withheld, conditioned or delayed) (such order as approved being the “**Claims Procedure Order**”).

7.3.2 By no later than the Phase 1 Bid Deadline, the Buyers will provide to the Seller and the Monitor a schedule summarizing the terms and conditions of the CCAA Plan that the Buyers require the Seller to submit to a meeting of Affected Creditors under section 6 of the CCAA in the event that the Transaction is a Share Purchase (such CCAA Plan being the “**Buyers’ CCAA Plan**”), which schedule shall be attached to and form part of this Agreement as Schedule 7.3.2.

7.3.3 If the Monitor makes a determination under sections 14, 24 or 35 of the SISF to terminate the SISF or under section 42 of the SISF that the Buyers are the Successful Bidders, at the request of the Buyers the Monitor will file within five (5) Business Days of such request, a motion with the Court, served on such Persons as agreed to by the Seller, the Monitor and the Buyers, each acting reasonably, seeking an Order:

7.3.3.1 approving the Transaction and the performance of those provisions of this Agreement applicable to Closing;

7.3.3.2 accepting the filing of the Buyers’ CCAA Plan with the Court; and

7.3.3.3 calling for and setting the date for one or more meetings of Affected Creditors to permit the Affected Creditors to vote upon whether or not to agree to the Buyers’ CCAA Plan,

which Order will be substantially in a form agreed to by the Buyers, Seller and Monitor, each acting reasonably (with such changes thereto as the Buyers, Seller and Monitor approve in writing, such approval not to be unreasonably withheld, conditioned or delayed) (such order as approved being the “**Buyers’ CCAA Plan Orders**”).

7.3.4 If the Monitor determines that the Buyers are the Successful Bidders under the SISF, and the class or classes of Affected Creditors have approved the Buyers’ CCAA Plan in accordance with section 6 of the CCAA, then within three (3) Business Days after the later of such determination or such approval, at the request of the Buyers the Monitor will file a motion with the Court, served on such Persons as agreed to by the Seller, the Monitor and the Buyers, each acting reasonably, seeking a Sanction Order in respect of the Buyers’ CCAA Plan.

7.3.5 The Seller will oppose the filing or submission to its creditors of any CCAA Plan other than the Buyers’ CCAA Plan, unless such CCAA Plan is submitted by a Successful Bidder other than the Buyers.

7.4 Procedure

7.4.1 The Seller, the Monitor and the Buyers will cooperate with filing and prosecuting the motions for the SISF Order, the Approval and Vesting Order, the Claims Procedure

Order, the Buyers' CCAA Plan Orders and the Sanction Order, and obtaining the issuance and entry of the SISP Order, the Approval and Vesting Order, the Claims Procedure Order, the Buyers' CCAA Plan Orders and the Sanction Order, and the Monitor and the Seller will deliver to the Buyers prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for the Buyers and their counsel to review and comment, copies of all proposed pleadings, motions, responses to objections, notices, statements, schedules, applications, reports and other material papers to be filed by the Monitor and the Seller in connection with such motions and the relief requested therein and any challenges thereto.

- 7.4.2 If the SISP Order, Approval and Vesting Order, the Claims Procedure Order, any of the Buyers' CCAA Plan Orders or the Sanction Order is appealed by any Person (or a petition for *certiorari* or motion for rehearing, re-argument or stay is filed with respect thereto), the Seller and the Monitor will take all reasonable steps, and use their commercially reasonable efforts, to defend against such appeal, petition or motion, and the Buyers agree to reasonably cooperate in such efforts. Each of the Parties agree to use commercially reasonable efforts to obtain an expedited resolution of such appeal, petition or motion. Subject to the conditions set forth herein, nothing will preclude the Parties from agreeing to consummate the Transaction if the Approval and Vesting Order and/or the Sanction Order has been entered and has not been stayed, modified, revised or amended.

ARTICLE 8 CLOSING CONDITIONS

8.1 Mutual Conditions

The obligations of Buyers and the Seller to complete and consummate the Transaction are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyers and the Sellers:

- 8.1.1 the CCAA Proceedings will not have been terminated;
- 8.1.2 the SISP Order and either (a) if the Transaction is an Asset Purchase, the Approval and Vesting Order, and (b) if the Transaction is a Share Purchase, the Claims Procedure Order, the Buyers' CCAA Orders and the Sanction Order, will have been issued and entered by the Court, and will not have been stayed, varied or vacated;
- 8.1.3 no order of any court or Governmental Authority will have been issued and no action or proceedings will be pending to restrain or prohibit the completion and consummation of the Transaction; and
- 8.1.4 this Agreement will have been determined by the Monitor to be the Successful Bid in the SISP.

