

PARAGON INC.

and

2408761 ONTARIO INC.

and

ESC CORPORATE SERVICES LTD.

ASSET PURCHASE AGREEMENT

July 28, 2020

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THIS ASSET PURCHASE AGREEMENT is dated July 28, 2020

BETWEEN:

PARAGON INC., a corporation existing under the laws of the Province of Ontario,
(“**Paragon**”)

- and -

2408761 ONTARIO INC., a corporation existing under the laws of the Province
of Ontario,

(“**RepoLot**” and, together with Paragon, the “**Companies**”)

and

WILLIAM MEANY, an individual resident in the Province of Ontario, solely for
purposes of Section 7.11,

(“**William**”)

- and -

ESC CORPORATE SERVICES LTD., a corporation amalgamated under the
laws of the Province of Ontario,

(the “**Purchaser**”).

RECITALS:

- A. The Companies are in the business of repossession of secured collateral and related services (the “**Business**”).
- B. The Purchaser wishes to purchase from the Companies and each of the Companies wishes to sell, transfer and assign to the Purchaser, the undertaking and substantially all of the property and assets used by each of the Companies in carrying on the Business upon the terms and conditions set forth in this Agreement.
- C. Each of the Companies supports the sale of the Purchased Assets (as defined herein) to the Purchaser on the terms and subject to the conditions set forth in this Agreement.

THEREFORE, the Parties agree as follows:

ARTICLE 1 PURCHASE AND SALE

1.1 Purchase and Sale

- (a) Purchased Assets. In consideration for the Purchase Price, the Companies shall sell, assign and transfer to Purchaser and Purchaser shall purchase from the Companies

on the Closing Date, the Purchased Assets, which Purchased Assets shall be sold, assigned and transferred free from any Encumbrances, other than Permitted Encumbrances.

- (b) Excluded Assets. Nothing contained herein or in any Related Documents shall be construed as an acquisition by Purchaser of the Excluded Assets, which are not part of the sale and purchase contemplated hereunder, are excluded from the Purchased Assets and will remain the property of the Companies.
- (c) Assumed Liabilities. On Closing, Purchaser shall assume and thereafter fully pay, perform and fulfill the Assumed Liabilities.
- (d) Excluded Liabilities. Purchaser will not and does not assume, agree to perform or discharge, or indemnify the Companies against, or otherwise have any responsibility for, any Excluded Liabilities.

1.2 Action by Companies and Purchaser

The closing of the sale and purchase of the Purchased Assets (the “**Closing**”) will take place electronically at 11:59 p.m. (Toronto time) (the “**Closing Time**”) on such date mutually agreed upon by the Purchaser and the Companies (which date is expected to be July 31, 2020), but no later than two Business Days after the satisfaction or waiver of each of the conditions set forth in Article 4 and Article 5 (the “**Closing Date**”).

ARTICLE 2 PURCHASE PRICE

2.1 Purchase Price

The aggregate purchase price (the “**Purchase Price**”), exclusive of all applicable sales and transfer taxes, if any, payable by the Purchaser to the Companies for the Purchased Assets shall be:

- (a) \$70,000,000 (the “**Base Purchase Price**”); plus
- (b) the value of the Assumed Liabilities; less
- (c) the Indebtedness of the Companies, determined without duplication and on a basis consistent with the Financial Statements as of the Closing Date (the “**Closing Indebtedness**”); plus
- (d) an amount equal to (i) the net working capital of the Companies as of the Closing Date (the “**Net Working Capital Amount**”), determined in accordance with Schedule 2.1(d), less (ii) *[Redacted – commercially sensitive]* (the “**Target Working Capital Amount**” and, such difference, the “**Closing Working Capital Adjustment Amount**”), which Closing Working Capital Adjustment Amount shall, for the avoidance of doubt, be (x) a positive number if the Net Working Capital Amount exceeds the Target Working Capital Amount, and (y) a negative number if the Net Working Capital Amount is less than the Target Working Capital Amount.

2.2 Preparation and Delivery of Estimated Closing Date Financial Statements

The Parties acknowledge that it is not possible to determine the Purchase Price until the Closing Date Financial Statements are accepted and approved in accordance with Section 2.6. Accordingly, not more than 5 and no fewer than 3 Business Days prior to the Closing Date, the Companies shall prepare and deliver to the Purchaser a balance sheet for each of the Companies and the Subsidiaries as at the Closing Date (the “**Estimated Closing Date Financial Statements**”), setting forth a good faith estimate of the assets and liabilities of the Companies and the Subsidiaries, prepared in accordance with ASPE on a basis consistent with the Financial Statements. The Estimated Closing Date Financial Statements shall include estimates of the Closing Indebtedness (such estimate, the “**Estimated Closing Indebtedness**”) and the Closing Working Capital Adjustment Amount (such estimate, the “**Estimated Closing Working Capital Adjustment Amount**”) on the basis of the foregoing information, the Purchase Price (such estimate, the “**Estimated Purchase Price**”), in each case prepared in accordance with the example calculations set out in Schedule 2.1(d). The Estimated Purchase Price shall be equal to:

- (a) the Base Purchase Price; plus
- (b) the value of the Assumed Liabilities; less
- (c) the Estimated Closing Indebtedness; plus
- (d) the Estimated Closing Working Capital Adjustment Amount.

2.3 Payment and Satisfaction of Purchase Price

At the Closing, the Purchaser will satisfy the Purchase Price as follows:

- (a) pay an amount equal to *[Redacted – commercially sensitive]* (the “**Escrow Amount**”) to the Escrow Agent, by wire transfer of immediately available funds to an account designated by the Escrow Agent, in accordance with the terms of the Escrow Agreement;
- (b) pay the Estimated Purchase Price less the Escrow Amount and less the value of the Assumed Liabilities to the Companies by wire transfer of immediately available funds to an account designated by the Companies; and
- (c) assume all of the Assumed Liabilities.

2.4 Escrow Amount

The Escrow Amount shall be held and disbursed solely for the purposes of, and in accordance with, this Agreement and the Escrow Agreement; provided that the Escrow Amount shall be used solely for the purpose of (i) funding amounts payable by the Companies pursuant to Sections 2.6 or 2.7, if any; and (ii) funding indemnity claims for Losses payable by the Companies pursuant to Article 8. The Parties agree that responsibility for any fees payable to the Escrow Agent on account of its engagement shall be paid one half by the Purchaser, on the one hand, and one half by the Companies, on the other hand.

2.5 Preparation and Delivery of Closing Date Financial Statements

- (a) As soon as reasonably practicable, and in no event later than 90 days, after the Closing Date, the Purchaser shall prepare and deliver to the Companies a balance sheet of each of the Companies and the Subsidiaries as at the Closing Date (the “**Closing Date Financial Statements**”), showing (to the extent permitted in accordance with ASPE) all of the assets and liabilities of each of the Companies and the Subsidiaries, prepared on a basis consistent with the Financial Statements. The Closing Date Financial Statements will include a calculation of the Purchase Price, the Closing Indebtedness, the Closing Working Capital Adjustment Amount and the Assumed Liabilities. The Parties shall cooperate fully in the preparation of the Closing Date Financial Statements.
- (b) If the Purchaser fails to timely deliver the Closing Date Financial Statements in accordance with Section 2.5(a), the Companies shall be entitled to retain, at the expense of the Purchaser, a nationally-recognized, independent firm of chartered accountants to provide an audit of the Books and Records of the Companies and the Subsidiaries (which Books and Records will be made available by the Purchaser for such purpose), review the calculation of the Estimated Purchase Price and make any necessary adjustments, consistent with the provisions of Section 2.6, to determine the Purchase Price, the Closing Indebtedness, the Closing Working Capital Adjustment Amount and the Assumed Liabilities, and the determination of such items by such accounting firm shall be final, conclusive and binding on the Parties hereto.

2.6 Objection to Closing Date Financial Statements

- (a) **Delivery of Objection Notice** – If the Companies object in good faith to any aspect of the Closing Date Financial Statements (each, a “**Statement**”), the Companies shall give written notice of such objection to the Purchaser (the “**Objection Notice**”) within 30 days after the delivery to the Companies of the Closing Date Financial Statements. The Objection Notice shall, for each such objection, set out the reasons for the Companies’ objection as well as the amount in dispute and reasonable details of the calculation of such amount. If the Companies do not notify the Purchaser within such 30 day period, the Companies will be deemed to have accepted and approved the Closing Date Financial Statements, which will be deemed final, conclusive and binding upon the Companies and the Purchaser.
- (b) **Resolution of Disputes** – The Purchaser shall give the Companies and their representatives reasonable access to the Books and Records used in the preparation of the Closing Date Financial Statements to enable the Companies to exercise their rights under this Section 2.6(b). The Companies and the Purchaser shall attempt to resolve all matters in dispute set out in the Objection Notice within 30 days of receipt of the Objection Notice by the Purchaser. Any items in dispute not resolved within such 30 day period shall be referred as soon as possible after the end of such period by the Companies and the Purchaser to MNP LLP, or such other independent auditing firm appointed by the Parties (the “**Independent Auditor**”). The Independent Auditor shall act as expert and not as arbitrator and shall be required to determine the items in dispute that have been referred to it as soon as reasonably

practicable, but in any event not later than 30 days after the date of referral of the dispute to it. In making its determination, the Independent Auditor will only consider the issues in dispute placed before it. The Companies and the Purchaser shall provide or make available all documents and information as are reasonably required by the Independent Auditor to make its determination. The determination of the Independent Auditor shall be final and binding on the Parties and the Closing Date Financial Statements shall be (or not be) adjusted in accordance with such determination.

- (c) **Audit Expenses** – The fees and expenses of the Independent Auditor in acting in accordance with this Section 2.6 shall be borne by the Purchaser, on the one hand, and the Companies, on the other hand, based on the inverse of the percentage that the Independent Auditor's determination (before such allocation) bears to the total amount of the disputed items as originally submitted to the Independent Auditor. For example, should the disputed items total in amount to \$1,000 and the Independent Auditor awards \$600 in favour of the Purchaser's position, 60% of the costs of the Independent Auditor's review would be borne by the Companies and 40% of the costs would be borne by the Purchaser.
- (d) **Payment in Accordance with Determination** – Within 10 days after resolution, by agreement of the Parties, of the dispute which was the subject of the Objection Notice or, failing such resolution, within 10 days after the final determination of the Independent Auditor, the Companies and the Purchaser shall jointly direct the Escrow Agent to pay such amounts, if applicable, as a result of such resolution or final determination.

2.7 **Net Working Capital Adjustment**

Subject to Section 2.6, within 10 days after delivery by the Purchaser to the Companies of the Closing Date Financial Statements:

- (a) if the Purchase Price, as finally determined and set out in the Closing Date Financial Statements, is less than the Estimated Purchase Price, then the Companies shall pay to the Purchaser an amount equal to such difference; or
- (b) if the Purchase Price, as finally determined and set out in the Closing Date Financial Statements, is greater than the Estimated Purchase Price, then the Purchaser shall pay to the Companies an amount equal to such difference.

2.8 **Interest**

The amounts paid as adjustments under Sections 2.6 and 2.7 shall be paid together with interest on such amount, calculated and compounded monthly from the Closing Date to the date of payment, at the annual rate equal to the rate quoted by the Bank of Montreal on the Closing Date as the reference rate of interest it uses for determining interest rates on Canadian dollar commercial loans in Canada and designated as such Bank's prime rate.

2.9 Allocation of Purchase Price

The Purchase Price shall be allocated in such manner as agreed to by the Purchaser and the Companies, which allocation will be set out in a schedule (“**PPA Schedule**”). The Purchaser and the Companies agree and covenant that they shall finalize and deliver the PPA Schedule on or before 90 days following the Closing Date and such PPA Schedule will form part of this Agreement. If the Purchase Price shall be adjusted pursuant to Section 2.7, the amount of adjustment required shall, if such amount cannot be reasonably allocated to a particular asset, be allocated on a pro rata basis among the various categories of assets (other than cash) listed in the PPA Schedule. Each of the Companies and the Purchaser shall report the purchase and sale of the Purchased Assets in any Tax Returns in accordance with the provisions of the PPA Schedule.

2.10 Assignment of Restricted Rights

- (a) Unless otherwise required in writing by Purchaser, nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to the Purchaser, or an assumption by the Purchaser of any obligation to discharge any liability or obligation under, any Restricted Right (a) which, as a matter of law, or by its terms, (i) is not assignable, or (ii) is not assignable without the approval or consent of the issuer thereof or other party or parties thereto; or (b) in respect of which the completion of the Transactions will increase the obligations or decrease the rights or entitlements of the Companies or Purchaser relating to the Purchased Assets, without first obtaining either such approval or consent or a waiver or a modification with respect to such Restricted Right, in each case acceptable to Purchaser, acting reasonably.
- (b) Each of the Companies shall:
 - (i) apply for and use all reasonable efforts to obtain all consents, approvals, waivers or modifications acceptable to the Purchaser, acting reasonably. Nothing in this Section 2.10 shall require the Purchaser to make any payment to any other party in order to obtain such consents, approvals, waivers or modifications, as any such payments shall be for such Company’s account;
 - (ii) enforce any rights of such Company arising from such Restricted Right against the issuer thereof or the other party or parties thereto; and
 - (iii) at no time use any such Restricted Right for its own purposes or assign or provide the benefit of such Restricted Right to any other party.
- (c) Once any necessary approvals, consents, waivers or modifications for any Restricted Right referred to in Section 2.10 have been obtained on terms acceptable to the Purchaser, acting reasonably, the applicable Company shall promptly assign, transfer, convey and deliver such Contract to the Purchaser, and the Purchaser shall assume the obligations under such Contract from and after the later of: (i) the Closing Date; and (ii) the date of assignment to the Purchaser pursuant to an assignment and assumption agreement having terms substantially similar to the

assignment and assumption agreement for other such Contracts, as applicable, delivered pursuant to this Agreement.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Companies

The Companies represent and warrant to the Purchaser, on a joint and several basis, the matters contained in Schedule B, as of the date of this Agreement and as of the Closing Date.

3.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to the Companies the matters contained in Schedule C, as of the date of this Agreement and as of the Closing Date.

ARTICLE 4 CONDITIONS IN FAVOUR OF THE PURCHASER

The obligation of the Purchaser to complete the purchase of the Purchased Assets under this Agreement is subject to the satisfaction of, or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Purchaser and may be waived by it in whole or in part).

4.1 Truth and Accuracy of Representations of the Companies at the Closing Time

All of the representations and warranties of the Companies made in or pursuant to this Agreement shall be true and correct as at the Closing Time (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such date) and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Purchaser shall have received a certificate from a senior officer of each of the Companies confirming to his knowledge (after due inquiry), without personal liability, the truth and correctness of such representations and warranties.

4.2 Performance of Obligations

Each of the Companies shall have performed or complied with, in all material respects, all of its obligations, covenants and agreements under this Agreement and the Purchaser shall have received a certificate from a senior officer of each of the Companies confirming to his knowledge (after due inquiry), without personal liability, such performance or compliance, as the case may be.

4.3 Receipt of Companies' Closing Documentation

The Purchaser shall have received copies of:

- (a) duly executed resolutions of the sole director of each of the Companies, and duly executed resolutions of the sole shareholder of each of the Companies, authorizing the sale of the Purchased Assets, the delivery and execution of, and performance of

the Transactions, in form and substance acceptable to the Purchaser, acting reasonably;

- (b) counterparts to an assignment and assumption agreement substantially in the form attached hereto as Exhibit 4.3(a) duly executed by the Companies, together with such other deeds of conveyance, bills of sale, assurances, transfers, assignments, consents, and such other agreements, documents and instruments as may be reasonably required by the Purchaser to effectively transfer and assign to the Purchaser the Purchased Assets and complete the transactions provided for in this Agreement;
- (c) counterparts to the Escrow Agreement, duly executed by the Companies and the Escrow Agent;
- (d) all keys, entry devices and passcodes with respect to the Purchased Assets including combinations to any locks or vaults;
- (e) the Books and Records;
- (f) a certificate of status with respect to each of the Companies issued by the Ministry of Government Services (Ontario); and
- (g) all such other documentation or evidence as is necessary to establish the consummation of the Transactions and the taking of all required corporate proceedings by the Companies in connection with such Transactions.

4.4 Third Party Consents and Notices

The consents, approvals and notices listed in Schedule 4.4 shall have been duly obtained, made, given or waived and shall be in full force and effect, each in form and substance satisfactory to the Purchaser, acting reasonably.

4.5 Actual Possession

The Companies shall have delivered actual possession of the Purchased Assets to the Purchaser.

4.6 No Proceedings

There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal, and there shall be no pending or threatened Claim of a Governmental Authority which if successful would reasonably be expected to restrain, enjoin or otherwise prohibit, the consummation of the Transactions.

4.7 Encumbrances

The Purchaser shall have received evidence satisfactory to it that all Encumbrances against the Purchased Assets, other than Permitted Encumbrances, have been discharged and that the Purchased Assets are free and clear of all Encumbrances, other than Permitted Encumbrances.

4.8 No Material Adverse Effect

There shall have been no Material Adverse Effect since the date of this Agreement.

4.9 Non-Competition

Each of the Companies and William shall have executed and delivered a non-competition, non-solicitation and confidentiality agreement substantially in the form attached as Exhibit 4.9.

4.10 Employees

- (a) Each of the Employees listed in Exhibit 4.10 shall have signed employment agreements with the Purchaser in a form reasonably acceptable to the Companies and the Purchaser.
- (b) The Purchaser will have offered employment, conditional upon Closing and effective as of the Closing Time, to the Employees on terms and conditions substantially similar (except where explicitly agreed between the Purchaser and a subject Employee) to their respective terms and conditions of employment with the applicable Company existing prior to the Closing Date. In such offer the Purchaser shall recognize the service of the Transferred Employees for all purposes.
- (c) Prior to the Closing Date, the Companies shall pay to each Transferred Employee all accrued vacation pay calculated up to the Closing Date.

4.11 Financial Statements

The Companies shall have provided the Purchaser with (i) the audited financial statements for Paragon for the fiscal year ended March 31, 2020 and the unaudited interim financial statements of Paragon for the quarter ended June 30, 2020; and (ii) the notice to reader financial statements of RepoLot for the fiscal years ended March 31, 2020 and the interim financial statements of RepoLot for the quarter ended June 30, 2020.

ARTICLE 5 CONDITIONS IN FAVOUR OF THE COMPANIES

The obligations of the Companies to complete the sale of the Purchased Assets under this Agreement shall be subject to the satisfaction of or compliance with, at or before the Closing Time, each of the following conditions precedent (each of which is acknowledged to be inserted for the exclusive benefit of the Companies and may be waived by it in whole or in part).

5.1 Truth and Accuracy of Representations of the Purchaser at Closing Time

All of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct as at the Closing Time (other than representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such date) and with the same effect as if made at and as of the Closing Time (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Companies shall have received

a certificate from a senior officer of the Purchaser confirming to his or her knowledge (after due inquiry), without personal liability, the truth and correctness of such representations and warranties.

5.2 Performance of Obligations

The Purchaser shall have performed or complied with, in all material respects, all of its obligations, covenants and agreements under this Agreement and the Companies shall have received a certificate from a senior officer of the Purchaser confirming to his or her knowledge (after due inquiry), without personal liability, such performance or compliance, as the case may be.