8.2 Conditions Precedent to Performance by Seller

The obligation of Seller to consummate the Transaction is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Seller in its sole discretion:

- 8.2.1 the representations and warranties of the Buyers made in this Agreement will be true and correct in all material respects; and
- 8.2.2 the Buyers will have performed in all material respects all obligations required under this Agreement or any Ancillary Agreements to which they are party that are to be performed by them on or before the Closing Date (except with respect to the obligation to pay the Cash Portion of the Purchase Price in accordance with the terms of this Agreement).

8.3 General Conditions Precedent to the Performance by Buyers

The obligations of Buyers to consummate the Transaction are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyers in their sole discretion:

- 8.3.1 the representations and warranties of Seller made in this Agreement that are qualified by a materiality standard, in each case, will be true and correct, and the representations and warranties of Seller made in this Agreement that are not qualified by a materiality standard, in each case, will be true and correct in all material respects;
- 8.3.2 the Seller will have performed in all material respects all obligations required under this Agreement that are to be performed by it on or before the Closing Date (except with respect to any obligations qualified by materiality, which obligations will be performed in all respects as required under this Agreement); and
- 8.3.3 there shall not have occurred a Material Adverse Effect or Material Adverse Change.

The conditions set out in Section 8.3.1 will be deemed to be satisfied upon the expiry of the Phase 1 Bid Deadline, except with respect to (a) any matter of which the Seller was aware prior to the Execution Date that renders a representation or warranty of the Seller in this Agreement inaccurate or that ought to have been disclosed in the Disclosure Schedule and was not, or arises after the Execution Date that renders any such representation and warranty materially inaccurate, (b) any matter in respect of which the Seller is required to provide notice to the Buyers under Sections 6.1.3.1, 6.1.4.3 and 6.1.5 and which constitutes a Material Adverse Change, in which event such condition must be satisfied in respect of such matters on the Closing Date, (c) and the representations and warranties set out in Sections 4.1.1, 4.2 and 4.3.1, which shall be deemed to be repeated on Closing.

8.4 Conditions Precedent to the Performance by Buyers – Share Purchase

If the Transaction is a Share Purchase, the obligations of Buyers to consummate the Transaction are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyers in their sole discretion:

- 8.4.1 the Seller will have terminated any Employees who are not Retained Employees;
- 8.4.2 any resignations of Retained Employees occurring prior to Closing shall not constitute a Material Adverse Change;
- 8.4.3 the Seller will have disclaimed in accordance with Section 6.3.5 and section 32 of the CCAA any Disclaimed Contracts and no counterparty to any Disclaimed Contract will have obtained an Order of the Court that such Contract is not disclaimed or applied for such an Order where such application has not been dismissed by a final Order;
- 8.4.4 the Buyers will be satisfied with the Tax losses and attributes of the Seller;
- 8.4.5 the Buyers' CCAA Plan will have been approved by the Affected Creditors in accordance with section 6 of the CCAA;
- 8.4.6 the Buyers' CCAA Plan Orders and Sanction Order will have been made by the Court and will not have been stayed, varied or vacated;
- 8.4.7 on Closing, pursuant to the Buyers' CCAA Plan, the authorized capital of the Seller will consist of an unlimited number of Class A voting shares (together with such other classes of Shares as are provided for in the Buyers' CCAA Plan), and upon issuance the Purchased Shares will be fully paid;
- 8.4.8 the Seller will have the full corporate power and authority pursuant to the Buyers' CCAA Plan and the Sanction Order to issue the Purchased Shares and upon issuance to the Buyers, the Purchased Shares will be duly authorized and delivered;
- 8.4.9 the issue to and vesting in the Buyers of the Purchased Shares will not on Closing conflict with or result in the breach of any of the Seller's articles, as such articles are amended by the Buyers' CCAA Plan; and
- 8.4.10 the Seller will have obtained any regulatory approvals necessary in connection with the Buyers' CCAA Plan and the Closing.

The condition set out in Section 8.4.4 will be deemed to be satisfied upon the expiry of the Phase 1 Bid Deadline unless the Buyers have given written notice to the Seller and Monitor that it is not satisfied.

8.5 Conditions Precedent to the Performance by Buyers – Asset Purchase

If the Transaction is an Asset Purchase, the obligations of Buyers to consummate the Transaction are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which may be waived by Buyers in their sole discretion:

- 8.5.1 in respect of each Assigned Contract that is a Material Contract and that requires a Counterparty Approval, either the counterparty to such Assigned Contract will have provided the Counterparty Approval, in form and substance satisfactory to the Buyers, or an Order will have been made by the Court under section 11.3 of the CCAA assigning the rights and obligations of the Seller under the Assigned Contract to the Buyers;
- 8.5.2 the Seller will have terminated all Employees;
- 8.5.3 the Transferred Employees will have entered into employment agreements on substantially similar terms and conditions as those applicable as of the Execution Date with the Buyers which are in form and substance acceptable to the Buyers;
- 8.5.4 a Material Adverse Change does not or would not result from Employees who are listed pursuant to Section 6.4.1 as Employees the Buyers wish to hire not accepting an offer of employment or engagement;
- 8.5.5 the Material Permits will have been transferred to Buyers or substituted, amended or new Permits will have been issued to Buyers in form and substance reasonably acceptable to Buyers; and
- 8.5.6 the Approval and Vesting Order will have been made by the Court and will not have been stayed, varied or vacated.

ARTICLE 9 CLOSING ARRANGEMENTS

9.1 Closing

The Closing will be held on the Closing Date at 10:00 a.m., local time, in the offices of counsel to the Buyers, or at such other place and time as may be mutually agreed to in writing by the Parties. All proceedings to be taken and all documents to be executed and delivered by all Parties at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

9.2 Closing Deliveries

- 9.2.1 If the Transaction is an Asset Purchase, at the Closing the Seller will deliver to the Buyers the following:

- 9.2.1.1 a certified copy of the issued and entered Approval and Vesting Order, pursuant to which the sale, transfer, assignment, conveyance and delivery by Seller of the Purchased Assets to Buyers will be effected;
 - 9.2.1.2 to the extent reasonably required by the Buyer, any Ancillary Agreements fully executed and delivered by the Seller or by the Monitor for and on behalf of the Seller;
 - 9.2.1.3 by wire transfer to the Buyers the Purchased Assets described in Section 1.1.112.1;
 - 9.2.1.4 where a Counterparty Approval is required in respect of an Assigned Contract, a Counterparty Approval fully executed and delivered by the relevant counterparty, or a certified copy of an issued and entered Order under section 11.3 of the CCAA assigning to the Buyers the rights and obligations under such Assigned Contract;
 - 9.2.1.5 a duly executed receipt for the Purchase Price paid or delivered at Closing;
 - 9.2.1.6 the elections referred to in Section 3.5, duly executed and delivered by the Seller or the Monitor for and on behalf of the Seller;
 - 9.2.1.7 possession of the Purchased Assets (including all keys to the any Owned Real Property or Leases Premises which form part of the Purchased Assets, combinations to any safes thereon and passwords for all computers thereon and any security devices therein) on an "as is, where is" basis, provided that delivery will occur *in situ* wherever such Purchased Assets are located on the Closing Date;
 - 9.2.1.8 the Monitor's Certificate;
 - 9.2.1.9 any consents or approvals for the assignment or transfer of Permits as provided in Section 6.2.3 of this Agreement; and
 - 9.2.1.10 all such other documents and instruments as the Buyers may reasonably require.
- 9.2.2 If the Transaction is an Asset Purchase, at the Closing the Buyers will deliver to the Seller the following:
- 9.2.2.1 the payments referred to in Section 3.2.1.2;
 - 9.2.2.2 the Ancillary Agreements to which the Buyers are party, duly executed and delivered by the Buyers;
 - 9.2.2.3 the elections referred to in Section 3.5, duly executed and delivered by the Buyers; and