5.3 Receipt of Purchaser Closing Documentation

The Companies shall have received copies of:

- (a) duly executed resolutions of the board of directors of the Purchaser, authorizing the purchase of the Purchased Assets, the delivery and execution of, and performance of the Transactions, in form and substance acceptable to the Companies, acting reasonably;
- (b) counterparts to the Escrow Agreement, duly executed by the Purchaser; and
- (c) counterparts to an assignment and assumption agreement substantially in the form attached hereto as Exhibit 4.3(a) duly executed by the Purchaser, together with such other assurances, transfers, assignments, consents, and such other agreements, documents and instruments as may be reasonably required by the Companies to effectively have the Purchaser assume the Assumed Liabilities.

- 5.4 **No Proceedings** There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal, and there shall be no pending or threatened Claim of a Governmental Authority which if successful would reasonably be expected to restrain, enjoin or otherwise prohibit, the consummation of the Transactions.

ARTICLE 6 TERMINATION

6.1 Termination

This Agreement may be terminated on or prior to the Closing Date:

- (a) by the written agreement of the Purchaser and the Companies;
- (b) by the Purchaser, if any of the Companies breaches any of its representations, warranties or covenants contained in this Agreement such that the conditions set forth in Section 4.1 and Section 4.3 are incapable of being satisfied on or before the Outside Date, provided that the Purchaser is not then in breach of this Agreement such that any condition in Section 5.1 or Section 5.3 is incapable of being satisfied on or before the Closing Date, and provided further that the Purchaser may not terminate this Agreement under this Section 6.1(b) unless such breach remains

uncured for 15 Business Days after written notice of such breach is given to the Companies by the Purchaser;

- (c) by the Companies, if the Purchaser breaches any of the Purchaser's representations, warranties or covenants contained in this Agreement such that the conditions set forth in Section 6.1 and Section 6.2 are incapable of being satisfied on or before the Outside Date, provided that the Companies are not then in breach of this Agreement such that any condition in Section 4.1 or Section 4.3 is incapable of being satisfied on or before the Closing Date, and provided further that the Companies may not terminate this Agreement under this Section 6.1(c) unless such breach remains uncured for 15 Business Days after written notice of such breach is given to the Purchaser by the Companies;
- (d) by either the Purchaser or the Companies if the Closing Date shall not have occurred or on before the Outside Date, except that the right to terminate this Agreement under this Section 6.1(d) shall not available to any Party whose failure to fulfill any of its obligations or breach of any of its representations and warranties under this Agreement has been the cause of, or resulted in, the failure of the Closing Date to occur by the Outside Date; or
- (e) by either the Purchaser or the Companies if, after the date of this Agreement, there shall be enacted or made applicable any Law or Order that prohibits or makes illegal the consummation of the Transactions, and in the case of an Order, such Order shall have become final and non-appealable,

in each case, with immediate effect upon delivery of written notice of termination or upon entering into a mutual agreement, as the case may be.

6.2 **Effect of Termination**

If this Agreement is terminated by the Companies or the Purchaser under Section 6.1, all further rights and obligations of the Parties under this Agreement shall terminate immediately except: (a) in respect of any breach arising prior to such termination, and (b) that the provisions of Article 6 [Termination], Article 10 [General], Section 7.4 [Confidentiality], Section 7.9 [Public Notices], Section 8.9 [Exclusive Remedy] and Section 9.1 [Certain Rules of Interpretation] shall survive such termination and continue in full force and effect.

6.3 **Other Rights and Remedies**

The provisions of this Article 6 are in addition to any other rights and remedies available to a Party in respect of the breach by another Party of any of its obligations under this Agreement. Nothing in this Article 6 shall be deemed to release any Party from any liability for any breach by such Party of the terms and conditions of this Agreement or impair the right of another Party to compel specific performance by another Party of its obligations under this Agreement.

ARTICLE 7 COVENANTS

7.1 Conduct of Business Prior to Closing

During the period from the date of this Agreement to the Closing Time, except as otherwise expressly contemplated by this Agreement or with the prior written consent of the Purchaser, each of the Companies will, and will cause each of the Subsidiaries to:

- (a) **Conduct Business in the Ordinary Course** – conduct the business of the Companies and the Subsidiaries in the ordinary course, consistent with past practice;
- (b) **Maintain the Business** – use commercially reasonable efforts to maintain and preserve intact the current organization, business and franchise of the Companies and the Subsidiaries and preserve the rights, franchises, goodwill and relationships of their Employees, customers, lenders, suppliers, distributors and others having business relationships with the Companies and the Subsidiaries;
- (c) **Advise of Changes** – promptly advise the Purchaser in writing of any fact or any change in the business, operations, affairs, assets, liabilities, capitalization, financial condition or prospects of the Companies and the Subsidiaries that would reasonably be expected to result in any of the conditions precedent of the Purchaser set out in Article 4 not being met prior to the Outside Date; and
- (d) **Restricted Activities** – not:
 - (i) take or omit to take any action that would reasonably be expected to result in a Material Adverse Effect;
 - (ii) acquire or agree to acquire by the Companies and the Subsidiaries in any manner (whether by merger, amalgamation, consolidation, equity purchase, asset purchase, or otherwise) any other Person or business other than the acquisition of assets in the ordinary course of business consistent with past practices;
 - (iii) adopt any amendments to the Organizational Documents of the Companies and the Subsidiaries;
 - (iv) sell, license, lease, assign, grant interests in, transfer, abandon, fail to renew, or otherwise dispose of any material assets (including Intellectual Property) of the Companies and the Subsidiaries outside of the ordinary course of business consistent with past practice;
 - (v) liquidate or dissolve the Companies and the Subsidiaries;
 - (vi) (A) enter into any contract or other arrangement that would constitute a Material Contract, (B) amend or modify any Material Contract (other than in the ordinary course of business consistent with past practices or to exercise renewals in the ordinary course of business consistent with past

practices prior to the expiration of such Material Contract), (C) waive any material benefits under any Material Contract or grant any consent or release in respect of any matters related to any Material Contract, (D) terminate (either partially or completely) or cancel any Material Contract (other than terminations in the ordinary course of business upon the expiration of such Material Contract); or (E) cause or permit any acceleration of any material terms under any Material Contract;

- (vii) impose or permit to exist any new Encumbrance (other than Permitted Encumbrances) upon any assets of the Companies and the Subsidiaries, whether tangible or intangible;
- (viii) make or commit to make any capital expenditures by the Companies and the Subsidiaries exceeding *[Redacted – commercially sensitive]* in the aggregate;
- (ix) make any change in accounting principles by the Companies and the Subsidiaries, except as required by applicable Law or ASPE;
- (x) delay or postpone the payment of accounts or other amounts payable or other obligations or liabilities of the Companies or any of the Subsidiaries, or accelerate the collection of any such accounts or other amounts receivable;
- (xi) except as required by applicable Law or any Material Contract in effect as of the date of this Agreement, grant any increase in the compensation or benefits of any current or former director, officer, employee or consultant of the Companies or any of the Subsidiaries, or make any payment of or agree to become obligated to pay any bonus, severance or change of control payments to any current or former director, officer, manager, member, partner, employee or consultant of the Companies or any of the Subsidiaries;
- (xii) incur, assume or guarantee any Indebtedness or make or provide any loans or advances;
- (xiii) hire any new Employee, other than Employees hired in the ordinary course of business consistent with past practice and whose annual compensation is less than *[Redacted – commercially sensitive]*;
- (xiv) terminate any Employee, other than any Employee whose annual base salary is less than *[Redacted – commercially sensitive]*;
- (xv) institute, settle, cancel or compromise any Proceeding;
- (xvi) in respect of the Companies or any of the Subsidiaries, authorize, issue, sell or otherwise dispose of any shares or other equity interests in the capital of the Companies or any of the Subsidiaries, or grant any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or

exercise) any such shares or other equity interests, or modify or amend any right of any holder of any such outstanding shares or other equity interests;

- (xvii) make or change any Tax election, change an annual accounting period, adopt or change any Tax accounting method, file any amended Tax Return, settle any Tax claim or assessment, waive or agree to extend the statute of limitations for the assessment of any Tax, surrender any right to claim a refund of Taxes or otherwise take any similar action;
- (xviii) declare, set aside or pay any dividend or make any other distribution with respect to shares or other equity interests in the capital of the Companies or any of the Subsidiaries (whether in cash or in kind) or directly or indirectly redeem, purchase or otherwise acquire any of such shares or other equity interests; or
- (xix) authorize or enter into any agreement, contract or commitment to do any of the foregoing or authorize, take or agree to take (or fail to take) any action with respect to the foregoing.

7.2 Access for Investigation

- (a) The Companies shall permit, and shall cause the Subsidiaries to permit, the Purchaser, its Affiliates, and its and their Representatives, between the date of this Agreement and the Closing Time, to have reasonable access during normal business hours and upon reasonable advance notice to the Companies, which shall not be less than twenty-four (24) hours, to:
 - (i) the Purchased Assets;
 - (ii) the Leased Real Property;
 - (iii) all the Books and Records; and
 - (iv) the properties and assets used by the Companies or any of the Subsidiaries.
- (b) Notwithstanding the foregoing, the Companies shall not be obligated to, and shall not be obligated to cause the Subsidiaries to, (i) provide, or cause to be provided, such access or information to the extent that doing so would (A) violate applicable Law, (B) violate an obligation of confidentiality owing to a third party, or (C) reasonably jeopardize the protection of a solicitor-client privilege, or (ii) disclose minutes of the deliberations of the Companies' or any Subsidiary's board of directors (or any committee of any such board) in connection with the Transactions, or the evaluation of possible alternatives to the Transactions, or any materials provided to such boards of directors (or any such committee) in connection with such deliberations.
- (c) Notwithstanding the foregoing, without the prior written consent of the Companies, the Purchaser shall not contact, and shall cause its Affiliates and its and their respective Representatives not to contact, any of the Employees, suppliers,

customers, clients or financing sources of the Companies with respect to the Transactions or otherwise outside of the ordinary course of business of the Purchaser, such Affiliates, or such Representatives, as applicable.

7.3 Notice by the Parties of Certain Matters

Prior to the Closing, each of the Purchaser and the Companies shall promptly notify the other Parties of:

- (a) any notice or other communication from (i) any Governmental Authority in connection with this Agreement or the Transactions, or (ii) any Person (x) alleging that the consent of such Person is or may be required in connection with the Transactions, or (y) threatening (in writing), requesting (in writing) or delivering an Order restraining or enjoining the execution of any Related Documents or the consummation of the Transactions;
- (b) the occurrence of any event that would reasonably be expected to result in the failure of one or more of the conditions to Closing set out in Article 4 or Article 5 to be met by the Outside Date; and
- (c) with respect to the Companies, any Proceeding (including, for this purpose, by or before a taxing authority) commenced relating to the Companies or any of its Affiliates (including the Subsidiaries) that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 13 of Schedule B and (ii) with respect to the Purchaser, any Proceedings (including, for this purpose, by or before a taxing authority) commenced relating to the Purchaser that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4 of Schedule C.

7.4 Confidentiality

- (a) Notwithstanding the execution of this Agreement, the Parties acknowledge that the mutual confidentiality and non-disclosure agreement between the Purchaser and Paragon, dated December 31, 2018, remains in full force and effect pursuant to its terms, except to the extent reasonably necessary for either of the Parties to enforce any of its respective rights under this Agreement. The Confidentiality Agreement is terminated effective as of the Closing Time.
- (b) From and after the Closing, each of the Companies shall, and shall cause each of its Affiliates and each of its and their respective Representatives to, keep confidential all information relating to the Companies or any of the Subsidiaries (including all Personal Information of the Employees), other than information that:
 - (i) is part of the public domain;
 - (ii) becomes part of the public domain other than as a result of a breach of these provisions by the Companies;

- (iii) was received in good faith after Closing from an Independent Person who was lawfully in possession of such information free of any obligation of confidentiality; or
 - (iv) the Companies or any of their Affiliates is required to disclose pursuant to applicable Law.
- (c) From and after the Closing, each of the Companies and the Purchaser shall, and shall cause each of their Affiliates and each of its and their Affiliates' Representatives to, keep confidential this Agreement, the Related Documents and all information disclosed to it in connection with the Transactions by or on behalf of another Party and relating to such other Party, except information that:
- (i) is part of the public domain;
 - (ii) becomes part of the public domain other than as a result of breach of these provisions;
 - (iii) can be demonstrated to have been known or available to such Person before receipt of such information from the other Party or independently developed by such Person;
 - (iv) was received in good faith from an Independent Person, who was lawfully in possession of such information free of any obligation of confidence; or
 - (v) either the Companies, the Purchaser or any of their respective Affiliates is required to disclose pursuant to applicable Law.

7.5 Actions to Satisfy Closing Conditions

During the period from the date of this Agreement until the Closing Time, and subject to the terms and conditions of this Agreement, each of the Companies and the Purchaser shall use commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary under the terms of this Agreement, any Related Document or applicable Laws to cause the satisfaction of the conditions set forth in Article 4 and Article 5 and to consummate the Transactions, including using their respective commercially reasonable efforts to obtain all authorizations, consents, permits, waivers or other approvals of all Governmental Authorities that may be or become necessary for the execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Related Documents, and the consummation of the Transactions, and the Parties shall reasonably cooperate with each other with respect to each of the foregoing.

7.6 Assumption of Obligations

At the Closing Time and conditional upon Closing, the Purchaser agrees to pay and be responsible for the liabilities and obligations of the Companies relating to the Business under the Contracts, the Governmental Authorizations, the Permitted Encumbrances, to the extent that such liabilities and obligations: (i) do not relate to liabilities or obligations to the Companies or their Affiliates or any of their respective directors, officers, former directors or officers, shareholders or employees;

and (ii) consist of liabilities or obligations that arise out of events or circumstances that occur after the Closing Time or are to be performed after the Closing Time.

7.7 **Preservation of Records**

The Purchaser shall take all reasonable steps to preserve and keep the Books and Records relating to the Companies and the Business for a period of six years from the Closing Date, or for any longer period as may be required by any Law or Order, and shall make such Books and Records available to the Companies on a timely basis, as may be reasonably requested by the Companies in connection with the Companies' rights or obligations under this Agreement or relating to any inquiries, investigations or Proceedings of or before any Governmental Authority with jurisdiction over the Companies. Notwithstanding the foregoing, the Purchaser shall not be obligated to, and shall not be obligated to cause the Companies and the Subsidiaries to, provide, or cause to be provided, such records to the extent that doing so would (a) violate applicable Law, (b) violate an obligation of confidentiality owing to a third party, or (c) reasonably jeopardize the protection of a solicitor-client privilege.

7.8 **Trademarks; Tradenames; Name Change**

As of the Closing Date, the Companies shall discontinue all use of the trademarks, service marks, domain names, trade names, corporate names, business names and any other indicator of source of any product or service included in the Purchased Assets and any confusingly similar marks or indicators of source in any of their forms or spellings, including, without limitation, use in or on any product or service offerings, websites, advertising materials, stationery, business cards, checks, purchase orders and acknowledgments, customer agreements and other contracts and business documents. The name "Paragon" and "RepoLot" and any derivations thereof (collectively, the "**Assigned Names**"), are being transferred to the Purchaser hereunder as part of the Purchased Assets. In this regard, the Companies shall, immediately after Closing, take all steps necessary to change or cause to change the corporate name of Paragon and any of its Affiliates so as to bear no resemblance to the Assigned Names. Each of the Companies agrees that it will not take any action that reasonably could be expected to affect adversely the Purchaser's right to the Assigned Names or cause confusion with respect to the Purchaser's or its Affiliates' use of the Assigned Names. All goodwill with respect to the use of the Assigned Names and the Business will enure to the benefit of the Purchaser, and neither the Companies nor any of their Affiliates will have any rights to sue or recover against any person with respect to the use of the Assigned Names.

7.9 **Public Notices**

The Parties shall jointly plan and co-ordinate any public notices, press releases, and any other publicity concerning the Transactions, and no Party shall disseminate any such public notices, public releases or other publicity without the prior written approval of the other Parties, which approval shall not be unreasonably withheld, conditioned or delayed, unless such disclosure is required to meet timely disclosure obligations of any Party under applicable Laws in circumstances where prior consultation with the other Parties is not practicable and a copy of such disclosure is provided to the other Parties as soon as is reasonably practicable.

7.10 Personal Information

The Purchaser shall at all times comply with all Laws governing the protection of Personal Information with respect to Personal Information disclosed or otherwise provided to the Purchaser by the Companies under this Agreement. The Purchaser shall only collect, use or disclose such Personal Information for the purposes of investigating the Companies and the Subsidiaries and the business of the Companies and the Subsidiaries as contemplated by this Agreement and completing the Transactions. The Purchaser shall safeguard all Personal Information collected from the Companies in a manner consistent with the degree of sensitivity of the Personal Information and maintain at all times the security and integrity of the Personal Information. The Purchaser shall not make copies or excerpts of or from the Personal Information or in any way re-create the substance or contents of the Personal Information if the Transactions are not completed for any reason, and shall return all Personal Information to the Companies, as applicable or destroy such Personal Information at the Companies' request.

7.11 Guarantee

William hereby unconditionally and irrevocably guarantees to the Purchaser the due and punctual observance, payment, performance and discharge of the indemnification obligations of the Companies pursuant to Sections 8.2(a) and 8.2(c)-8.2(f) of this Agreement, as they may be amended, changed, replaced or otherwise modified from time to time upon agreement between the Parties, and undertakes to perform all such obligations to the extent that the Companies fail to do so. The Purchaser hereby acknowledges and agrees that the Companies are the indemnitor of first resort (any obligations of William are secondary). William acknowledges that the benefit of the guarantee contained in this Section 7.11 is for the exclusive benefit of the Purchaser and its affiliates. William's obligations under this Section 7.11 shall be binding on his heirs, attorneys, guardians, estate trustees, executors and trustees. For greater certainty, any obligations of William pursuant to this Section 7.11 shall be subject to the indemnification limitations as set out in Article 8.

7.12 Goods and Services Tax and Harmonized Sales Tax

In respect of the purchase and sale of the Purchased Assets under this Agreement, each Party shall pay direct to the appropriate Governmental Authority all sales and transfer taxes, registration charges and transfer fees payable by it and, upon the reasonable request of a Party, the requested Party shall furnish proof of such payment except that the Purchaser shall be liable for and shall pay to the Companies an amount equal to any tax payable by the Purchaser and collectible by the Companies under the *Excise Tax Act* (Canada) and under any similar provincial or territorial legislation imposing a similar value-added or multi-staged tax.

7.13 Goods and Services Tax and Harmonized Sales Tax Election

To the extent permitted under subsection 167(1) of Part IX of the *Excise Tax Act* (Canada), and any equivalent or corresponding provision under any applicable provincial or territorial legislation imposing a similar value added or multi-staged tax, the Purchaser and the Companies shall jointly elect in a timely manner that no goods and services taxes, harmonized sales taxes, or similar taxes be payable with respect to the purchase and sale of the Purchased Assets under this Agreement.