- 9.2.2.4 Assignment and Assumption Agreements required hereunder in respect of the Assigned Contracts, duly executed and delivered by the Buyers; and
 - 9.2.2.5 all such other documents and instruments as the Seller may reasonably require.
- 9.2.3 If the Transaction is a Share Purchase, at Closing the Seller will deliver to the Buyer the following:
- 9.2.3.1 duly issued certificates representing the Purchased Shares in the name of the Buyers, as provided in Section 2.1.1, and the Buyers will be reflected as owners of the Purchased Shares in the Share Register;
 - 9.2.3.2 a certified copy of the Sanction Order and the Monitor's Certificate;
 - 9.2.3.3 the minute books and corporate seals of the Seller;
 - 9.2.3.4 a duly executed receipt for the Purchase Price paid or delivered at Closing;
 - 9.2.3.5 a certificate of status issued in respect of the Seller;
 - 9.2.3.6 in respect of any Remaining Contract where a Counterparty Approval is required hereunder, a Counterparty Approval executed and delivered by the counterparty to such Remaining Contract; and
 - 9.2.3.7 all such other documents and instruments as the Buyers may reasonably require.
- 9.2.4 If the Transaction is a Share Purchase, at Closing the Buyers will deliver to the Seller the following:
- 9.2.4.1 the payment referred to in Section 3.2.1.2; and
 - 9.2.4.2 all such other documents and instruments as the Seller may reasonably require.

ARTICLE 10 TERMINATION

10.1 Conditions of Termination

This Agreement may be terminated only in accordance with this Section 10.1 as follows:

- 10.1.1 by mutual written consent of Seller, the Monitor and Buyers;
- 10.1.2 automatically and without any action or notice by either the Seller to Buyers, or Buyers to Seller, immediately upon:

- 10.1.2.1 the issuance of a final and non-appealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Purchased Assets or Purchased Shares contemplated hereby; or
- 10.1.2.2 the consummation of an Alternate Transaction;
- 10.1.3 by Buyers:
 - 10.1.3.1 if the SISP Order will not have been issued and entered by April 19, 2013 or such other date as agreed to in writing by the Buyers;
 - 10.1.3.2 if the Auction has not concluded by June 21, 2013 or such later date as agreed to in writing by the Buyers;
 - 10.1.3.3 if the Transaction is an Asset Purchase, the Court has not issued and entered the Approval and Vesting Order and the Transaction has not Closed (other than as a result of a breach of this Agreement by the Buyers) by June 28, 2013 or such later date as agreed to in writing by the Buyers;
 - 10.1.3.4 if the Transaction is a Share Purchase, the Court has not issued and entered the Buyers' CCAA Plan Orders and the Sanction Order and the Transaction has not Closed (other than as a result of a breach of this Agreement by the Buyers) by July 17, 2013 or such later date as agreed to in writing by the Buyers;
 - 10.1.3.5 if there has been a material violation or breach by any Seller of any obligation of the Seller under this Agreement, which (1) has rendered the satisfaction of any condition to the obligations of Buyers impossible or is not curable or, if curable, has not been cured one (1) day prior to the Closing Date, and (2) has not been waived by Buyers;
 - 10.1.3.6 if, prior to the Closing Date, a receiver, receiver and manager, interim receiver, custodian, trustee in bankruptcy or similar official will be appointed with respect to the Seller or its Assets;
 - 10.1.3.7 if the Transaction is an Asset Purchase, there will be excluded from the Purchased Assets any Material Contract or Material Permit that is not assignable or transferable pursuant to Applicable Law without the consent of any Person other than Seller, to the extent that such consent or approval will not have been given prior to the Closing, or the Court has not ordered the assignment of such Material Contract pursuant to section 11.3 of the CCAA, and such Assigned Contract or Permit is required for the Buyers to operate the Business as currently operated in all material respects, subject to Buyers having complied with their covenants in Sections 6.2.3 and 6.3.