7.14 **Self-Assessment of Goods and Services Tax and Harmonized Sales Tax on Leased Real Property**

To the extent permitted under subsection 221(2) of the *Excise Tax Act* (Canada) and any equivalent or corresponding provision under any applicable provincial or territorial legislation, the Purchaser shall self-assess and remit directly to the appropriate Governmental Authority any goods and services tax and harmonized sales tax imposed under the *Excise Tax Act* (Canada) and any similar value added or multi-staged tax imposed by any applicable provincial or territorial legislation payable in connection with the transfer of any of the Leased Real Property. The Purchaser shall make and file a return(s) in accordance with the requirements of subsection 228(4) of the *Excise Tax Act* (Canada) and any equivalent or corresponding provision under any applicable provincial or territorial legislation.

7.15 **Income Tax Elections**

If requested by the Companies and agreed to by Purchaser or if requested by Purchaser, Purchaser and the Companies shall, in accordance with the requirements of the Tax Act, the regulations thereunder, the administrative practice and policy of the Canada Revenue Agency and any applicable equivalent or corresponding provincial or territorial legislative, regulatory and administrative requirements, make and file, in a timely manner:

- (a) a joint election(s) to have the rules in section 22 of the Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply in respect of the Accounts Receivable that are the subject of such election, and shall designate therein that portion of the Purchase Price allocated to the Accounts Receivable that are the subject of such election in accordance with the procedures set out in Section 2.9 of this Agreement as the consideration paid by the Purchaser to the Companies;
- (b) a joint election(s) to have the rules in subsection 20(24) of the Tax Act, and any equivalent or corresponding provision under applicable provincial or territorial tax legislation, apply to the obligations of the Companies in respect of undertakings which arise from the operation of the Business and to which paragraph 12(1)(a) of the Tax Act applies. The Purchaser and the Companies acknowledge that the Companies are transferring assets to the Purchaser which have a value equal to the elected amount as consideration for the assumption by the Purchaser of such obligations of the Companies. The Purchaser and the Companies shall prepare and file their respective Tax Returns in a manner consistent with the aforesaid election(s).

7.16 **Employee Restrictive Covenant Release**

From and after the Closing, each of the Companies shall and shall cause each of its Affiliates (including the Subsidiaries) to release all Transferred Employees of and from any confidentiality, non-competition or non-solicitation obligations, covenants, agreements and/or arrangements that may exist or have existed prior to the Closing, under contract, law or otherwise, between each Transferred Employee and any of the Companies (collectively, the “**Restrictive Covenants**”) subject to any obligations due to clients pursuant to any of the Companies’ Contracts relating to the Business. Each of the Companies and each of its Affiliates (including the Subsidiaries) further

remises, releases, acquits and forever discharges each Transferred Employee and the Purchaser from all actions, causes of action, applications, suits, complaints, grievances, liabilities, debts, demands, damages, costs, torts (both intentional and unintentional), dues, bonds, accounts, covenants, contracts, or statutory rights that exist or may exist which the Companies ever had, now have or which the Companies can, shall or may hereafter have, arising from or in connection with the Restrictive Covenants.

7.17 Transition Covenants

- (a) The Purchaser hereby covenants and agrees that from the date hereof until ninety (90) days after the Closing Date it shall use reasonable efforts to provide all necessary assistance, at no additional cost to the Companies, to ensure the orderly transition of all operations, books, records, and other matters, including Excluded Assets, unrelated to the Business and not forming part of the Purchased Assets, to William or an Affiliate of the Companies, as applicable, including assistance with forwarding mail, accounting and tax related services for the Companies, and other matters as reasonably requested by the Companies or William.
- (b) Each of the Companies hereby covenants and agrees that from the date hereof until the date that is ninety (90) days after the Closing Date, such Company shall use reasonable efforts to provide all necessary assistance, at no additional cost to the Purchaser, to ensure the orderly transition of all operations, books, records, and other matters related to the Business and forming part of the Purchased Assets, to the Purchaser or an Affiliate of the Purchaser, as applicable, including the payment to the Purchaser of any accounts payable received by the Companies following the Closing Date, and other matters as reasonably requested by the Purchaser.

7.18 Financial Statements

If not already delivered on or prior to the Closing, the Companies shall, as soon as reasonably practicable, provide the Purchaser with (i) the audited financial statements for Paragon for the fiscal year ended March 31, 2020 and the unaudited interim financial statements of Paragon for the quarter ended June 30, 2020; and (ii) the notice to reader financial statements of RepoLot for the fiscal years ended March 31, 2020 and the interim financial statements of RepoLot for the quarter ended June 30, 2020.

ARTICLE 8 INDEMNIFICATION

8.1 Survival

All representations, warranties and covenants contained in or made pursuant to this Agreement on the part of each of the Parties shall survive and shall not merge following any or all of the following:

- (a) the Closing;
- (b) the execution and delivery under this Agreement of any documents of title to any of the Purchased Assets; and

- (c) the payment of the consideration for the Purchased Assets,

in each case, for the same period of time during which an obligation to indemnify exists pursuant to Section 8.2 or Section 8.6.

8.2 Indemnification by the Companies

The Companies shall, on a joint and several basis, indemnify and save harmless the Purchaser and each of its directors, officers, agents, employees and shareholders (collectively referred to as the “**Purchaser Indemnified Parties**”), on an after-Tax basis, from and against all Losses, whether or not arising due to third party Claims, that any Purchaser Indemnified Party may suffer or incur, directly or indirectly, as a result of or in connection with or arising from:

- (a) any non-fulfilment or breach of any covenant or agreement on the part of the Companies contained in or made pursuant to this Agreement;
- (b) any misrepresentation or any incorrectness in or breach of any representation or warranty of the Companies contained in or made pursuant to this Agreement (other than Fundamental Representations), disregarding for the purpose of this Section 8.2(b), any knowledge, materiality or Material Adverse Effect qualification contained in any such representation or warranty;
- (c) any misrepresentation or any incorrectness in or breach of any representation or warranty of the Companies set out in Sections 1, 2, 3, 4 and 15 of Schedule B (collectively, the “**Fundamental Representations**”), disregarding for the purpose of this Section 8.2(c), any knowledge, materiality or Material Adverse Effect qualification contained in any such representation or warranty; and
- (d) any liabilities, debts and obligations of the Companies not forming part of the Assumed Liabilities;
- (e) any Losses relating to any Claims, investigations or other proceedings, including appeals and applications for review, in progress, or pending or threatened against or relating to the Business or the Companies or any of the Subsidiaries; and
- (f) any intentional misrepresentation or fraud by the Companies or any Person acting for or on behalf of the Companies.

8.3 Settlement of Indemnification Claims and Escrow Amount

- (a) Subject to the limitations on indemnification set out in this Article 8 and the other terms of this Agreement, the Purchaser Indemnified Parties right to recoup Losses for which they are entitled to indemnification shall be satisfied (i) first, from the Escrow Amount; and (ii) second, from the Companies.
- (b) Upon resolution of any indemnification claim of the Purchaser Indemnified Parties pursuant to this Article 8 that requires the payment of all or a portion of the Escrow Amount to one or more Purchaser’s Indemnified Parties, the Purchaser and the Companies shall instruct the Escrow Agent to release and pay the applicable Purchaser’s Indemnified Parties, as applicable, from the then-available Escrow

Amount, the amount required to resolve such indemnification claim subject to the terms of this Agreement.

- (c) Upon the date that is 18 months from the Closing Date, the Purchaser and the Companies shall instruct the Escrow Agent to promptly release and distribute to the Companies, the Escrow Amount, minus the aggregate amount, as of such date, of any amounts distributed to the Purchaser Indemnified Parties pursuant to Section 8.3(a), minus the Unresolved Claim Amount as of such date. The “**Unresolved Claim Amount**” means the aggregate amount of Losses sought by the Purchaser Indemnified Parties with respect to all unresolved indemnification claims that have been properly asserted in accordance with this Agreement as of the applicable date.
- (d) Following distribution of all or any portion of the Escrow Amount pursuant to Section 8.3(c), the Unresolved Claim Amount shall be maintained by the Escrow Agent until the date on which each indemnification claim by any Purchaser’s Indemnified Parties hereunder for which the Unresolved Claim Amount is in respect of is finally resolved, on which date any remaining portion of such Unresolved Claim Amount after the resolution of and payment of all such indemnification claims shall be released and distributed by the Escrow Agent to the Companies following receipt of instructions from the Purchaser and the Companies.

8.4 **Temporal Limitations on Claims**

The Companies’ obligations under Section 8.2 shall be subject to the following limitations:

- (a) subject to Sections 8.4(b) and 8.4(c), the obligations of the Companies under Section 8.2(b) shall terminate 18 months following the Closing Date (the “**Survival Date**”);
- (b) the obligations of the Companies under Section 8.2(b) in respect of any Losses relating to or impacted by Tax matters, including any Losses as a result of or in connection with or arising from Sections 42 [Tax Matters] and 43 [Residence of the Companies] of Schedule B, arising in or in respect of a particular period (or the portion of a particular period) ending on or before the Closing Date shall terminate on the date that is the earlier of:
 - (i) 90 days after the relevant Governmental Authorities shall no longer be entitled to assess or reassess liability for Taxes against the Companies or any of the Subsidiaries for that particular period, including as a result of any waivers given by the Companies or any of the Subsidiaries prior to the Closing in respect of any taxation year; and
 - (ii) the fifteenth anniversary of the Closing Date;
- (c) the obligations of the Companies under Section 8.2(b) in respect of any Losses based on any incorrectness in or breach of the representations and warranties set out in Sections 34 [Technology], 35 [Privacy Laws] and 36 [Anti-Spam Laws] of Schedule B shall terminate on the fifth anniversary of the Closing Date; and

- (d) the obligations of the Companies under Sections 8.2(a), 8.2(c), 8.2(d), 8.2(e) and 8.2(f) shall terminate on the fifteenth anniversary of the Closing Date,

except, in each case, with respect to Losses (i) set forth in written notices given by a Purchaser Indemnified Party to the Companies prior to such date, and (ii) incurred by the Purchaser Indemnified Parties prior to the date of such notices.

- (e) The amount of any Losses which may be claimed by the Purchaser pursuant to Section 8.2 shall be calculated to be the cost or loss to the Purchaser Indemnified Parties after giving effect to:

- (i) any amounts actually recovered by the Purchaser for such Losses under any applicable third party insurance policies (excluding self-insurance arrangements), less the costs and expenses incurred by the Purchaser to collect any such insurance proceeds (including reasonable legal fees and expenses and any deductibles, increases in premium or retroactive premium adjustments directly related to obtaining such insurance proceeds), it being agreed and understood that the Purchaser shall not have any obligation to seek recovery under any insurance policy prior to making any Claim; and
- (ii) the value of any related determinable Tax benefits that will (with reasonable certainty) be realized, within a 3 year period following the date of incurring such costs or loss, by the Purchaser Indemnified Parties in relation to the matter which is the subject of the Claim.

8.5 **Other Limitations on Claims**

- (a) Notwithstanding anything to the contrary contained in this Agreement:
- (i) the Companies shall not be required to indemnify, defend or hold harmless the Purchaser Indemnified Parties against, or reimburse the Purchaser Indemnified Parties for, any Losses pursuant to Section 8.2(b) in excess of the Escrow Amount; and
- (ii) the Companies' maximum aggregate liability to the Purchaser Indemnified Parties' under this Agreement shall not exceed the Purchase Price.
- (b) The Companies shall have no obligation to indemnify, defend or hold harmless the Purchaser Indemnified Parties against, or reimburse the Purchaser Indemnified Parties for, any matters in respect of which the Purchaser was aware at the time of Closing.

8.6 **Indemnification by the Purchaser**

- (a) The Purchaser shall indemnify and save harmless the Companies, and each of its directors, officers, agents, employees and shareholders, on an after-Tax basis, from and against all Losses, whether or not arising due to third party Claims, that the Companies may suffer or incur, directly or indirectly, as a result of:

- (i) any non-fulfilment or breach of any covenant or agreement on the part of the Purchaser contained in or made pursuant to this Agreement; and
 - (ii) any misrepresentation or any incorrectness in or breach of any representation or warranty of the Purchaser contained in or made pursuant to this Agreement.
- (b) The obligations of the Purchaser under Section 8.6(a)(ii) shall terminate on the Survival Date except, in each case, with respect to Losses (i) set forth in written notices given by the Companies to the Purchaser prior to such date, and (ii) incurred by the Companies prior to the date of such notices.

8.7 **Indemnification Procedures for Third Party Claims**

- (a) In the case of Claims made by a third party with respect to which indemnification is sought, the Party seeking indemnification (the “**Indemnified Party**”) shall give prompt notice, and in any event within 20 days, to the other Party (the “**Indemnifying Party**”) of any such Claims made upon it including (i) a description of such third party Claim in reasonable detail including the sections of this Agreement which form the basis for such Claim, (ii) the actual or estimated amount of the damages that have been or will be sustained by an Indemnified Party, and (iii) reasonable supporting documentation. If the Indemnified Party fails to give such notice, such failure shall not preclude the Indemnified Party from obtaining such indemnification but its right to indemnification may be reduced to the extent that such delay materially prejudiced the defence of the Claim or increased the amount of liability or cost of defense.
- (b) The Indemnifying Party shall have the right, by notice to the Indemnified Party given not later than 10 days after receipt of the notice described in Section 8.7(a), to assume the control of the defence, compromise or settlement of the Claim, provided that such assumption shall, by its terms, be without cost to the Indemnified Party and provided the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in accordance with the terms contained in this Section 8.7 in respect of that Claim.
- (c) Upon the assumption of control of any Claim by the Indemnifying Party as set out in Section 8.7(b), the Indemnifying Party shall diligently proceed with the defence, compromise or settlement of the Claim at its sole expense, including if necessary, employment of counsel and experts reasonably satisfactory to the Indemnified Party and the Indemnified Party shall cooperate fully with such defence, but at the expense of the Indemnifying Party with respect to any out-of-pocket expenses incurred, to make available to the Indemnifying Party all pertinent information and witnesses under the Indemnified Party’s control and take such other steps as in the opinion of counsel for the Indemnifying Party are reasonably necessary to enable the Indemnifying Party to conduct such defence. The Indemnified Party shall also have the right to participate in the negotiation, settlement or defence of any Claim at its own expense. The Indemnifying Party shall not settle any Claim without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld.

- (d) The final determination of any Claim pursuant to this Section 8.7, including all related costs and expenses, shall be binding and conclusive upon the Parties as to the validity or invalidity, as the case may be, of such Claim against the Indemnifying Party.
- (e) If the Indemnifying Party does not assume control of a Claim as permitted in Section 8.7(b), the Indemnified Party shall be entitled to make such settlement of the Claim as in its sole discretion may appear advisable, and such settlement or any other final determination of the Claim shall be binding upon the Indemnifying Party.
- (f) If any Claim made by a third party is of a nature that the Indemnified Party is required by applicable Law to incur losses or make a payment to any third party with respect to the Claim before completion of settlement negotiations or related legal proceedings, the Indemnified Party may incur such losses or make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such Losses on payment. If the amount of any liability of the Indemnified Party under such third party Claim, as finally determined, is less than the amount that was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after the receipt of the difference from the third party, pay to the Indemnifying Party the amount of such difference, together with any interest on it paid by the third party to the Indemnified Party. In addition, the Indemnifying Party shall post all security required by any court, regulatory body or other authority having jurisdiction, including for purposes of enabling the Indemnifying Party to contest any Claim made by a third party.
- (g) The Indemnified Party and the Indemnifying Party shall co-operate fully with each other and shall keep each other fully advised with respect to Claims made by third parties (including supplying copies of all relevant documentation promptly as it becomes available).

8.8 Tax Status of Indemnification Payments

Any payment made by the Companies pursuant to this Article 8 shall constitute a reduction of the Purchase Price and any payment made by the Purchaser pursuant to this Article 8 shall constitute an increase in the Purchase Price. For greater certainty, any such reduction or increase to the Purchase Price shall be allocated among the Purchased Assets to which the Indemnification Payment relates. In either the case of a reduction or increase to the Purchase Price, each of the Companies and the Purchaser shall, within a reasonable time of payment and receipt of such payment, as applicable, and in any event within two months of such payment, request all amendments to its current or past Tax Returns as may be necessary to reflect such reduction or increase. If any payment made by the Companies or the Purchaser pursuant to this Article 8 is deemed by the *Excise Tax Act* (Canada) to include goods and services tax or harmonized sales tax, or is deemed by any applicable provincial or territorial legislation to include a similar value added or multi-staged tax, the amount of such payment shall be increased accordingly.

8.9 Exclusive Remedy

- (a) From and after Closing and subject to Section 8.9(b), the rights of indemnity set forth in this Article 8 are the sole and exclusive remedy of each Party in respect of any misrepresentation, incorrectness in or breach of any representation or warranty, or breach of covenant, by the other Party under this Agreement or any certificate given pursuant to this Agreement, but not in respect of any agreement delivered pursuant to this Agreement. If any Losses are suffered or incurred by one Party as contemplated by Section 8.2 or Section 8.6(a), and there has been a refusal by the other Party to make payment or otherwise provide satisfaction in respect of such Losses, then a proceeding pursuant to Section 10.2 is the appropriate means to seek a remedy for such refusal. This Article 8 shall remain in full force and effect in all circumstances and shall not be terminated by any breach (fundamental, negligent or otherwise) by any Party of its representations, warranties or covenants under this Agreement or under any Closing document or by any termination or rescission of this Agreement by any Party. This Section 8.9 shall not apply to any rights of indemnity arising as a result of or pursuant to Section 7.4.
- (b) Notwithstanding Section 8.9(a), the Parties acknowledge that the failure to comply with a covenant or obligation contained in this Agreement may give rise to irreparable injury to a Party inadequately compensable in damages. Accordingly, a Party may seek to enforce the performance of this Agreement by injunction or specific performance upon application to a court of competent jurisdiction without proof of actual damage (and without the requirement of posting a bond or other security).

8.10 Trustee and Agent

Each Party acknowledges that the other Party is acting as trustee and agent for the other Purchaser Indemnified Parties or the Companies, as the case may be, on whose behalf and for whose benefit the indemnity in Section 8.2 or Section 8.6, as the case may be, is provided and that such other Indemnified Parties shall have the full right and entitlement to take the benefit of and enforce such indemnity notwithstanding that they may not individually be parties to this Agreement. Each Party agrees that the other Party may enforce the indemnity for and on behalf of such other Indemnified Parties and, in such event, the Party from whom indemnification is sought will not in any proceeding to enforce the indemnity by or on behalf of such other Indemnified Parties assert any defence based on the absence of authority or consideration or privity of contract and irrevocably waives the benefit of any such defence.

ARTICLE 9 INTERPRETATION

9.1 Certain Rules of Interpretation

In this Agreement:

- (a) **Consent** – Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then,

unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

- (b) **Currency** – Unless otherwise specified, all references to money amounts are to lawful currency of Canada.
- (c) **Definitions** – Capitalized words and terms used in this Agreement have the meanings attributed to them in Schedule A.
- (d) **Governing Law** – This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (e) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- (f) **Including** – Where the word “including” or “includes” is used in this Agreement, it means “including (or includes) without limitation”.
- (g) **No Strict Construction** – The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.
- (h) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
- (i) **Severability** – If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.
- (j) **Statutory References** – A reference to a statute includes all regulations and rules made pursuant to such statute and, unless otherwise specified, the provisions of any statute, regulation or rule which amends, supplements or supersedes any such statute, regulation or rule.
- (k) **Time** – Time is of the essence in the performance of the Parties’ respective obligations.
- (l) **Time Periods** – Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

9.2 Recitals

The Parties acknowledge and declare that the recitals in this Agreement are true and correct.

9.3 Knowledge

Any reference to the knowledge of any Party means to the best of the knowledge, information and belief of such Party after reviewing all relevant records and making due inquiries regarding the relevant matter of all relevant directors, officers and employees of such Party and, in the case of the knowledge of the Companies and the relevant senior managers of the Companies or any of the Subsidiaries.

9.4 Entire Agreement

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

9.5 Schedules and Exhibits

The schedules and exhibits to this Agreement, are an integral part of this Agreement.

ARTICLE 10 GENERAL

10.1 Non-Waiver

No waiver of any condition or other provisions, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10.2 Arbitration

Any controversy or dispute arising out of or relating to this Agreement, including its negotiation, validity, existence, breach, termination, construction or application, or the rights, duties or obligations of any Party, shall be referred to and determined by arbitration before a single arbitrator in accordance with the *Arbitration Act, 1991* (Ontario) and the procedures set out in Schedule 10.2 to this Agreement. The decision of the arbitrator shall be final and binding.

10.3 Expenses

Except as otherwise provided in this Agreement, each Party shall pay all costs and expenses (including the fees and disbursements of legal counsel and other advisers) it incurs in connection with the negotiation, preparation and execution of this Agreement and the Transactions.

10.4 Notices

Any notice, consent or approval required or permitted to be given in connection with this Agreement (in this Section 10.4 referred to as a “**Notice**”) shall be in writing and shall be sufficiently given if delivered (whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail:

- (a) in the case of a Notice to the Companies or William at:

130 King Street West, Suite 1800
Toronto, Ontario M5X 2A2

Attention: William Meany
E-mail: *[Redacted – personal information]*

- (b) in the case of a Notice to the Purchaser at:

ESC Corporate Services Ltd.
445 King Street West, 4th Floor
Toronto, ON M5V 1K4

Attention: Clare Colledge
E-mail: *[Redacted – personal information]*

Any Notice delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then the Notice shall be deemed to have been given and received on the next Business Day.

Any Party may, from time to time, change its address by giving Notice to the other Parties in accordance with the provisions of this Section 10.4.

10.5 Assignment

The Purchaser shall be entitled, upon giving notice to the Companies at any time not less than three days prior to the Closing Date, to assign all of its rights and obligations under this Agreement to any Affiliate of the Purchaser. In such case, such assignee shall have and may exercise all the rights, and shall assume all of the obligations, of the Purchaser under this Agreement, except that such assignment shall not release the Purchaser from liability for its obligations under this Agreement. Except for such permitted assignment, no Party may assign this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably delayed, conditioned or withheld. The benefit of the

indemnity may be assigned in whole or in part by the Purchaser to any successor or assign of the Purchaser and the Companies consent to any such assignment. In the event of any such assignment, the benefit of the indemnity may be claimed by both the assignor and the assignee and the number of such assignments shall not negate the effectiveness of this clause.

10.6 Enurement

This Agreement enures to the benefit of and is binding upon the Parties and their respective successors (including any successor by reason of amalgamation of any Party), permitted assigns, heirs, attorneys, guardians, estate trustees, executors and trustees, as applicable.

10.7 Amendment

No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by any Party, is binding unless executed in writing by the Party to be bound thereby.

10.8 Further Assurances

The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the Transactions, and each Party shall provide such further documents or instruments required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions, whether before or after the Closing.

10.9 Execution and Delivery

This Agreement may be executed in any number of counterparts (including counterparts by facsimile or email) and all such counterparts taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its electronic or original signature on the execution page hereof to the other Parties by facsimile, email in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Parties.

[Signature pages follow]

The Parties have executed this Agreement as of the date first written above.

ESC CORPORATE SERVICES LTD.

By: "Clare College"

Name: Clare Colledge

Title: President

PARAGON INC.

By: "William Meany"
Name: William Meany
Title: President

2408761 ONTARIO INC.

By: "William Meany"
Name: William Meany
Title: President

"William Meany"
William Meany

SCHEDULE A

DEFINED TERMS

“**Accounts Payable**” means current amounts exclusively relating to the Business owing to any Person as of the Closing Time, which are incurred in connection with the purchase of goods or services in the ordinary course of business and in accordance with the terms of this Agreement and which would be classified as accounts payable in accordance with ASPE.

“**Accounts Receivable**” means accounts receivable, bills receivable, trade accounts, book debts and insurance claims recorded as receivable in the Books and Records and other amounts owing or deemed to be owing to the Companies or any of the Subsidiaries including refunds and rebates receivable.

“**Accrued Liabilities**” means expenses of the Companies and the Subsidiaries incurred as of the Closing Time but that are not yet due and payable as of the Closing Time and claims against the Companies and the Subsidiaries that are increasing with the passage of time or receipt of goods or services but are not yet due and payable as of the Closing Time, including accruals for vacation pay, customer rebates and allowances for product returns.

“**Affiliate**” of any Person means, at the time such determination is being made, any other Person controlling, controlled by or under common control with such first Person, in each case, whether directly or indirectly, and “control” and any derivation of that term means the possession, directly or indirectly, of the power to direct or significantly influence the management and policies, business or affairs of a Person whether through the ownership of voting securities or otherwise.

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

“**Appurtenances**” means privileges, rights, easements and appurtenances both at law and equity belonging to or for the benefit of Leased Real Property, including means of access between Leased Real Property and a public way, rights in respect of or for any other uses upon which the present use is dependent (such as pipelines, cables, railway sidings) and rights existing in and to any streets, alleys, passages and other rights-of-way.

“**arm’s length**” has the meaning that it has for purposes of the Tax Act;

“**ASPE**” means accounting standards for private enterprises from time to time approved by the Chartered Professional Accountants of Canada, or any successor organization, applicable as at the date on which a calculation is made or an action is taken.

“**Assigned Names**” has the meaning given to it in Section 7.8.

“**Assumed Liabilities**” shall mean: (a) all liabilities arising or accruing after the Closing Time with respect to the Business (including all maintenance fees associated with any registered Intellectual Property arising after the Closing Time) other than those relating to circumstances or events existing at, prior to or as a consequence of Closing; (b) Accounts Payable to the extent reflected in the Net Working Capital Amount; (c) all obligations and liabilities under the Purchased Contracts and the Real Property Leases existing after Closing and not related to any default

existing at, prior to or as a consequence of Closing; (d) the Permitted Encumbrances; and (e) Employment Liabilities.

“**Balance Sheet**” means the consolidated balance sheet of the Companies or any of the Subsidiaries as at March 31, 2019, forming part of the Financial Statements.

“**Benefit Plans**” means any plan, arrangement, agreement, program, policy, practice or undertaking, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, registered or unregistered, that provides any employee benefit, fringe benefit, supplemental unemployment benefit, bonus, incentive, profit sharing, termination, change of control, pension, supplemental pension, retirement, stock option, stock purchase, stock appreciation, share unit, phantom stock, deferred compensation, health, welfare, medical, dental, disability, life insurance and any similar plans, programmes, arrangements or practices, in each case (x) for the benefit of Employees or former employees of the Business, officers or directors of the Companies or any of the Subsidiaries or other Persons who are receiving remuneration for work or services provided to the Business or any of the Subsidiaries who are not Employees (or any spouses, dependants, survivors or beneficiaries of such Persons), or (y) that are maintained, sponsored or funded by the Companies or (z) under which the Companies or any of the Subsidiaries has, or will have, any liability or contingent liability, provided that a Benefit Plan shall not include any Statutory Plans.

“**Books and Records**” means (i) books and records of the Companies or any of the Subsidiaries relating to the Business or the Purchased Assets, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, formulae, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise, including all data, information and databases stored on computer-related or other electronic media; and (ii) a USB (or in such other format as agreed by the Purchaser) that contains the true, correct and complete contents (with all view restrictions or otherwise removed), as of the date of this Agreement, of the virtual data room maintained on behalf of the Companies at Firmex and made available to the Purchaser in connection with the Transactions.

“**Breach of Security Safeguards**” means the actual or suspected theft, loss of, unauthorized access to, use, or disclosure of, or other processing of Personal Information.

“**Business**” has the meaning given to it in the Recitals.

“**Business Day**” means any day, other than a Saturday or Sunday, on which commercial banks located in Toronto, Ontario are open for banking business during normal banking hours.

“**Canada’s Anti-Spam Legislation**” or “**Anti-Spam Laws**” means an *Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act the Telecommunications Act* (Canada) and regulations thereunder, and other laws that regulate the same or similar subject matter.

“**Claims**” includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, Orders, charges, indictments, prosecutions, informations or other similar processes,

assessments or reassessments, judgments, debts, liabilities, penalties, fines, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“**Closing**” has the meaning given to it in Section 1.2.

“**Closing Date**” has the meaning given to it in Section 1.2.

“**Closing Working Capital Adjustment Amount**” has the meaning given to it in Section 2.1(d).

“**Collective Agreements**” means the collective agreements (including expired collective agreements which have not been renewed) and related documents including benefit agreements, letters of understanding, letters of intent and other written communications (including arbitration awards) by which the Companies or any of the Subsidiaries is bound or which impose any obligations upon the Companies or any of the Subsidiaries or set out the understanding of the parties or an interpretation with respect to the meaning of any provisions of such collective agreements.

“**Companies**” has the meaning given to it in the Recitals.

“**Company Insurance Policies**” means any insurance policies obtained by the Companies.

“**Competition Act**” means the *Competition Act* (Canada).

“**Contracts**” means contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements to which the Companies or any of the Subsidiaries is a party or by which any of them are bound or under which the Companies or any of the Subsidiaries has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied) relating to the Business or the Purchased Assets, and includes any quotations, orders, proposals or tenders which remain open for acceptance and warranties and guarantees.

“**control**” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management policies of a Person, whether through the ownership of voting securities, by contract or credit arrangement, as trustee or executor, or otherwise (and the terms “**controlling**” and “**controlled by**” have corresponding meanings).

“**Database**” shall mean any compilation of Proprietary Information or any other data or information that can be electronically searched, organized or otherwise manipulated using Software.

“**Defined Benefit Plans**” means any Benefit Plan that is a “registered pension plan” as defined in subsection 248(1) of the Tax Act and which contains a “defined benefit provision” as defined in subsection 147.1(1) of the Tax Act, excluding any Multi-Employer Plans.

“**Disclosure Letter**” means the disclosure letter delivered by the Companies to the Purchaser on the date of this Agreement.

“**Employees**” means individuals employed by the Companies or any of the Subsidiaries relating to the Business.

“**Employment Contracts**” means Contracts, other than Benefit Plans, whether oral or written, relating to an Employee, including any communication or practice relating to an Employee which imposes any obligation on the Companies or any of the Subsidiaries.

“**Employment Liabilities**” means all liabilities (whether by statute, contract, common law or otherwise) accruing in respect of the period after the Closing Date with respect to any of the Transferred Employees, or otherwise arising out of, or resulting from, the relationship between the Purchaser and any of the Transferred Employees after the Closing Date, including any liability arising as a result of the Purchaser being deemed to be a successor employer, related employer or otherwise responsible or liable for payment of any amounts owing to, on behalf of, or in respect of, any of the Transferred Employees, whether pursuant to the *Employment Standards Act* (Ontario), the *Pay Equity Act* (Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario), in each case in respect of the period after the Closing Date. Without limiting the foregoing, Employment Liabilities shall include: (a) all salaries, wages, bonuses, commissions, public holiday pay and other compensation relating to the employment of the Transferred Employees by the Purchaser, in each case accruing after the Closing Date; and (b) all termination pay, severance pay, damages in lieu of reasonable notice and other related liabilities (under statute, contract, common law or otherwise) in respect of the termination and/or severance of employment of any Transferred Employees by the Purchaser after the Closing Date. For clarity, Employment Liabilities does not include any liabilities accrued at any time relating to any of the Employees who are not Transferred Employees.

“**Encumbrances**” means pledges, liens, charges, security interests, leases, title retention agreements, mortgages, restrictions, developments or similar agreements, easements, rights-of-way, title defects, options, adverse claims or encumbrances of any kind or character whatsoever.

“**Equipment Contracts**” means Contracts relating to Tangible Personal Property and includes motor vehicle leases, equipment leases, leases of computer hardware and computer systems, conditional sales contracts, title retention agreements and other similar agreements.

“**Escrow Agent**” means JPMorgan Chase Bank, N.A., Toronto Branch.

“**Escrow Agreement**” means the escrow agreement to be entered into on the Closing Date among the Companies, the Purchaser and the Escrow Agent.

“**Escrow Amount**” has the meaning given to it in Section 2.3(a).

“**Estimated Purchase Price**” has the meaning given to it in Section 2.2.

“**Excluded Assets**” means:

- (a) cash, bank balances, moneys in possession of banks and other depositories, bank accounts, term or time deposits and similar cash items of, owned or held by or for the account of the Companies, except for such items which are part of Prepaid Expenses and Deposits;

- (b) marketable shares, notes, bonds, debentures or other securities of or issued by corporations or other Persons and not relating to the Business and certificates or other evidences of ownership thereof owned or held by or for the account of the Companies;
- (c) corporate, financial and taxation records of the Companies and records of the Companies that do not relate exclusively or primarily to the Business;
- (d) extra-provincial, sales, excise or other licences or registrations issued to or held by the Companies, whether relating to the Business or otherwise;
- (e) refunds in respect of reassessments for Taxes relating to the Business or Purchased Assets paid prior to the Closing;
- (f) refundable Taxes relating to periods prior to the Closing;
- (g) the Benefit Plans and any assets held thereunder, including any refunds received thereunder;
- (h) the Company Insurance Policies, including the right to receive insurance recoveries, and any refunds received, thereunder;
- (i) the Excluded Contracts; and
- (j) those assets listed in Schedule 1.1(b) of the Disclosure Letter.

“Excluded Contracts” means:

- (a) each written employment contract and retention agreement between any Company and an Employee;
- (b) all labour union or collective bargaining agreements;
- (c) all agreements relating to Indebtedness of the Companies;
- (d) all Contracts not relating to the Business, including each Contract between a Company and any director or officer of such Company regarding indemnification and all agreements relating to the securities, stock options or capital structure of any Company; and
- (e) all contracts relating exclusively to Excluded Liabilities; and
- (f) the Contracts listed in Schedule 1.1(d) of the Disclosure Letter.

“Excluded Employment Liabilities” means all liabilities (whether by statute, contract, common law or otherwise) accruing in respect of the period up to and including the Closing Date with respect to any of the Employees, or otherwise arising out of, or resulting from, the relationship between the Companies and any of the Employees up to and including the Closing Date, including any liability for payment of any amounts owing to, on behalf of, or in respect of, any of the Employees, whether pursuant to the *Employment Standards Act* (Ontario), the *Pay Equity Act*

(Ontario) or the *Workplace Safety and Insurance Act, 1997* (Ontario), in each case in respect of the period up to and including the Closing Date. Without limiting the foregoing, Excluded Employment Liabilities shall include: (a) all salaries, wages, bonuses, commissions, public holiday pay and other compensation relating to the employment of the Employees by the Companies, in each case accrued and owing up to and including the Closing Date; and (b) all termination pay, severance pay, damages in lieu of reasonable notice and other related liabilities (under statute, contract, common law or otherwise) owing as a result of the termination and/or severance of employment of any Employees by the Companies up to and including the Closing Date. For clarity, Excluded Employment Liabilities includes all liabilities accrued at any time relating to any of the Employees who are not Transferred Employees.

“**Excluded Liabilities**” shall mean any liabilities, obligations, costs, expenses, claims or losses of the Companies or with respect to the Business, whether known, unknown, direct, indirect, absolute, contingent or otherwise or arising out of facts, circumstances or events in existence on or prior to the Closing Date, other than the Assumed Liabilities, including related to the following matters:

- (a) all unpaid fees, costs and expenses incurred by the Companies and their Subsidiaries on or before the Closing in connection with the negotiation, preparation and execution of this Agreement and the consummation of the Transactions, including: (i) costs, fees and disbursements of financial advisors, counsel, accountants and other advisors and service providers, and (ii) all change of control, severance, termination or similar payments to any director, officer, employee or consultant of the Companies or any of the Subsidiaries, in all cases, without duplication;
- (b) the Excluded Employment Liabilities;
- (c) all vacation pay accrued in respect of each Transferred Employee for periods up to and including the Closing Date, regardless of whether such vacation pay is due or owing;
- (d) all liabilities and obligations arising out of the Excluded Contracts; and
- (e) all liabilities in respect of the Employees, except the Employment Liabilities.

“**Financial Statements**” means:

- (a) with respect to Paragon, (i) the audited financial statements of Paragon for the fiscal years ended March 31, 2019 and March 31, 2018, and the draft financial statements of Paragon for the fiscal year ended March 31, 2020; and (ii) the unaudited interim financial statements of Paragon for the quarter ended June 30, 2020, in each case consisting of the balance sheet and the statements of earnings and retained earnings and cash flows and all notes thereto for the applicable periods; and
- (b) with respect to RepoLot, (i) the notice to reader financial statements of RepoLot for the fiscal years ended March 31, 2019 and March 31, 2018, and the draft notice to reader financial statements of RepoLot for the fiscal year ended March 31, 2020; and; (ii) the draft interim financial statements RepoLot for the quarter ended June

30, 2020, in each case consisting of the balance sheet and the statements of earning and retained earnings and cash flows;

copies of which financial statements are included as Schedule 7 of the Disclosure Letter.

“**Fundamental Representations**” has the meaning given to it in Section 8.2(c).

“**Governmental Authority**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, body, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity:

- (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or
- (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.

“**Governmental Authorizations**” means authorizations, approvals, including Orders, franchises, certificates, consents, directives, notices, variances, agreements, instructions, registrations, licences or permits or other rights issued to or required by the Companies or any of the Subsidiaries relating to the Business or any of the Purchased Assets by or from any Governmental Authority.

“**Improvements**” means plants, buildings, structures, fixtures, erections and improvements located on, over, under or upon the Leased Real Property and mechanical, electrical, plumbing, heating and air-conditioning systems relating to the Leased Real Property, including any of the foregoing under construction.

“**Incidental Intellectual Property**” shall mean (a) Licensed Intellectual Property consisting of shrink-wrap, non-exclusively licensed general purpose Software, and (b) Owned Intellectual Property consisting of unregistered copyrights, trade-marks, service marks and source identifiers that, if no longer available to be used in the Business, would not result in a Material Adverse Effect upon ceasing to be available to be used in the Business, and that do not constitute, cover or embody (x) the Databases, Products, Programs, Services, Software Documentation for the Programs, trade-marks and service marks used in the Business, and/or Websites or (y) Proprietary Information describing or used in the development or maintenance of the Databases, Products, Programs, Services, Software Documentation for the Programs, trade-marks and service marks used in the Business, and/or Websites.