- 10.1.3.8 if the Transaction is a Share Purchase, a Material Contract or Material Permit is or will be terminable by the counterparty to such Material Contract or by the issuer of the Material Permit as a result of the Seller entering into this Agreement or the Closing, and such Material Contract or Material Permit is required for the continued operation of the Business after Closing as currently operated in all material respects, subject to the Buyers having complied with their covenants in Sections 6.2.3 and 6.3;
 - 10.1.3.9 if there occurs a Material Adverse Change between the Execution Date and the Closing Date that is not subsequently waived by the Buyers;
 - 10.1.3.10 if there occurs a Casualty as provided in Section 6.7.1; or
 - 10.1.3.11 if the Transaction is a Share Purchase, the conditions set out in Sections 8.1, 8.3 and 8.4 are not satisfied or waived (unless the conditions set out in Sections 8.1, 8.3 and 8.5 are satisfied or waived, in which event the Transaction is converted to an Asset Purchase), and if the Transaction is an Asset Purchase, the conditions set out in Sections 8.1, 8.3 and 8.5 are not satisfied or waived;
- 10.1.4 by Seller, with the consent of the Monitor:
- 10.1.4.1 if there has been a material violation or breach by Buyers of any agreement, or any representation or warranty of the Buyers in this Agreement is materially inaccurate, and the Seller has given written notice to the Buyers promptly upon becoming aware of such violation, breach or inaccuracy, which (x) has rendered the satisfaction of any condition to the obligations of Seller impossible or is not curable or, if curable, has not been cured on or one (1) day prior to the Closing Date following receipt by Buyers of written notice of such breach from Seller, and (y) has not been waived by Seller; or
 - 10.1.4.2 if the Closing will not have occurred by July 30, 2013 and such failure to Close is not caused by or the result of Seller's breach of this Agreement.

10.2 Effect of Termination

In the event of termination pursuant to Section 10.1, this Agreement will become null and void and have no effect and neither Party will have any liability to the other (other than those provisions of Sections 2.5.3, 6.5 or any other provisions that expressly survive termination or obligations to be performed on or after the Closing).

ARTICLE 11 GENERAL

11.1 Covenants of the Buyers

The covenants of the Buyers contained in this Agreement are several in nature, such that each Buyer will only have responsibility for its own performance of the covenants and will not be responsible for the performance by the other Buyer of the covenants.

11.2 Survival

No representations, warranties, covenants and agreements of Seller and Buyers made in this Agreement will survive the Closing Date except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, including Buyers' assumption of the Assumed Obligations or as otherwise expressly provided in this Agreement.

11.3 Successors and Assigns

11.3.1 Each Buyer will have the right to assign to an Affiliate, or both Buyers will have a right to assign to a Person in whom the Buyers hold all of the issued and outstanding securities, any of their rights or obligations in whole or in part (including the right to acquire any of the Purchased Assets or Purchased Shares) (such assignee being an "Assignee"). In the event of any assignment pursuant to this Section 11.3.1, (a) the Assignee will thereafter perform all of the obligations of the assigning Buyer under this Agreement, including execute and deliver all agreements, instruments and other documents contemplated by Sections 9.2.2 and 9.2.4, and have all of the rights, benefits and remedies of the assigning Buyer under this Agreement, provided that the assigning Buyer or Buyers will remain liable for any breach by the Assignee of any such obligations, and (b) the Assignee will be assume the obligations of the assigning Buyer under this Agreement pursuant to a written assumption agreement with the Seller, the Monitor and the other Buyer (if applicable), will be upon its execution and delivery of such assumption agreement a Party to this Agreement.

11.3.2 The Seller will not assign this Agreement or any of its rights or obligations hereunder and any such assignment will be void and of no effect.

11.3.3 This Agreement will inure to the benefit of and will be binding upon the successors and permitted assigns of the Parties, including any trustee in bankruptcy, receiver, receiver and manager, interim receiver, custodian or similar official appointed with respect to the Seller or its property.

11.4 Governing Law

This Agreement will be construed, performed and enforced in accordance with, and governed by, the Laws of the Province of Alberta and the federal laws of Canada applicable therein, without giving effect to the principles of conflicts of laws thereof.

11.5 Submission to Jurisdiction

Each of the Parties irrevocably and unconditionally submits and attorns to the exclusive jurisdiction of the Court to determine all issues, whether at law or in equity arising from this Agreement. To the extent permitted by Applicable Law, each of the Parties:

- 11.5.1 irrevocably waives any objection, including any Claim of inconvenient forum, that it may now or in the future have to the venue of any legal proceeding arising out of or relating to this Agreement in the Court, or that the subject matter of this Agreement may not be enforced in the Court;
- 11.5.2 irrevocably agrees not to seek, and waives any right to, judicial review by any court which may be called upon to enforce the judgment of the Court, of the substantive merits of any suit, action or proceeding; and
- 11.5.3 to the extent a Party has or may acquire any immunity from the jurisdiction of any court or from any legal process, whether through service or notice, attachment before judgment, attachment in aid of execution, execution or otherwise, with respect to itself or its property, that Party irrevocably waives that immunity in respect of its obligations under this Agreement.