“**Indebtedness**” means, as of a specified date, the following obligations (whether or not then due and payable and without duplication), to the extent they are obligations of the Companies or any of the Subsidiaries or guaranteed by the Companies or any of the Subsidiaries, including through the grant of a security interest upon any assets of the Companies or any of the Subsidiaries:

- (a) all outstanding indebtedness for borrowed money, whether or not contingent, owed to third parties;
- (b) all accrued interest payable with respect to Indebtedness referred to in clause (a);

- (c) all obligations for the deferred purchase price of property or services (including any potential future earn-out, purchase price adjustment, releases of “holdbacks” or similar payments, but excluding any such obligations to the extent there is cash being held in escrow exclusively for the purposes of satisfying such obligations) (“**Deferred Purchase Price**”);
- (d) all obligations evidenced by notes, bonds, debentures or other similar instruments (whether or not convertible) or arising under indentures, including, in each case, accrued but unpaid interest thereon;
- (e) all obligations arising out of any financial hedging, swap or similar arrangements;
- (f) all obligations as lessee that would be required to be capitalized in accordance with ASPE;
- (g) all obligations in connection with any letter of credit, banker’s acceptance, guarantee, surety, performance or appeal bond, or similar credit transaction; and
- (h) the aggregate amount of all prepayments premiums, penalties, breakage costs, “make whole amounts”, costs, expenses and other payment obligations of such Person that would arise (whether or not then due and payable) if all such items under clauses (a) through (g) were prepaid, extinguished, unwound or settled in full as of such specified date.

For the avoidance of doubt, “Indebtedness” shall not include (a) any amounts available under any letter of credit or similar instrument to the extent undrawn or uncalled, (b) any intercompany indebtedness or (c) obligations under operating leases. For purposes of determining the Deferred Purchase Price obligations as of a specified date, such obligations shall be deemed to be the maximum amount of Deferred Purchase Price owing as of such specified date (whether or not then due and payable) or potentially owing at a future date.

“**Indemnified Party**” has the meaning given to it in Section 8.7(a).

“**Indemnifying Party**” has the meaning given to it in Section 8.7(a).

“**Independent Auditor**” has the meaning given to it in Section 2.6(b).

“**Independent Person**” means a Person other a Party or an Affiliate or Representative of a Party.

“**Intellectual and Industrial Property Rights**” means:

- (a) any and all proprietary rights anywhere in the world provided under:
 - (i) patent law;
 - (ii) copyright law;
 - (iii) trade-mark law;
 - (iv) design patent or industrial design law;

- (v) semiconductor chip or mask work law;
- (vi) trade secret law; or
- (vii) any other statutory provision or common law principle applicable to rights to intellectual property, including those which may provide a right in either:
 - (A) ideas, formulae, algorithms, concepts, inventions, technologies, software, data compilations, drawings, specifications, confidential business information, procedures or know-how generally, including without limitation, trade secret; or
 - (B) the expression or use of such ideas, formulae, algorithms, concepts, inventions technologies, software, data compilations, drawings, specifications, confidential business information, procedures or know-how; and
- (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.

“Intellectual Property” shall mean all intellectual and industrial property which is recognized under the law of any jurisdiction anywhere in the world, whether under common law, by statute or otherwise, including, but not limited to, any intellectual or industrial property included in or covered by an Intellectual Property Registration, including but not limited to, intellectual or industrial property arising out of the following:

- (a) patents granted in any jurisdiction anywhere in the world, reissues, divisions, continuations, continuations-in-part, re-examinations, renewals and substitutes thereof, foreign counterparts of the foregoing, term restorations or other extensions of the term of any issued or granted patents anywhere in the world and extensions of the monopoly right covering a product or service previously covered by any issued or granted patent anywhere in the world for the limited purpose of extending the holder’s exclusive right to make, use or sell a particular product or service covered by such patent (such as supplemental protection certificates or the like);
- (b) trade names, trade-marks, service names, service marks, product names, brands, logos and other distinctive identifications used in commerce, whether in connection with products or services, and the goodwill associated with any of the foregoing and with the Business;
- (c) original works of authorship, derivative works and other copyrightable works of any nature, and fixations of any of the foregoing;
- (d) Software, Databases and fixations thereof;
- (e) uniform resource locators, website addresses, domain names, website content and all fixations thereof;
- (f) Proprietary Information; and

(g) any other intangible property similar to any of the above.

“Intellectual Property Registration” shall mean an application (including provisional applications), certificate, filing, registration or other document seeking or confirming rights in Intellectual Property issued by, filed with or recorded by any Governmental Authority in any jurisdiction anywhere in the world (including, in the case of patent applications, international or multi-national applications filed in accordance with Chapter I of the Patent Cooperation Treaty or any other multi-lateral agreement), including any and all amendments to any of the foregoing.

“Inventories” means items that are held by the Companies or any of the Subsidiaries for sale, license, rental, lease or other distribution in the ordinary course of business, or are being produced for sale, or are to be consumed, directly or indirectly, in the production of goods or services to be available for sale, of every kind and nature and wheresoever situate including inventories of raw materials, work-in-progress, finished goods and by-products, operating supplies and packaging materials relating to the Business.

“IP Development Work” has the meaning ascribed to that term in Section 34 of Schedule B.

“Law” means applicable laws (including common law or civil law), statutes, by-laws, rules, regulations, Orders, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, decrees, judgments, awards or requirements, in each case of any Governmental Authority.

“Leased Real Property” means lands and premises used by the Companies or any of the Subsidiaries relating to the Business that are leased, subleased, licensed to or otherwise occupied by the Companies or any of the Subsidiaries and the interest of the Companies and the Subsidiaries in Improvements and Appurtenances.

“Licensed Intellectual Property” shall mean Intellectual Property which the Companies or any of the Subsidiaries has the right to use by agreement (such as a Third-Party License) with a person (or another person acting as an authorized representative of such person) claiming to own (or control the Companies’ use of) such Intellectual Property including, without limitation, “open source,” “freeware” or “public source” Software.

“Loss” or “Losses” includes all actually suffered or incurred and paid judgments, debts, liabilities, penalties, fines, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

“Material Adverse Effect” means a state of facts, event, change, effect or circumstance that, when considered either individually or in the aggregate together with all other adverse changes, effects or circumstances with respect to which such phrase is used in this Agreement, is materially adverse to, or would reasonably be expected to have a material adverse effect on: (i) the financial condition or results of operations or prospects of the Companies or any of their Subsidiaries, other than those resulting from industry-wide conditions or general economic conditions affecting the industry in which the business of the Companies or any of their Subsidiaries is carried on (except to the extent disproportionately affecting such business), or (ii) the ability of the Companies to consummate the Transactions.

“**Material Contracts**” means Contracts (i) involving payments to or by the Companies or any of the Subsidiaries in excess of *[Redacted – commercially sensitive]* per year, (ii) involving rights or obligations of the Companies or any of the Subsidiaries that may reasonably extend beyond two years and which do not terminate or cannot be terminated by the Companies or any of the Subsidiaries without penalty on less than three months’ notice, (iii) which are outside the ordinary course of business, (iv) which restrict in any way the business or activities of the Companies or any of the Subsidiaries, or (v) which, if terminated without the consent of the Companies or any of the Subsidiaries, would have a Material Adverse Effect.

“**Multi-Employer Plans**” means Benefit Plans to which the Companies are required to contribute pursuant to a collective agreement, participation agreement, any other agreement or statute or municipal by-law and which are not maintained or administered by the Companies or their Affiliates.

“**Notice**” has the meaning given to it in Section 10.4.

“**Object Code**” shall mean the sequence of instructions in binary form that is generated from Source Code and that is intended to be executable by a computer after suitable processing and linking, but without further intervening steps of compilation or assembly.

“**Objection Notice**” has the meaning given to it in Section 2.6(a).

“**Orders**” means orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any Governmental Authority or arbitrator.

“**Organizational Documents**” means, with respect to an entity, its certificate of incorporation, articles of incorporation, bylaws, articles of association, memorandum of association, certificate of trust, trust agreement, partnership agreement, limited partnership agreement, certificate of formation, limited liability company agreement or operating agreement, or other similar instrument, as applicable, in each case, including all amendments thereto.

“**Outside Date**” means August 15, 2020, or such other date as the Purchaser and Paragon may agree in writing.

“**Owned Intellectual Property**” shall mean Intellectual Property (a) created or developed by or on behalf of the Companies and any of the Subsidiaries or (b) to which any of the Companies and any of the Subsidiaries has acquired, by purchase, assignment or other transfer, the unconditional, unrestricted, exclusive right to control or prevent any and all use of such Intellectual Property by others without the consent or approval of or payment to any other person.

“**Paragon**” has the meaning given to it in the Recitals.

“**Parties**” means the Companies, William and the Purchaser collectively, and “**Party**” means any one of them.

“**Pension Plans**” means Benefit Plans providing pensions, superannuation benefits or retirement savings including pension plans, top up pensions or supplemental pensions, “registered retirement

savings plans” (as defined in the Tax Act), “registered pension plans” (as defined in the Tax Act) and “retirement compensation arrangements” (as defined in the Tax Act).

“**Permitted Encumbrances**” means the Encumbrances listed in Schedule D.

“**Person**” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority, and where the context requires any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.

“**Personal Information**” means information about an identifiable individual in the possession or under control of the Companies and any of the Subsidiaries.

“**Prepaid Expenses and Deposits**” means the unused portion of amounts prepaid by or on behalf of the Companies exclusively relating to the Business or the Purchased Assets including Taxes, assessments, rates and charges, utilities, rents, tenant allowances and deposits with any public utility or any Governmental Entity, but excluding income or other Taxes which are personal to the Companies and amounts paid in respect of the Benefit Plans and Company Insurance Policies.

“**Privacy Laws**” means (i) all federal and provincial laws regarding the collection, use, storage, processing or disclosure of Personal Information, including without limitation the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security; and (iii) all laws, regulations and guidelines governing direct marketing, telemarketing, the sending of commercial electronic messages including, e-mails and text messages, including Canada’s Anti-Spam Legislation.

“**Proceedings**” means any investigations (including any audit or examination), actions, claims, suits or proceedings (public or private) by or before a Governmental Authority or any arbitrator.

“**Products**” shall mean any products used to provide the Services or otherwise marketed, sold or offered by the Companies and any of the Subsidiaries in the operation of the Business, including but not limited to the Products listed on Schedule 34(a) of the Disclosure Letter.

“**Programs**” shall mean the Software and all Databases which are either (a) licensed or otherwise made available to, or used to provide Services to, customers by the Companies and any of the Subsidiaries as part of the Business or (b) used in the operation of the Business, in each case together with all Software Documentation with respect to such Programs, including but not limited to the Programs listed on Schedule 34(a) of the Disclosure Letter.

“**Proprietary Information**” shall mean technical, commercial, marketing and other information, data and material of the kind which is or can be used in the operation of a business and which would reasonably be considered to be confidential or proprietary in nature including, but not limited to, any algorithm; procedure; idea; concept; strategic, business and other plan; research; invention or invention disclosure (whether patentable or un-patentable); test, engineering and technical data and materials, know-how, show-how or methodology; trade secret, process, design, formula, or other information or data which has not entered the public domain, and all records or fixations of any thereof, including but not limited to, laboratory notes, Source Code and Software Documentation.

“**Purchase Price**” has the meaning given to it in Section 2.1.

“**Purchased Assets**” means the undertaking and all of the property and assets of the Business, both tangible and intangible, of every kind and description and where so ever situate, other than the Excluded Assets, including: (i) all machinery, equipment, technology and communications hardware and infrastructure, furniture, furnishings and accessories, parts and supplies of all kinds including office supplied, owned by the Companies and used in connection with the Business; (ii) all Accounts Receivable and the full benefit of all security for the Accounts Receivable; (iii) all Prepaid Expenses and Deposits; (iv) the full benefit of all Purchased Contracts; (v) the leasehold interest of the Companies in and to each Leased Real Property; (vi) all Law or Governmental Authorizations owned, held or used by the Companies in connection with the Business to the extent they are transferrable; (vii) all right, title and interest of the Companies in and to the Intellectual Property owned by or licensed to the Companies or used by the Companies in connection with the Business; (viii) the Books and Records, excluding all Tax Returns pertaining to corporate income taxes of the Companies; (ix) all claims of the Companies relating to the Business or the Purchased Assets, whether choate or inchoate, known or unknown, contingent or otherwise; and (x) the goodwill of the Business, including the exclusive right of Purchaser to (a) represent itself as carrying on the Business in continuation of and in succession to the Companies, and (b) use any words indicating that the Business is so carried on, including all of the Companies’ right, title and interest in and to the Assigned Names or any variation of them, together with the rights if any, to any telephone and facsimile numbers and interest domain names used in connection with the Business.

“**Purchased Contracts**” means all Contracts to which any of the Companies is a party in connection with the Purchased Assets, excluding the Excluded Contracts.

“**Purchaser**” has the meaning given to it in the Recitals.

“**Purchaser Indemnified Parties**” has the meaning given to it in Section 8.2.

“**Real Property Leases**” means Contracts pursuant to which the Companies or any of the Subsidiaries uses or occupies the Leased Real Property, including all rights to related Improvements and Appurtenances.

“**Related Documents**” means each other Contract, document, instrument or certificate other than this Agreement that is contemplated by this Agreement or to be executed by the Parties in connection with the consummation of the Transactions.

“**RepoLot**” has the meaning given to it in the Recitals.

“**Representative**” means, with respect to any Person, any director, officer or employee of such Person and any agent, consultant, legal, accounting, financial or other advisor or other representative authorized by such Person to represent or act on behalf of such Person.

“**Restricted Right**” means any Purchased Asset that is a Contract which by its terms requires consent or approval of the other party or parties thereto or the issuer for completion of the transactions contemplated by this Agreement or in respect of which the completion of the transactions contemplated by this Agreement will increase the obligations or decrease the rights or entitlements of the Purchaser or the Companies relating to such Contract.

“**Security Method**” has the meaning ascribed to that term in Schedule 34(q) of the Disclosure Letter.

“**Services**” shall mean services offered or provided to third parties by the Companies or any of the Subsidiaries in the conduct of the Business, including, but not limited to, license of, access to and use of Products.

“**Software**” shall mean computer code of any type (whether Source Code or Object Code) in any programming or mark-up language, underlying any type of computer programming (whether application software, middleware, firm ware or system software) including, but not limited to, applets, assemblers, compilers, design tools, and user interfaces.

“**Software Documentation**” shall mean all records, technical and descriptive materials, documentation and procedures (including computerized records, if any) existing and relating to the creation, acquisition, design, development, programming, enhancement, modification, translation or other manipulation, operation, use or maintenance of any Software or Database, and all embodiments and descriptions of such Software in any medium, including hardcopy versions and, if applicable, relevant Source Code files and including, but not limited to, all computer tapes, disks and CD-ROMs containing embodiments or descriptions of such Software.

“**Source Code**” shall mean the human readable programming statements for Software that are created by a programmer with a text editor or visual programming tool and that are used to generate the Object Code. Source Code also includes Software Documentation (such as logic diagrams and flow charts, programmer comments and annotations, help text, data, data structures and instructions) where such Software Documentation is stored within or associated electronically with Source Code files.

“**Statement**” has the meaning given to it in Section 2.6(a).

“**Statutory Plans**” means statutory benefit plans which the Companies are required to participate in or comply with, including the Canada and Quebec Pension Plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation.

“**Subsidiaries**” or “**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company or other Person of which such Person, either alone or together with one or more subsidiaries or by one or more other subsidiaries (i) directly or indirectly owns or purports to own, beneficially or of record securities or other interests representing more than 50% of the outstanding equity, voting power, or financial interests of such other Person or (ii) is entitled, by Contract or otherwise, to elect, appoint or designate directors constituting a majority of the members of such other Person’s board of directors or other governing body.

“**Tangible Personal Property**” means machinery, equipment, furniture, furnishings, office equipment, computer hardware, supplies, materials, vehicles, material handling equipment, implements, parts, tools, jigs, dies, moulds, patterns, tooling and spare parts and tangible assets (other than Inventory) owned or used or held by the Companies or any of the Subsidiaries for use in or relating to the Business, including (i) any of the foregoing which are in storage or in transit; (ii) other tangible personal property of the Companies or any of the Subsidiaries whether located

in or on the Leased Real Property or elsewhere; and (iii) any of the foregoing which may be attached to Leased Real Property but are not Improvements.

“**Target Working Capital Amount**” has the meaning given to it in Section 2.1(d).

“**Tax Act**” means the *Income Tax Act* (Canada).

“**Tax Returns**” means returns, reports, declarations, elections, notices, filings, forms, statements and other documents (whether in tangible, electronic or other form) and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto, made, prepared, filed or required to be made, prepared or filed by Law in respect of Taxes.

“**Taxes**” means taxes, duties, fees, premiums, assessments, imposts, levies and other similar charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Québec and other government pension plan premiums or contributions.

“**Technology**” shall mean any reduction to practice, physical embodiment or actual operational and technological use or application of one or more items of Proprietary Information or other Intellectual Property, either alone or in combination with other assets, such as websites; computer systems and networks; databases; and specialized business methods and procedures.

“**Third-Party License**” shall mean all licenses, agreements, obligations or other commitments under which a person has granted any of the Companies a right to use any Licensed Intellectual Property in connection with the Business, but retains one or more rights to use such Intellectual Property, as listed and described on Schedule 34(h) of the Disclosure Letter.

“**Transactions**” means the transactions contemplated by this Agreement and the Related Documents.

“**Transferred Employees**” means Employees who accept offers of employment from the Purchaser and commence employment with the Purchaser as of the Closing Date and “**Transferred Employee**” means any one of them.

“**Union**” means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, territorial, national or international union, a certified council of unions, a designated or certified employee bargaining agency, and any organization which has been declared a union pursuant to applicable labour relations legislation or which may qualify as a Union.

“**Websites**” shall mean the content available at the URLs listed on Schedule 34(a) of the Disclosure Letter.

“**William**” has the meaning given to it in the Recitals.

SCHEDULE B
REPRESENTATIONS AND
WARRANTIES OF THE COMPANIES

Fundamental Matters

1. Incorporation, Corporate Power and Registration

- (a) The Companies and the Subsidiaries are each corporations duly incorporated, validly existing and in good standing (if applicable) under the laws of their respective jurisdiction of incorporation and have all necessary corporate power, authority and capacity to own or lease its property and to carry on its business as presently conducted.
- (b) Neither the nature of the Companies' or any of the Subsidiaries' business nor the location or character of the assets owned or leased by the Companies or any of the Subsidiaries requires the Companies or any of the Subsidiaries, as applicable, to be registered, licensed or otherwise qualified as an extra-provincial or foreign corporation in any jurisdiction other than in jurisdictions where it is duly registered, licensed or otherwise qualified for such purpose.

2. Due Authorization and Enforceability of Obligations

- (a) The Companies have all necessary corporate power, authority and capacity to enter into this Agreement and to carry out their obligations under this Agreement.
- (b) The execution and delivery of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of the Companies.
- (c) This Agreement constitutes, and each other agreement to be executed by the Companies in connection with the Closing will constitute, a valid and binding obligation of the Companies enforceable against them in accordance with its terms.

3. Status of the Companies and Right to Sell

- (a) Except for those Encumbrances listed in Schedule 3(a) of the Disclosure Letter, the Companies are the sole registered and beneficial owners of the Purchased Assets free and clear of all Encumbrances.
- (b) The Companies have the exclusive right to dispose of the Purchased Assets as provided in this Agreement and such disposition will not violate, contravene, breach or offend against or result in any default under any Contract, charter or by-law provision, Order, judgment, decree, licence, permit or Law, to which the Companies are a party or subject or by which the Companies are bound or affected.