11.6 Expenses

Except as otherwise provided in this Agreement, each of the Parties will pay their own expenses in connection with this Agreement and the Transaction including any legal and accounting fees and commissions or finder's fees, whether or not the Transaction is consummated. Notwithstanding any other provision of this Agreement, the Buyers will pay the cost of all surveys, title insurance policies and title reports ordered by Buyers.

11.7 Payment and Currency

Any money to be advanced, paid or tendered by one Party to another under this Agreement must be advanced, paid or tendered by bank draft, certified cheque or wire transfer of immediately available funds payable to the Person to whom the amount is due. Unless otherwise specified, the word "dollar" and the "\$" sign refer to Canadian currency, and all amounts to be advanced, paid, tendered or calculated under this Agreement are to be advanced, paid, tendered or calculated in Canadian currency.

11.8 Tender

Any tender of documents or money under this Agreement may be made upon the Parties or their respective counsel.

11.9 Time of Essence

Time is of the essence in all respects of this Agreement.

11.10 Notices

Any Communication must be in writing and either delivered personally or by courier, or transmitted by facsimile, e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid. Any Communication must be sent to the intended recipient at its address as follows:

11.10.1 to the Seller at:

RS Technologies Inc.
233 Mayland Place NE
Calgary, Alberta T2E 7Z8

Attention: Howard Elliott, President and Chief Executive Officer
Tel. No.: (734) 508-6483
Facsimile No.: (519) 682-3786
E-mail: HRE@rspoles.com

with a copy to:

Blake Cassels & Graydon LLP
855 - 2nd Street S.W.
Suite 3500, Bankers Hall East Tower
Calgary AB T2P 4J8

Attention: Kelly J. Bourassa and Ryan Zahara
Tel. No.: (403) 260-9697/(403) 260-9628
Facsimile No.: (403) 260-9700
E-mail: kelly.bourassa@blakes.com / ryan.zahara@blakes.com

11.10.2 to the Monitor at:

F T I Consulting Canada Inc.
1000, 888-3rd Street SW
Bankers Hall, West Tower
Calgary, AB T2P 5C5

Attention: Deryck Helkaa, Senior Managing Director

Tel. No.: (403) 444-5372
Facsimile No.: (403) 444-6699
E-mail: deryck.helkaa@fticonsulting.com

with a copy to:

McCarthy Tétrault LLP
3300, 421-7th Avenue S.W.
Calgary, AB T2P 4K9

Attention: Sean Collins
Tel. No.: (403) 260-3531
Facsimile No.: (403) 260-3501
E-mail: scollins@MCCARTHY.CA

11.10.3 to the Buyers at:

Werklund Capital Corporation
4500 Devon Tower
400 - 3rd Avenue SW
Calgary AB T2P 4H2

Attention: Stefan Erasmus, President
Tel. No.: (403) 231-2086
Facsimile No.: (403) 231-6549
E-mail: stefan.erasmus@werklund.com

Melbye Skandinavia AS
Prost Stabelsvei 22
2021 Skedsmokorset
Norway

Attention: Christian Aasheim, President
Tel. No.: 011-47-63-87-0150
Facsimile No.: 011-47-63-87-0151
E-mail: cha@melbye.no

with a copy to:

Gowling Lafleur Henderson LLP
1400, 700 - 2 Street SW
Calgary, Alberta T2P 4V5

Attention: Tom Cumming and Jeff Oliver
Tel. No.: (403) 298-1938 / (403) 298-1818
Facsimile No.: (403) 695-3538
E-mail: tom.cumming@gowlings.com / jeffrey.oliver@gowlings.com

or at any other address as any Party may at any time advise the other by Communication given or made in accordance with this Section 11.10. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 5:00 pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

11.11 Amendments: Waivers

This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by Buyers and Seller, or in the case of a waiver, by the Party waiving compliance. Any waiver by any Party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, will not be deemed to be or construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

11.12 Entire Agreement

This Agreement and the Ancillary Agreements contain the entire understanding between the Parties with respect to the Transaction and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to the Transaction. All Schedules and any documents and instruments delivered pursuant to any provision of this Agreement are expressly made a part of this Agreement as fully as though completely set forth herein.