4. Absence of Conflicts

Except for those items listed in Schedule 4 of the Disclosure Letter, none of the Companies or any of the Subsidiaries is a party to, bound or affected by or subject to any:

- (a) Contract;
- (b) charter or by-law; or
- (c) Laws or Governmental Authorizations,

that would be violated, breached by, or under which default would occur or an Encumbrance would be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement to be entered into under the terms of this Agreement. There has been no sale, assignment, subletting, licensing or granting of any rights in or other disposition of or in respect of any of the Companies' or any of the Subsidiaries' assets or any granting of any agreement or right capable of becoming an agreement or option for the purchase, assignment, subletting, licensing or granting of any rights in or other disposition of any of such assets other than pursuant to the provisions of, or as disclosed in, this Agreement or pursuant to purchase orders accepted by the Companies or any of the Subsidiaries in the ordinary course of business.

Regulatory Matters

5. Regulatory Approvals

No approval, Order, consent of or filing with any Governmental Authority is required other than consents to assignment of any Governmental Authorizations on the part of the Companies or any of the Subsidiaries, in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement or the performance of the Companies' obligations under this Agreement or any other documents and agreements to be delivered under this Agreement other than those approvals, Orders, consents or filings where the failure to obtain or perform would not have a Material Adverse Effect.

6. Competition Act Assets and Revenues

For the purposes of determining the application of the pre-merger filing requirements of the *Competition Act*, the aggregate value of the assets in Canada being acquired and the gross revenues from sales in and from Canada generated from the assets in Canada being acquired determined in each case as prescribed in the *Competition Act* are [Redacted – commercially sensitive] respectively.

Financial Matters

7. Financial Statements

The Financial Statements have been prepared in accordance with ASPE applied on a basis consistent with that of the preceding period and present fairly:

- (a) all of the assets, liabilities and financial position of each of the Companies or any of the Subsidiaries as of the date of such Financial Statements; and
- (b) the sales, earnings, results of operation and changes in financial position of each of the Companies or any of the Subsidiaries for the applicable period ended as of the date of such Financial Statements.

8. Reserves and Accruals

The reserves and Accrued Liabilities disclosed on or reflected in the Financial Statements and the Books and Records and to be reflected on the Closing Date Financial Statement, are recorded in amounts equal to the liabilities in respect of which they have been established.

9. Management Recommendation Letters

During the last five years, none of the Companies or any of the Subsidiaries or their boards of directors have received any management recommendation letters by the auditor or any previous auditor of the Companies or any of the Subsidiaries.

Liabilities and Litigation

10. Absence of Contingent Liabilities

Except as described in Schedule 10 of the Disclosure Letter, none of the Companies or any of the Subsidiaries has given or agreed to give, or is a party to or bound by, any guarantee, surety or indemnity in respect of indebtedness, or other obligations, of any Person, or any other commitment by which the Companies or any of the Subsidiaries is, or is contingently, responsible for such indebtedness or other obligations.

11. Absence of Undisclosed Liabilities

None of the Companies or any of the Subsidiaries has incurred any liabilities or obligations (whether accrued, absolute, contingent or otherwise), which continue to be outstanding, except:

- (a) as disclosed in the Financial Statements;
- (b) as disclosed on Schedule 11 of the Disclosure Letter;
- (c) as incurred in the ordinary course of business; or
- (d) in respect of any registered pension plan, the obligation to make special payments to liquidate any solvency deficiency or any unfunded liability in accordance with actuarial reports disclosed to the Purchaser under Schedule 41 of the Disclosure Letter.

12. Absence of Changes and Unusual Transactions

Except as disclosed in Schedule 12 of the Disclosure Letter, since the date of the Balance Sheet:

- (a) there has not been any change in the financial condition, operations or prospects of the Companies or any of the Subsidiaries with respect to the Business or Purchased Assets other than changes in the ordinary course of business, none of which has a Material Adverse Effect;
- (b) none of the Companies or any of the Subsidiaries has transferred, assigned, sold or otherwise disposed of any of the Purchased Assets shown or reflected in the

Balance Sheet or cancelled any debts or entitlements except, in each case, in the ordinary course of business;

- (c) there has not been any material change in the level or value of Inventories;
- (d) to the knowledge of the Companies, there has not been any damage, destruction, loss, virus or denial of service attack, information technology failure, labour dispute, organizing drive, application for certification or other event, development or condition of any character (whether or not covered by insurance) which has a Material Adverse Effect;
- (e) none of the Companies or any of the Subsidiaries has incurred or assumed any obligation or liability (fixed or contingent), except those listed in Schedule 12 of the Disclosure Letter and except unsecured current obligations and liabilities incurred in the ordinary course of business none of which has a Material Adverse Effect;
- (f) none of the Companies or any of the Subsidiaries has discharged or satisfied any Encumbrance, or paid any obligation or liability (fixed or contingent) other than liabilities included in the Balance Sheet and liabilities incurred since the date of the Balance Sheet in the ordinary course of business;
- (g) none of the Companies or any of the Subsidiaries has suffered an operating loss or any unusual or extraordinary loss, waived or omitted to take any action in respect of any rights, or entered into any commitment or transaction not in the ordinary course of business where such loss, rights, commitment or transaction is or would be material in relation to the Business;
- (h) none of the Companies or any of the Subsidiaries has granted any bonuses, whether monetary or otherwise, or made any general wage or salary increases in respect of its Employees, other than as provided for in the Collective Agreements or in the ordinary course of business, or changed the terms of employment for any Employee or entered into a written contract with any Employee;
- (i) none of the Companies or any of the Subsidiaries has, relating to the Business, hired or dismissed any senior employees or hired or dismissed more than 20 employees;
- (j) none of the Companies or any of the Subsidiaries has, relating to the Business or the Purchased Assets, directly or indirectly, engaged in any transaction, made any loan or entered into any arrangement with any officer, director, partner, shareholder, Employee (whether current or former or retired), consultant, independent contractor or agent of the Companies or any of the Subsidiaries;
- (k) none of the Companies or any of the Subsidiaries has changed the manner of billing of, or the credit lines made available to, any of its customers;
- (l) none of the Companies or any of the Subsidiaries, except for Permitted Encumbrances, has created or permitted to exist any Encumbrance affecting the Purchased Assets;

- (m) none of the Companies or any of the Subsidiaries, directly or indirectly, has declared or paid any dividends or declared or made any other payments or distributions on or in respect of any of its shares and has not, directly or indirectly, purchased or otherwise acquired any of its shares; and
- (n) none of the Companies or any of the Subsidiaries has authorized, agreed or otherwise become committed to do any of the foregoing.

13. Litigation

- (a) Except as disclosed in Schedule 13 of the Disclosure Letter, there are no Claims, investigations or other proceedings, including appeals and applications for review, in progress, or pending or threatened against or relating to the Companies or any of the Subsidiaries before any Governmental Authority, which, if determined adversely to the Companies or any of the Subsidiaries, would,
 - (i) have a Material Adverse Effect,
 - (ii) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or
 - (iii) delay, restrict or prevent any of the Companies from fulfilling any of its obligations set out in this Agreement or arising from this Agreement,

and the Companies have no knowledge of any existing ground on which any such action, suit, litigation or proceeding might be commenced with any reasonable likelihood of success.

- (b) Except as disclosed in Schedule 13 of the Disclosure Letter, there is no judgment, decree, injunction, rule or Order of any Governmental Authority or arbitrator outstanding against the Companies or any of the Subsidiaries.
- (c) The Purchaser has been provided with copies of all of the audit response letters from all counsel to the Companies or any of the Subsidiaries for the last five years. None of the Companies or any of the Subsidiaries has undergone during the last five years, or is currently undergoing, any audit, review, inspection, investigation, survey or examination of records by a Governmental Authority relating to the business of the Companies or any of the Subsidiaries.

Assets

14. Sufficiency of Assets

The Purchased Assets are sufficient for the continued conduct of the Companies' or any of the Subsidiaries' businesses after the Closing in substantially the same manner as conducted prior to the Closing.

15. Title to Certain Assets

Except with respect to Licensed Intellectual Property and Leased Real Property and as disclosed in Schedule 15 of the Disclosure Letter, each of the Companies or any of the Subsidiaries is the sole legal and beneficial and (where its interests are registrable) the sole registered owner of all of the Purchased Assets, with good and valid title, free and clear of all Encumbrances other than Permitted Encumbrances, and is exclusively entitled to possess and dispose of same (subject only, in the case of Contracts or Governmental Authorizations, to the necessity of obtaining consents to their assignment).

16. Condition of Certain Assets

The Tangible Personal Property is in good condition, repair and (where applicable) proper working order, having regard to its use and age and such assets have been properly and regularly maintained.

17. Location of the Assets

All of the Purchased Assets are located on the Leased Real Property or are in transit to or from the Leased Real Property.

18. Inventories

All Inventories are valued on the books of the Companies or any of the Subsidiaries at the lower of cost, using the first in, first out method, or net realizable value.

19. Collectability of Accounts Receivable

The Accounts Receivable are good and collectible at the aggregate recorded amounts, except to the extent of any reserves and allowances for doubtful accounts provided for such Accounts Receivable in the Books and Records and to be provided for in the Closing Date Financial Statement, and are not subject to any defence, counterclaim or set off.

Compliance

20. Business in Compliance with Law

The Companies or any of the Subsidiaries are, and have at all times been, in compliance with all Laws applicable to the Business or the Companies or any of the Subsidiaries. No event has occurred and no circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation or a failure to comply with any Laws applicable to the Business or the Companies or any of the Subsidiaries, and neither the Companies nor any of the Subsidiaries has received any notice or other communication (whether written or oral) from any Governmental Authority regarding any actual, alleged, possible or potential violation of, or failure to comply with, any such Laws.

21. Governmental Authorizations

Schedule 21 of the Disclosure Letter sets out a complete and accurate list of all Governmental Authorizations, true and complete copies of which have been delivered or made available to the Purchaser, and there are no other Governmental Authorizations necessary to carry on the Business as currently conducted or to own or lease any of the property or assets owned or used by the

Companies or any of the Subsidiaries as such property or assets are currently owned, leased or used. Each Governmental Authorization is valid, subsisting, in good standing and in full force and effect, and no event has occurred or circumstance exists that (with or without notice or lapse of time) may constitute or result in a violation of such Governmental Authorization or give rise to an obligation on the part of the Companies to undertake or bear any cost. No proceedings are pending or, to the knowledge of the Companies, threatened, which could result in the revocation or limitation of any Governmental Authorization, and all steps have been taken and filings made on a timely basis with respect to each Governmental Authorization and its renewal.

22. Third Party Consents

Schedule 22 of the Disclosure Letter sets out a complete and accurate list of all notifications required to be given and waivers, approvals and consents required to be obtained by the Companies or any of the Subsidiaries in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement.

Contracts and Related Matters

23. Material Contracts

- (a) Schedule 23 of the Disclosure Letter sets out a complete list of all Material Contracts in effect on the date of this Agreement.
- (b) Except as set out on Schedule 23 of the Disclosure Letter:
 - (i) each Material Contract is in full force and effect, unamended;
 - (ii) each Material Contract is a legal, valid and binding obligation of the Companies or any of the Subsidiaries, as the case may be, and to the knowledge of the Companies, each other party to such Material Contract;
 - (iii) each Material Contract is enforceable against the Companies or any of the Subsidiaries, as the case may be, and, to the knowledge of the Companies, each other party to such Material Contract in accordance with its terms, subject, in each case, to bankruptcy, insolvency, reorganization or other Laws affecting the enforcement of the rights of creditors;
 - (iv) each of the Companies and any of the Subsidiaries has performed, in all material respects, all obligations required to be performed by it and is not, and to the knowledge of the Companies, no other Person is, in default under or in breach of any Material Contract; and
 - (v) no event has occurred which is, or with the passage of time or the giving of notice or both would result in, a default, breach or event of noncompliance under any Material Contract by the Companies or any of the Subsidiaries or, to the knowledge of the Companies, any other party to such Material Contract.

24. Copies of Contracts, etc.

True and complete copies of the Material Contracts have been delivered or made available to the Purchaser, and there are no current or pending negotiations with respect to the renewal, repudiation or amendment of any such Material Contracts.

25. Non-Arm's Length Transactions

Other than as disclosed in Schedule 25 of the Disclosure Letter, no director or officer, former director or officer, shareholder or Employee of, or any other Person not dealing at arm's length with the Companies or any of the Subsidiaries is engaged in any transaction or arrangement with or is a party to a Contract with, or has any indebtedness, liability or obligation to, the Companies or any of the Subsidiaries relating to the Business or the Purchased Assets except for employment arrangements with Employees, the terms of which are disclosed in Schedule 39 of the Disclosure Letter, with respect to which the Purchaser will not assume any liabilities.

26. No Joint Venture Interests or Strategic Alliances

None of the Companies or any of the Subsidiaries, relating to the Business, is a party to a strategic alliance or co-operative agreement or is a partner, beneficiary, trustee, co-tenant, joint-venturer or otherwise a participant in any partnership, trust, joint venture, co-tenancy or similar jointly owned business undertaking and none of the Companies or any of the Subsidiaries has significant investment interests in any business owned or controlled by any third party which carries on in whole or in part the Business or any business similar to, competitive with or ancillary to the Business.

27. Major Suppliers and Customers

The Purchaser has been provided with a comprehensive listing of each supplier of goods and services to, and each customer of, the Companies or any of the Subsidiaries to whom the Companies or any of the Subsidiaries paid or billed in excess of *[Redacted – commercially sensitive]* in the aggregate during the 12 month period ending December 31, 2019, together with, in each case, the amount so billed or paid. Since December 31, 2019, there has been no termination or modification or change in the business relationship with any such supplier or customer. To the knowledge of the Companies, no such supplier or customer has any intention to change its relationship or the terms upon which it conducts business with the Companies or any of the Subsidiaries.

28. Restrictive Covenants

None of the Companies or any of the Subsidiaries is a party to or bound or affected by any Contract:

- (a) limiting the freedom of the Companies or any of the Subsidiaries to compete in any line of business or any geographic area, acquire goods or services from any supplier, establish the prices at which it may sell any goods or services, sell goods or services to any customer or potential customer, or transfer or move any of its assets or operations; or
- (b) which has a Material Adverse Effect.

29. Equipment Contracts

Schedule 29 of the Disclosure Letter sets forth a complete list of all Equipment Contracts together with a description of the Tangible Personal Property to which the Equipment Contracts relate. The Equipment Contracts listed in Schedule 29 of the Disclosure Letter are all those used to earn the revenue shown on the Financial Statements. All of the Equipment Contracts are in full force and effect unamended and there are no outstanding defaults (or events which would constitute a default with the passage of time or giving of notice or both) under the Equipment Contracts on the part of the Companies or any of the Subsidiaries, or on the part of any of the other parties to the Equipment Contracts. The interest of the Companies or any of the Subsidiaries under each of the Equipment Contracts is held free and clear of any Encumbrance, other than Permitted Encumbrances, and all payments due under the Equipment Contracts have been duly and punctually paid.

30. Insurance

- (a) Each of the Companies or any of the Subsidiaries maintains such policies of insurance, issued by responsible insurers, as are appropriate to the Business and its Purchased Assets, in such amounts and against such risks as are customarily carried and insured against by owners of comparable businesses, properties and assets.
- (b) All such policies of insurance are in full force and effect and none of the Companies or any of the Subsidiaries is in default, as to the payment of premiums or otherwise, under the terms of any such policy.
- (c) Schedule 30 of the Disclosure Letter sets forth:
 - (i) a complete list of all policies of insurance which the Companies or any of the Subsidiaries maintain and the particulars of such policies, including the name of the insurer, the risk insured against, the amount of coverage and the amount of any deductible and a summary of all claims under each such policy for the past five years;
 - (ii) details of any self-insurance arrangements by or affecting the Companies or any of the Subsidiaries, including any reserves established thereunder; and
 - (iii) details of any insurance coverage provided to third parties and details of the policies under which such coverage is provided.

31. Trade Allowances

No customers of the Companies or any of the Subsidiaries are entitled to or customarily receive discounts, allowances, rebates, credits, preferential terms, or similar reductions in price or other trade terms arising from any agreements or understandings (whether written or oral) with or concessions granted to any customer. All such discounts, allowances, rebates, credits, preferential terms, or similar reductions in price or other trade terms, including contra transactions, are at the same levels as have been in existence for the three immediately preceding fiscal years and are consistent with industry practice.

Corporate Records

32. Books and Records

All Books and Records have been delivered or made available to the Purchaser. Such Books and Records fairly and correctly set out and disclose in all material respects the financial position of the Companies or any of the Subsidiaries and all material financial transactions relating to each of their businesses has been accurately recorded in such Books and Records. Books and Records stored on computer-related or other electronic media are appropriately organized and indexed and no data conversions, translations or technology upgrades are required before such data can be accessed, read, searched and used by the Companies' and the Subsidiaries' current information technology.

33. Corporate Records

- (a) The Articles and by-laws for the Companies or any of the Subsidiaries, including any and all amendments, have been delivered or made available to the Purchaser and such Articles and by-laws as so amended are in full force and effect and no amendments are being made to them.
- (b) The corporate records and minute books for the Companies or any of the Subsidiaries have been delivered or made available to the Purchaser. The minute books include complete and accurate minutes of all meetings of the directors or shareholders for the Companies or any of the Subsidiaries, as applicable, held to date or resolutions passed by the directors or shareholders on consent, since the date of its incorporation. The share certificate book, register of shareholders, register of transfers and register of directors for the Companies or any of the Subsidiaries, are complete and accurate.

Intellectual Property

34. Intellectual Property and Technology

- (a) Schedule 34(a) of the Disclosure Letter sets forth a true, complete and correct list of each separately identifiable item of Intellectual Property, other than Incidental Intellectual Property, of the Companies and any of the Subsidiaries and relating to the Business, including, but not limited to, Intellectual Property that covers or is embodied in any Products, Programs, Services, Software Documentation and Websites, and all other Software used in the Business, including an indication of the registered or unregistered status of all copyrights, trade-marks and service marks included within such Intellectual Property of the Companies and any of the Subsidiaries. Schedule 34(a) of the Disclosure Letter sets forth each material Program, Product and Service currently sold, licensed, provided or marketed by the Companies and any of the Subsidiaries in the operation of the Business. In each case, Schedule 34(a) of the Disclosure Letter correctly identifies whether a particular item of Intellectual Property is Owned Intellectual Property or Licensed Intellectual Property.
- (b) Each person who has contributed to or participated in the conception, reduction to practice, authoring, creation or development of the Programs, Products, or any Owned Intellectual Property created or developed by or on behalf of the Companies and which is used in the Business (and expressly excluding Licensed Intellectual Property) (collectively, "**IP Development Work**") is set forth on Schedule 34(b)

of the Disclosure Letter. Except as set forth on Schedule 34(b) of the Disclosure Letter, no person set forth thereon has retained or been granted any rights or licenses in the Programs, Products, Services, Technology or such Intellectual Property. Except as set forth on Schedule 34(b) of the Disclosure Letter, each such person:

- (i) either (x) is (or was at the time the IP Development Work was performed) a bona fide employee of the Companies or any of the Subsidiaries (and is identified as such on Schedule 34(b) of the Disclosure Letter) or (y) has duly executed a “work-made-for-hire”, contractor or consultant agreement with the Companies or any of the Subsidiaries (which agreement is identified on Schedule 34(b) of the Disclosure Letter and a copy of which has been provided to the Purchaser) covering such IP Development Work;
 - (ii) if such IP Development Work generated Intellectual Property or Proprietary Information that may embody or be covered by Intellectual Property anywhere in the world, unless such Intellectual Property becomes the property of the Companies or any of the Subsidiaries pursuant to such person’s employment agreement with the Companies or any of the Subsidiaries, has executed a valid written assignment of all rights of such person in and to the results of such person’s IP Development Work in favour of the Companies or any of the Subsidiaries, as the case may be, as assignee (which assignment is identified on Schedule 34(b) of the Disclosure Letter and a copy of which has been provided to the Purchaser);
 - (iii) has irrevocably waived his or her moral rights in and to such IP Development Work in favour of the Companies or any of the Subsidiaries; and
 - (iv) has executed a confidentiality agreement in favour of the Companies or any of the Subsidiaries that obligates such person to maintain the IP Development Work as confidential.
- (c) The Companies and any of the Subsidiaries owns all right, title and interest in and with respect to all Owned Intellectual Property free and clear of any Encumbrances, and the Owned Intellectual Property is fully transferable, alienable and licensable by the Companies or any of the Subsidiaries without restriction, and the Companies and any of the Subsidiaries shall have all such right, title and interest in and with respect to all Owned Intellectual Property following the Closing. Except as set forth on Schedule 34(c) of the Disclosure Letter, the material Owned Intellectual Property used in the Business is valid, enforceable and, in the case of Proprietary Information, confidential and none of Companies or any of the Subsidiaries has received (nor do the Companies have knowledge of) any notice, claim or allegation from any person for any violation or infringement by the Companies or any of the Subsidiaries of any rights with respect to any Intellectual Property or questioning the right of the Companies or any of the Subsidiaries to unconditionally use, possess, transfer, convey, distribute or otherwise dispose of any (i) Technology, (ii) Owned Intellectual Property or (iii) Licensed Intellectual Property used or distributed by the Companies or any of the Subsidiaries in the Business provided that no representation or warranty is made hereunder respecting the Incidental

Intellectual Property. The Companies' and any of the Subsidiaries' use of the Technology and Intellectual Property used in the Business, past and present, and the Companies' and any of the Subsidiaries' use of same in substantially the same manner following the Closing, has not, and does not and will not violate or constitute a breach of any agreement, obligation, promise or commitment by which the Companies or any of the Subsidiaries may be bound or constitute a violation of any laws, regulations, ordinances, codes or statutes in the Province of Ontario.

- (d) The Companies have not received notice of (i) any interference, opposition, cancellation, re-examination or other contest, proceeding, action, suit, hearing, investigation, charge, complaint, demand, notice, claim, dispute and, to the knowledge of the Companies, there is not (ii) any claim of infringement, misappropriation or other violation by the Companies or any of the Subsidiaries, of any Intellectual Property or other proprietary rights of any other person, in either case pending or, to the knowledge of the Companies, threatened against the Companies or any of the Subsidiaries, nor shall there be as against the Companies and any of the Subsidiaries when such Intellectual Property or other proprietary rights are used or exploited by the Companies or any of the Subsidiaries in substantially the same manner following the Closing. No Governmental Authority has disputed the Companies' or any of the Subsidiaries' right to obtain or continue registration of any Intellectual Property where the Companies or any of the Subsidiaries has applied for such registration, except where such dispute has been resolved in favour of issuing or continuing such registration.
- (e) Except as set forth on Schedule 34(d) of the Disclosure Letter, no licenses or other rights have been granted to any person by the Companies and any of the Subsidiaries, and the Companies and any of the Subsidiaries do not have any obligation to grant to any person any licenses or other rights, with respect to any Programs, Products, Services, Technology or other Intellectual Property. None of the Companies and any of the Subsidiaries has any agreement to indemnify any individual or entity against any charge of infringement of any Intellectual Property. To the knowledge of the Companies, there has been no unauthorized use, disclosure, infringement or misappropriation by any third party, including any employee or former employee of the Companies or any of the Subsidiaries, of any Programs, Services, Technology or other Intellectual Property used or distributed in connection with the Business. No claims have been made by the Companies and any of the Subsidiaries for any violation, infringement or misappropriation by third parties of any rights with respect to any Programs or other Technology or Intellectual Property used in the Business. To the knowledge of the Companies, there are no such claims which the Companies or any of the Subsidiaries has the right to make or assert against third parties (nor any reasonable basis therefor).
- (f) To the knowledge of the Companies, neither the manufacture, use, offer for sale, sale, licensing, distribution, copying or other reproduction, transfer or disposal of any Product, Program or Service by the Companies and any of the Subsidiaries, nor any other activity engaged in by the Companies and any of the Subsidiaries in the course of conducting the Business, (i) infringes or misappropriates the Intellectual Property of any other person; (ii) violates the privacy rights of any person; or (iii)

constitutes unfair competition or trade practices under the laws of any jurisdiction. None of the Companies and any of the Subsidiaries has received a notice from any person that such Companies' or any of the Subsidiaries' manufacture, use, offer for sale, sale, licensing, distribution, copying or other reproduction, transfer or disposal of the Products, Programs and Services, or any other activity engaged in by the Companies or any of the Subsidiaries in the course of conducting the Business, infringes or misappropriates any Intellectual Property, violates the privacy rights of any person, or constitutes unfair competition or unfair trade practices.

- (g) With respect to the Programs:
- (i) the Companies and any of the Subsidiaries have delivered or made available to the Purchaser true and complete copies of all Software Documentation in the possession or control of the Companies and any of the Subsidiaries;
 - (ii) such Software Documentation represents all documentation necessary to enforce the Companies' and any of the Subsidiaries' proprietary rights in such Programs;
 - (iii) the Software Documentation (including the Source Code, system documentation, statements of principles of operation, and schematics as well as any pertinent commentary or explanation for all Programs) includes all information that may be necessary to render the Programs understandable and usable by a trained computer programmer and to support all current and prior releases of the Programs;
 - (iv) the Programs and Software Documentation for the Programs to the knowledge of the Companies include all programs (including compilers, "workbenches," tools, and higher level or "proprietary" languages) used for the development, maintenance, and implementation of the Programs; and
 - (v) to the knowledge of the Companies, the Programs conform in all material respects to the functional requirements, design specifications, documentation and other specifications referred to in the Software Documentation, and will perform substantially in accordance with the foregoing with respect to the most recent release for each such Program.
- (h) Schedule 34(h) of the Disclosure Letter sets forth a true, complete and correct list of all Third-Party Licenses, exclusive of off-the-shelf software, including, but not limited to, all licenses for Software used to create, modify, compile, operate or support the Services and the Programs. The Companies and any of the Subsidiaries have all rights in the Technology and Intellectual Property necessary to conduct the Business as currently conducted by the Companies and any of the Subsidiaries and such rights will not be adversely affected as a result of or in connection with the execution and delivery of this Agreement, the Closing or the consummation of any of the transactions contemplated hereby. Each of the Companies and any of the Subsidiaries has made any and all payments required to be made pursuant to, or in connection with, its rights under the Third-Party Licenses and is not otherwise in breach of any Third-Party License. Except for Licensed Intellectual Property, the

Programs contain no programming or materials in which any third party may claim superior, joint or common ownership.

- (i) Schedule 34(i) of the Disclosure Letter sets forth (i) a true, complete and correct list of all Intellectual Property Registrations of the Companies and any of the Subsidiaries related to the Business, including all future deadlines for actions, payments and documentation required to be taken, made or filed, as the case may be, for the purposes of renewing, prosecuting, maintaining and perfecting such Intellectual Property Registrations (including, without limitation, all responses to office actions, provisional conversions, declarations of use and registration, maintenance and renewal fees), and (ii) a true, complete and correct list of all material Intellectual Property, other than Incidental Intellectual Property, constituting unregistered trade-marks, service marks and other source identifiers of the Companies and any of the Subsidiaries related to the Business, and the jurisdictions in which such trade-marks, service marks and source identifiers are used. All statements and representations made by the Companies or any of the Subsidiaries in any such Intellectual Property Registration were true in all material respects as of the time they were made. To the extent required by applicable Law, if such statements or representations thereafter ceased to be true, appropriate amendments to the applicable Intellectual Property Registration were timely filed by the Companies or any of the Subsidiaries, as applicable, to correct such statements or representations. (i) No Intellectual Property Registration related to the Business has lapsed, expired or been abandoned, surrendered or cancelled, or is subject to any injunction, judgment, order, decree, ruling or charge or is subject to any pending or threatened oppositions, cancellations, interferences or other proceedings before the Canadian Intellectual Property Office, the Trade-mark Opposition Board, the Federal Court of Canada or in any other Tribunal in any country anywhere in the world; and (ii) all filing fees, maintenance fees, examination fees, taxes, proofs of use and other administrative requirements necessary or desirable to have been paid or done in order to obtain or maintain any Intellectual Property Registration related to the Business have been paid or done and there are no fees or taxes required to be paid, or actions required to be taken, within ninety (90) days after the Closing Date. Each of the Companies and any of the Subsidiaries shall do all acts and sign all documentation as may be necessary to assign all of its right, title and interest in and to any Intellectual Property Registrations arising from the Owned Intellectual Property, and to record, register, evidence or otherwise place such assignment with the Canadian Intellectual Property Office or any other applicable Governmental Authority.
- (j) Except as set forth on Schedule 34(j) of the Disclosure Letter, there are no Contracts with respect to the marketing, distribution, licensing, or promotion of any Services or Programs, Technology or any other Intellectual Property of the Companies and any of the Subsidiaries by any independent salesperson, distributor, sublicensor, or other remarketer or sales organization.
- (k) Except as set forth on Schedule 34(k) of the Disclosure Letter, the Companies and any of the Subsidiaries are in possession and control of all copies of the Source Code for the Programs and the Source Code for the Programs has never been

publicly disclosed or otherwise been the subject of an unauthorized disclosure by the Companies or any of the Subsidiaries. None of the Companies and any of the Subsidiaries has, nor has it ever had, any copies of Source Code for any of the Programs at any locations other than those locations set forth on Schedule 34(k) of the Disclosure Letter.

- (l) The Programs and other Technology of the Business (and all parts thereof) are, the knowledge of the Companies', free and clear of (i) any protective, encryption, security or lock-out devices which might in any way interrupt, discontinue or otherwise adversely affect the Programs and other Technology of the Business or the Companies' or any of the Subsidiaries' use thereof; and (ii) any so-called computer viruses, worms, trap or back doors, trojan horses or other instructions, codes, programs, data or materials which could improperly, wrongfully and/or without the authorization of the Companies or any of the Subsidiaries, interfere with the operation or use of the Services, Programs and other Technology of the Business.
- (m) From the date on which the Companies and any of the Subsidiaries commenced development or acquired each item of Technology or Proprietary Information through the date hereof, the Companies and any of the Subsidiaries have taken all actions which a reasonably prudent person in the Business would take to maintain such Technology and Proprietary Information (including, but not limited to, its Source Code) as confidential and proprietary, to protect against the loss, theft or unauthorized use of such Technology or Proprietary Information, and to protect and preserve the confidentiality of all such Technology and Proprietary Information used in the Business. To the Companies' knowledge, all use, disclosure or appropriation of such Technology or Proprietary Information used in the Business by or to a third party has been pursuant to the terms of an agreement between the Companies and any of the Subsidiaries and such third party. All use, disclosure or appropriation of Technology or Proprietary Information used in the Business not owned by the Companies or any of the Subsidiaries has been pursuant to the terms of an agreement between a Company and the owner of such Technology or Proprietary Information, or is otherwise lawful.
- (n) No government funding, facilities of a government agency or research or educational institution or funding from third parties was used in the conception, reduction to practice, authoring or other creation or development of the Owned Intellectual Property or Technology of the Companies or any of the Subsidiaries used in the Business other than scientific and research development credits under the Tax Act. No employee of the Companies or any of the Subsidiaries was, at the time such person contributed to or participated in any manner in the conception, reduction to practice, authoring or other creation or development of such Intellectual Property or Technology, also employed by or otherwise performing services of the same or similar nature for a government agency, research or educational institution or other third party.
- (o) Schedule 34(o) of the Disclosure Letter contains a true, complete and correct list of all Software used in the Business commonly referred to as "open source," "public source," or "freeware" and any modification or derivative thereof. None of the

Companies and any of the Subsidiaries has used open source software in any manner that would (i) require its disclosure or distribution in source code form, (ii) require the licensing thereof for the purpose of making derivative works, (iii) impose any restriction on the consideration to be charged for the distribution thereof, (iv) create, or purport to create, obligations for any party with respect to the Intellectual and Industrial Property Rights or Technology owned by such party or grant, or purport to grant, to any third party, any rights or immunities under the Intellectual and Industrial Property Rights or Technology owned by any party or (v) impose any other material limitation, restriction or condition on the right of any party with respect to its use or distribution. With respect to any open source software that is or has been used in any way, each of the Companies and any of the Subsidiaries has been and is in compliance with all applicable licenses with respect thereto.

- (p) To the extent any Programs or Services offered to third parties are subject to the use of Security Methods, as hereinafter defined, (i) the client is required by the end-user agreement to use its passwords and usernames to access such Programs and Services (the “**Security Methods**”); (ii) Schedule 34(p) of the Disclosure Letter sets forth a true, correct and complete list of all such Security Methods; and (iii) the Companies and any of the Subsidiaries retain (and will deliver to the Purchaser at Closing) a true, correct and complete list of all such Security Methods and the Technology necessary to generate such Security Methods.
- (q) Schedule 34(q) of the Disclosure Letter contains a true, complete and correct list of all telephone and email address used by the Business.
- (r) All information known to the Companies and any of the Subsidiaries and relating to any problem or issue that does or may reasonably be expected to materially adversely affect the utility, operability, functionality or fitness for the intended purpose of any Program or Service has been disclosed to the Purchaser.

35. Privacy Laws

- (a) Except as disclosed in Schedule 35(a) of the Disclosure Letter:
 - (i) Privacy Laws, as well as all Contracts, notices and consents and other obligations and commitments applicable to the collection, use, storage, processing or disclosure of Personal Information are being complied with by the Companies and any of the Subsidiaries.
 - (ii) All Personal Information provided to the Purchaser in connection with the transactions contemplated by this Agreement, and the manner in which such Personal Information has been obtained and provided to the Purchaser, has been provided and obtained in compliance with Privacy Laws and with all other obligations and commitments noted in subsection (a)(i) above.
 - (iii) Each of the Companies and any of the Subsidiaries has developed and implemented corporate policies and procedures, including training, auditing

and monitoring, designed to enable the Companies and any of the Subsidiaries to:

- A. comply with Privacy Laws;
- B. demonstrate and evidence compliance with Privacy Laws,

and have complied with such policies and procedures. These policies and procedures are sufficient to enable the continued conduct of the Business after the Closing in substantially the same manner as the Business was conducted prior to the Closing.

- (iv) All notices and consents required by Privacy Laws or Contracts related to each of the Companies' and any of the Subsidiaries' collection, use or disclosure of Personal Information in connection with the conduct of the Business (including disclosure to Affiliates of the Companies and any of the Subsidiaries), including the collection of Personal Information from third party data sources, have been given or obtained in accordance with all applicable Privacy Laws and are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing.
 - (v) Each of the Companies and any of the Subsidiaries, to the extent required by Privacy Laws, has and has had a written privacy policy which governs its collection, use, storage, processing and disclosure of Personal Information and each of the Companies and any of the Subsidiaries is in compliance with such privacy policy.
 - (vi) Each of the Companies and any of the Subsidiaries has and has had in place all security safeguards required to comply with applicable Privacy Laws and has adhered to such safeguards, including a robust written information security management program that includes all necessary administrative, technical, physical, organizational and operational safeguards and other measures appropriate to the sensitivity of the Personal Information in its custody or control to ensure the security and confidentiality of Personal Information and safeguard Personal Information against loss, theft, damage or unauthorized or unlawful access or processing.
 - (vii) Each of the Companies and any of the Subsidiaries has not received any Claims or notices regarding its collection, use, storage, processing or disclosure of Personal Information and has no knowledge of facts upon which such a Claim or complaint could be based.
- (b) Schedule 34(b) of the Disclosure Letter provides a complete list of:
- (i) any Breaches of Security Safeguards of each of the Companies and any of the Subsidiaries of which the Companies are aware; and

- (ii) any Claims or Orders of which the Companies are aware (including investigations by any Governmental Authority and orders issued by any privacy regulator) relating to any Breach of Security Safeguards, the collection, use, storage, processing or disclosure of Personal Information by each of the Companies and any of the Subsidiaries or the privacy policies or practices of the Companies and any of the Subsidiaries and any steps taken to respond to such Claims or Orders.

36. Anti-Spam Matters

- (a) Each of the Companies and any of the Subsidiaries is, and has at all times been, in compliance with all applicable Anti-Spam Laws.
- (b) Each of the Companies and any of the Subsidiaries has developed and implemented corporate policies and procedures, including training, auditing and monitoring, designed to enable the each of the Companies and any of the Subsidiaries to:
 - (i) comply with all Anti-Spam Laws;
 - (ii) demonstrate and evidence compliance with Anti-Spam Laws;

and has complied with such policies and procedures. These policies and procedures are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as the Business was conducted prior to the Closing.

- (c) All necessary consents required by Anti-Spam Laws in connection with the conduct of the Business have been obtained in accordance with all applicable Anti-Spam Laws and are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing.
- (d) There are no Claims or other proceedings relating to Anti-Spam Laws in respect of the Companies and any of the Subsidiaries that have commenced, concluded or of which notice has been received, and the Companies have no knowledge of any existing ground on which such a Claim or other proceeding could be based.
- (e) None of the Companies or any of the Subsidiaries has not entered into an undertaking pursuant to any Anti-Spam Laws.

Real Property

37. Owned Real Property

- (a) None of the Companies and any of the Subsidiaries owns or has any interest in, nor are the Companies or any of the Subsidiaries a party to or bound by or subject to any agreement, contract, commitment or option, respecting any real or immovable property.

38. Leased Real Property

- (a) Schedule 38 of the Disclosure Letter sets forth a complete list of the Leased Real Property and details for each Leased Real Property including: (i) municipal address, (ii) legal description, (iii) area of premises, (iv) a description of all relevant documents (including amendments, extension notices, registered notices, non-disturbance agreements) including details of parties thereto and dates of documents, and (v) details of annual rent payable, applicable discounts or premiums associated therewith, current terms, renewal rights and security deposits or prepaid rent.
- (b) Except as disclosed in Schedule 38 of the Disclosure Letter, the Real Property Leases have not been altered or amended and are in full force and effect. There are no Contracts between the landlord and tenant, or sublandlord and subtenant, or other relevant parties relating to the use and occupation of the Leased Real Property, other than as contained in the Real Property Leases.
- (c) There are no outstanding defaults (or events which would constitute a default with the passage of time or giving of notice or both) under the Real Property Leases on the part of the Companies or any of the Subsidiaries or, to the knowledge of the Companies, on the part of any other party to such Real Property Leases.
- (d) None of the Companies or any of the Subsidiaries has an option, right of first refusal or other right relating to the Leased Real Property, other than as set out in the Real Property Leases.
- (e) None of the Companies or any of the Subsidiaries has waived or omitted to take any action in respect of any material rights under any of the Real Property Leases.