11.13 Seller Disclosures

After notice to and consultation with Buyers, Seller will be entitled to disclose, if required by Applicable Law or by Order of the Court, this Agreement and all information provided by Buyers in connection herewith to the Court, the Monitor, parties in interest in the CCAA Proceedings and other Persons bidding on assets of Seller. Other than statements made in the Court (or in pleadings filed therein), Seller will not issue (prior to, on or after the Closing) any press release or make any public statement or public communication with respect to the Agreement or transactions contemplated thereby without the prior written consent of Buyers, which will not be unreasonably withheld or delayed; provided, however, that Seller, without the prior consent of Buyers, may issue such press release or make such public statement as may, upon the advice of counsel, be required by Applicable Law, any Governmental Authority with competent jurisdiction or any listing agreement with any national securities exchange, provided further that the Seller will act reasonably in permitting the Buyers to comment on such release or public statement, and in considering any such comments.

11.14 Monitor

- 11.14.1 The Parties acknowledge and agree that the Monitor will be entitled to file the Monitor's Certificate with the Court without independent investigation upon receiving confirmation from the Seller that all conditions of Closing in favour of the Seller have been satisfied by the Buyers or waived by the Seller, and the Monitor will have no liability to the Seller or the Buyers or any other Person as a result of filing the Monitor's Certificate upon receiving such confirmation.
- 11.14.2 Except with respect to Article 7, FTI Consulting Canada Inc. has executed and delivered this Agreement for and on behalf of the Seller and in its capacity as Monitor and not in its personal capacity, and none of the terms, provisions, covenants or conditions of this Agreement (other than in Article 7) will be enforceable against the Monitor. With respect to Article 7, the Monitor has executed this Agreement as a Party to this Agreement, in its capacity as Monitor and not in its personal capacity, but is not a party to this Agreement in any other respect.

11.15 General Release

Effective upon the Closing, the Seller, on behalf of itself and its estate, acknowledges that it has no claim, counterclaim, setoff, recoupment, action or cause of action of any kind or nature whatsoever against Buyers and any of their Related Persons, that directly or indirectly arise out of, are based upon, or in any manner are connected with the pre-Filing Date agreements to which Buyers (or their Affiliates) and the Seller were parties and all transactions referred to in such agreements (the "**Released Claims**"). Should any Released Claims nonetheless exist, the Seller hereby (i) releases and discharges each of the Buyers and their Related Persons from any liability whatsoever on such Released Claims and (ii) releases, waives and discharges all such Released Claims against any of the Buyers and their Related Persons.

11.16 Further Assurances

Each Party will, at the requesting Party's cost and expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the requesting Party to give effect to this Agreement and, without limiting the generality of this Section 11.16, will do or cause to be done all acts and things, execute and deliver or cause to be executed and delivered all agreements and documents and provide any assurances, undertakings and information as may be required at any time by all Governmental Authorities.

11.17 No Broker

Each Party represents and warrants to the other Party that all negotiations relating to this Agreement and the Transaction have been carried on between them directly, without the intervention of any other Person on behalf of any Party in such manner as to give rise to any valid Claim against the Buyers or the Seller for a brokerage commission, finder's fee or other similar payment.

11.18 Severability

Each Section of this Agreement is distinct and severable. If any Section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that Section, in whole or in part, will not affect the legality, validity or enforceability of the remaining Sections of this Agreement, in whole or in part, or the legality, validity or enforceability of that Section, in whole or in part, in any other jurisdiction.

11.19 Counterparts and Electronic Delivery

This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission, and those counterparts will together constitute one and the same instrument.

Each of the Parties has executed and delivered this Agreement as of the date noted at the beginning of the Agreement.

RS TECHNOLOGIES INC., by
FTI CONSULTING CANADA INC., in its
capacity as Monitor and not in its personal
capacity
Per:

Name:
Title:

WERKLUND CAPITAL CORPORATION
Per:

Name:
Title:

MELBYE SKANDINAVIA AS
Per:

Name:
Title:

FTI CONSULTING CANADA INC., in its
capacity as Monitor and not in its personal
capacity
Per:

Name:
Title:

SCHEDULE 1.1.25
Form of Bill of Sale

Attached.

SCHEDULE 1.1.126
SISP

Attached.

SCHEDULE 4
Disclosure Schedule

To be attached by no later than 10 Business Days from the Execution Date.

SCHEDULE 7.1
SISP Order

Attached.

SCHEDULE 7.3.2
Summary of Buyers' CCAA Plan

To be attached by no later than the Phase 1 Bid Deadline.