Employment and Labour Matters

39. Employment Matters

- (a) Schedule 39 of the Disclosure Letter sets forth a complete and accurate list of the Employees, together with their:
 - (i) titles, service dates (including service with any predecessor) and age;
 - (ii) salaries or hourly rate of pay;
 - (iii) benefits;
 - (iv) vacation entitlement, commissions and bonus entitlement (whether monetary or otherwise); and
 - (v) other compensation paid since the beginning of the most recently completed fiscal year (including the date of payment if paid since December 31, 2019) or payable to each such Employee and the date upon which each such term of employment became effective if it became effective in the 12 month period prior to the date of this Agreement.
- (b) Except for those Employment Contracts listed in Schedule 39 of the Disclosure Letter, there are no Employment Contracts which are not terminable on the giving

of reasonable notice in accordance with applicable Law, nor are there any Employment Contracts or Benefit Plans providing for cash, other compensation, benefits or contingent rights on Closing.

- (c) Schedule 39 of the Disclosure Letter also lists Employees on inactive status, including lay-off, short-term disability leave, long-term disability leave, pregnancy and parental leave or other extended absences, or receiving benefits pursuant to workers' compensation legislation, and specifies the last date of active employment, the reason for the absence and the expected date of return of each such Employee.
- (d) The operations of the Companies and the Subsidiaries have been and are being operated in compliance with all Laws relating to employees, including employment standards, occupational health and safety, workers' compensation, human rights, labour relations, accessibility, privacy, and pay equity
- (e) Current and complete copies of all Employment Contracts or, where oral, written summaries of the terms thereof, have been delivered or made available to the Purchaser.
- (f) To the knowledge of the Companies, no executive employed by the Companies or any of the Subsidiaries has any plans to terminate his or her employment.
- (g) There are no Claims pending Claims nor, to the knowledge of the Companies, threatened Claims pursuant to any Laws relating to the Employees or former employees, including pursuant to Laws regarding employment standards, human rights, labour relations, occupational health and safety, workers' compensation, accessibility, privacy, or pay equity. To the knowledge of the Companies, nothing has occurred which might lead to a Claim under any such Laws.
- (h) There are no outstanding decisions, Orders or settlements or pending settlements which place any obligation upon the Companies or any of the Subsidiaries to do or refrain from doing any act.
- (i) All current assessments under workers' compensation legislation in relation to the Companies or any of the Subsidiaries and all of their respective contractors and subcontractors have been paid or accrued in connection with the Business.
- (j) None of the Companies or any of the Subsidiaries has been or is subject to any additional or penalty assessment under workers' compensation legislation which has not been paid or has been given notice of any audit and, to the Companies' knowledge, nothing has occurred which might lead to such an additional or penalty assessment, an experience rating charge, or an increase in the Companies' accident cost experience rating.
- (k) The Companies have made available to the Purchaser for review all inspection reports, workplace audits or written equivalent, made under any occupational health and safety legislation which relate to the Companies or any of the Subsidiaries.

- (l) There are no outstanding inspection Orders or written equivalent made under any occupational health and safety legislation which relate to the Companies or any of the Subsidiaries. There have been no fatal or critical accidents in the last three years.
- (m) There are no materials present in the assets owned or used by the Companies or any of the Subsidiaries or conditions present in the businesses conducted by the Companies or any of the Subsidiaries, exposure to which could result in a disease caused by employment or peculiar to or characteristic of such materials or conditions or characteristic of a particular industrial process, trade or occupation, including but not limited to all occupational diseases as defined in the *Workplace Safety and Insurance Act* (Ontario) and its schedules and regulations.
- (n) The Companies and the Subsidiaries have complied in all respects with any Orders issued under any occupational health and safety legislation.

40. Collective Agreements

- (a) None of the Companies or any of the Subsidiaries is a party to or bound by, either directly or indirectly, voluntarily or by operation of law, any Collective Agreement.
- (b) No Union has bargaining rights in respect of the Companies or any of the Subsidiaries, any Employees or any Persons providing on site services in respect of the Companies or any of the Subsidiaries.
- (c) There are no outstanding or, to the knowledge of the Companies, threatened unfair labour practices, complaints or applications relating to any Union, including any proceedings which could result in certification of a Union as bargaining agent for any Employees or any Persons providing on site services in respect of the Companies or any of the Subsidiaries, and there have not been any such proceedings within the last five years.
- (d) There are no threatened or apparent Union organizing activities involving the Companies or any of the Subsidiaries, any Employees or any Persons providing on site services in respect of the Companies or any of the Subsidiaries.
- (e) None of the Companies or any of the Subsidiaries has any labour relations problems that could reasonably be expected to adversely affect the value of the Companies or any of the Subsidiaries or lead to an interruption of their respective operations.
- (f) None of the Companies or any of the Subsidiaries has engaged in any plant closing or employee lay-off activities within the past five years that would violate or in any way subject the Companies or any of the Subsidiaries to the group termination or lay-off requirements of any applicable employment standards legislation.

41. Pension and Other Benefit Plans

- (a) Schedule 41 of the Disclosure Letter sets forth a complete list of the Benefit Plans. Except as disclosed in such Schedule, none of the Benefit Plans is a Multi-Employer Plan or a Defined Benefit Plan.

- (b) Current and complete copies of all Benefit Plans as amended to date or, where oral, written summaries of the terms thereof, and all booklets and communications concerning the Benefit Plans which have been provided to persons entitled to benefits under the Benefit Plans have been delivered or made available to the Purchaser together with copies of all material documents relating to the Benefit Plans, including, as applicable,
 - (i) all trust agreements, funding agreements, insurance contracts and policies, investment management agreements, subscription and participation agreements, benefit administration contracts, and any financial administration contracts;
 - (ii) all legal opinions, consultants' reports and correspondence relating to the administration or funding of any Benefit Plan or the use of the funds held under such Benefit Plans;
 - (iii) all financial and accounting statements and reports for each of the last six years and all reports, statements, valuations, returns and correspondence for each of the last three years which affect premiums, contributions, refunds, deficits or reserves under any Benefit Plan;
 - (iv) the three most recent actuarial reports (whether or not such actuarial reports were filed with a Governmental Authority) and any supplemental cost certificates filed with any Governmental Authority;
 - (v) all annual information returns or other returns filed with, and significant correspondence with, any Governmental Authority within the last six years; and
 - (vi) all Benefit Plan amendments or other documents reflecting *ad hoc* increases, upgrades and improvements to the Benefit Plans which have been implemented within the last six years.
- (c) The Companies and the Subsidiaries have no formal plan and have made no promise or commitment, whether legally binding or not, to create any additional Benefit Plan or to improve or change the benefits provided under any Benefit Plan.
- (d) Each Benefit Plan is, and has been, established, registered, amended, funded, administered and invested in compliance with the terms of such Benefit Plan (including the terms of any documents in respect of such Benefit Plan), all Laws and the Collective Agreements, as applicable. None of the Companies or any of the Subsidiaries has received, in the last six years, any notice from any Person questioning or challenging such compliance, and the Companies have no knowledge of any such notice beyond the last six years.
- (e) All reports and filings with Governmental Authorities required in connection with each Benefit Plan have been timely made, and all disclosures and notices required by applicable Law or the Benefit Plan provisions to be given to participants and

beneficiaries in connection with each Benefit Plan have been properly and timely made.

- (f) Each Benefit Plan that is intended to qualify for tax-preferred or tax-exempt treatment has been duly registered in accordance with applicable Laws, and, to the knowledge of the Companies, no event has occurred with respect to any such Benefit Plan that could result in the revocation of the registration of such Benefit Plan or which could otherwise reasonably be expected to adversely affect the tax status of such Benefit Plan.
- (g) There is no investigation by a Governmental Authority or Claim (other than routine claims for payment of benefits) pending or, to the knowledge of the Companies, threatened involving any Benefit Plan or their assets, and no facts exist which could reasonably be expected to give rise to any such investigation or Claim (other than routine claims for payment of benefits).
- (h) None of the Benefit Plans provide for benefit increases, payments or the acceleration of, or an increase in, securing or funding obligations that are contingent upon, or will be triggered by the entering into of this Agreement or the completion of the Transactions.
- (i) All employer and employee payments, contributions and premiums required to be remitted, paid to or in respect of each Benefit Plan and each Statutory Plan have been paid or remitted in a timely fashion in accordance with its terms and all Laws.
- (j) No individuals are participating in (or are eligible to participate in) any of the Benefit Plans other than Employees or former employees of the Companies, or officers or directors of the Companies (and any spouses, dependants, survivors or beneficiaries of such persons).
- (k) All data necessary to administer each Benefit Plan is in the possession of the Companies or the Subsidiaries or their agents and is in a form which is sufficient for the proper administration of the Benefit Plan in accordance with its terms and all Laws and such data is complete and correct.
- (l) Except as disclosed in Schedule 41 of the Disclosure Letter, none of the Benefit Plans, other than the Pension Plans, provide benefits beyond retirement or other termination of service to Employees or former employees (or any spouses, dependents, survivors or beneficiaries of any such persons).
- (m) None of the Benefit Plans, or any insurance contract relating thereto, require or permit a retroactive increase in premiums or payments, or require additional premiums or payments on termination of the Benefit Plan or any insurance contract relating thereto.
- (n) The Companies' and the Subsidiaries' sole obligation to or in respect of any Multi-Employer Plans is to make the required contributions to the Multi-Employer Plans in the amounts and in the manner set forth in Schedule 41 of the Disclosure Letter.

- (o) Where the assets of any Benefit Plan are invested in units of a unitized trust sponsored by the Companies or a Subsidiary, no entity other than the Companies, a Subsidiary or a person acting in relation to a Benefit Plan holds units of any such unitized trust and the unitized trust has been established, qualified, invested and administered in accordance with the terms of such unitized trust and all Laws.

42. Tax Matters

- (a) No failure, if any, of the Companies or any of the Subsidiaries to duly and timely pay all Taxes, including all instalments on account of Taxes for the current year, that are due and payable by it will result in an Encumbrance on the Purchased Assets.
- (b) There are no proceedings, investigations, audits or Claims now pending or threatened against the Companies or any of the Subsidiaries in respect of any Taxes and there are no matters under discussion, audit or appeal with any Governmental Authority relating to Taxes, which will result in an Encumbrance on the Purchased Assets.
- (c) Each of the Companies and the Subsidiaries has duly and timely withheld all Taxes and other amounts required by Law to be withheld by it (including Taxes and other amounts required to be withheld by it in respect of any amount paid or credited or deemed to be paid or credited by it to or for the account or benefit of any Person, including any Employees, officers or directors and any non-resident Person), and has duly and timely remitted to the appropriate Governmental Authority such Taxes and other amounts required by Law to be remitted by it.
- (d) Each of the Companies and the Subsidiaries has duly and timely collected all amounts on account of any sales or transfer taxes, including goods and services, harmonized sales and provincial or territorial sales taxes, required by Law to be collected by it and has duly and timely remitted to the appropriate Governmental Authority any such amounts required by Law to be remitted by it.
- (e) Each of the Companies and the Subsidiaries is duly registered under subdivision (d) of Division V of Part IX of the *Excise Tax Act* (Canada) with respect to the goods and services tax and harmonized sales tax.

43. Residence of the Companies

Each of the Companies is not a non-resident of Canada for the purposes of the Tax Act.

Other Matters

[Redacted – commercially sensitive]

46. No Broker

The Companies have carried on all negotiations relating to this Agreement and the Transactions directly and without intervention on its behalf of any other party in such manner as to give rise to

any valid claim for a brokerage commission, finder's fee or other like payment against the Purchaser, the Companies or any of the Subsidiaries.

47. Full Disclosure

The Companies have made available to the Purchaser all information, including Personal Information and the financial, marketing, sales and operational information on a historical basis relating to the Companies or any of its Subsidiaries, which would be material to a purchaser of the Business or the Purchased Assets. All such information which has been provided to the Purchaser is true and correct in all material respects and no material fact or facts have been omitted from that information which would make such information misleading. Without limiting the generality of the foregoing, the Companies have not failed to disclose to the Purchaser, any fact or information which would be material to a purchaser of the Business or the Purchased Assets.

SCHEDULE C
REPRESENTATIONS AND
WARRANTIES OF THE PURCHASER

1. Status of the Purchaser

The Purchaser is a corporation amalgamated under the laws of the Province of Ontario.

2. Due Authorization and Enforceability of Obligations

- (a) The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement.
- (b) The execution and delivery of this Agreement and the consummation of the Transactions have been duly authorized by all necessary corporate action of the Purchaser.
- (c) This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms subject to any limitations imposed by Law.

3. Absence of Conflicts

The Purchaser is not a party to, bound or affected by or subject to any material:

- (a) indenture, mortgage, lease, agreement, obligation or instrument;
- (b) charter or by-law; or
- (c) Laws or Governmental Authorizations;

that would be violated, breached by, or under which default would occur or an Encumbrance would, or with notice or the passage of time would, be created as a result of the execution and delivery of, or the performance of obligations under, this Agreement or any other agreement to be entered into under the terms of this Agreement.

4. Litigation

There are no Claims, investigations or other proceedings, including appeals and applications for review, in progress or, to the knowledge of the Purchaser, pending or threatened against or relating to the Purchaser, before any Governmental Authority, which, if determined adversely to the Purchaser, would,

- (a) prevent the Purchaser from paying the Purchase Price to the Companies;
- (b) enjoin, restrict or prohibit the transfer of all or any part of the Purchased Assets as contemplated by this Agreement; or
- (c) prevent the Purchaser from fulfilling any of its obligations set out in this Agreement or arising from this Agreement.

5. No Broker

The Purchaser has carried on all negotiations relating to this Agreement and the Transactions directly and without the intervention on its behalf of any other party in such manner as to give rise to any valid claim for a brokerage commission, finder's fee or other like payment.

SCHEDULE D
PERMITTED ENCUMBRANCES

- (a) Statutory Encumbrances for current Taxes, special assessments or other governmental charges not yet due and payable and for which appropriate accruals have been established in the Financial Statements;
- (b) statutory liens and deposits or pledges made in connection with, or to secure payment of, workplace safety and insurance, worker's compensation, employment insurance, Canada Pension Plan and Québec Pension Plan programs mandated under Law and for which appropriate accruals have been established in accordance with ASPE;
- (c) the rights of counterparties under the Contracts; and
- (d) Encumbrances listed in Schedule 3(a) of the Disclosure Letter.

SCHEDULE 2.1(D)
CALCULATION OF NET
WORKING CAPITAL AMOUNT

“**Net Working Capital Amount**” means, as of the Closing Date, the current assets less the current liabilities of the Companies and the Subsidiaries determined on a consolidated basis in accordance with the principles and sample calculation set out below. For the avoidance of doubt, the calculation of the Net Working Capital Amount shall exclude any Indebtedness.

Current assets:

Cash;

All Prepaid expenses (including only prepaid expenses that are transferable such as rent and expenses paid for services that relate to servicing and sale of the vehicles); and

Accounts receivable

Current liabilities:

Accounts payable; and

Accrued liabilities.

SCHEDULE 4.4
THIRD PARTY CONSENTS

[Redacted – commercially sensitive]

SCHEDULE 10.2
ARBITRATION PROCEDURES

1. Definitions and Interpretation

- (a) **Definitions** – Unless otherwise defined in this Schedule, all terms defined in the Agreement which are used in this Schedule have the same meaning as provided for those terms in the Agreement. Where used in this Schedule, unless the context or subject matter otherwise requires, the following words and phrases will have the meaning set forth below:

“**Act**” means the *Arbitration Act, 1991* (Ontario);

“**Approved Arbitrator**” means a retired judge of the Supreme Court of Canada, Ontario Superior Court or Court of Appeal or a senior qualified lawyer who is impartial and independent of the Parties;

“**Arbitrator**” means the arbitrator appointed pursuant to Section 2 of this Schedule;

“**Dispute**” means any matter which a Party, in accordance with the terms of the Agreement, submits to arbitration in accordance with the terms of this Schedule;

“**Procedures**” means the arbitration procedures described in this Schedule;

“**Schedule**” means this schedule of arbitration procedures.

- (b) **Governing Law and Jurisdiction** – The seat of the arbitration shall be Toronto, Ontario and all Disputes referred to arbitration (including the scope of the agreement to arbitrate, the law relating to the enforcement of the agreement to arbitrate, any relevant limitation periods, the law governing the procedure of the arbitration, the law relating to available remedies, set-off claims, conflict of laws rules and claims to costs and interest) shall be governed by the laws of the Province of Ontario.
- (c) **Time** – In the computation of time under the Procedures or an order or direction given by the Arbitrator pursuant to this Schedule, except where a contrary intention appears or the Parties otherwise agree:
- (i) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words “at least” are used;
 - (ii) where the time for doing any act under this Schedule or any order or direction given by the Arbitrator expires on a day which is not a Business Day, the act may be done on the next day that is a Business Day; and
 - (iii) delivery of a document or notice provided for in this Schedule or any order or direction given by the Arbitrator made after 5:00 p.m. (Toronto time) or

at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

2. **Commencement of Arbitration** – Any Party (the “**Claimant**”) may commence arbitration for a Dispute by delivering a written notice (a “**Notice of Arbitration**”) to the Party against whom the Claimant seeks a remedy (the “**Respondent**”). In the Notice of Arbitration, the Claimant shall describe the substance of the Dispute and name three individuals whom the Claimant is prepared to appoint as arbitrator, each of such individuals to be an Approved Arbitrator. Within 10 days of the receipt of the Notice of Arbitration, the Respondent shall by Notice to the Claimant agree to the appointment of one of the three individuals named by the Claimant or provide the Claimant with a list of three other individuals who are Approved Arbitrators. Within 10 days of receipt of the Respondent’s list, by Notice to the Respondent, the Claimant shall agree to the appointment of one of such individuals, or provide a further list of three Approved Arbitrators. The Parties shall continue to exchange lists of three Approved Arbitrators in this fashion until the Arbitrator is appointed. If the Arbitrator is not appointed within 30 days of the initial receipt by the Respondent of the Notice of Arbitration, either Party may provide copies of the exchanged lists to the ADR Institute of Canada which shall appoint the Arbitrator by selecting an Approved Arbitrator from the exchanged lists.
3. **Arbitration Procedures** – The following procedures shall apply to the arbitration of any Dispute, except as the Parties may otherwise agree or as the Arbitrator otherwise directs:
 - (a) Within 20 days of the appointment of the Arbitrator, the Claimant shall deliver to the Respondent and the Arbitrator a written statement (the “**Complaint**”) concerning the Dispute setting forth, with particularity, the full names, descriptions and addresses of the Parties, the nature of the Complaint, the allegations of fact supporting the Dispute submitted for arbitration and the relief or remedy sought.
 - (b) Within 30 days after the delivery of the Complaint, the Respondent shall deliver to the Claimant and the Arbitrator a written response (the “**Answer**”) to the Complaint setting forth, with particularity, its position on the Dispute and the allegations of fact supporting the Answer.
 - (c) If the Respondent fails to deliver an Answer within the time limit referred to in Section 3(b) of this Schedule, the Respondent shall, subject to Section 3(f) of this Schedule, be deemed to have admitted the allegations of fact alleged in the Complaint and have accepted the Claimant’s entitlement to the relief and remedy set out in the Complaint.
 - (d) Within 10 days after the delivery of any Answer, the Claimant may deliver to the Respondent and the Arbitrator a written reply to that Answer, setting forth, with particularity, its response, if any, to the Answer.
 - (e) If the Respondent wants to submit any other Dispute to the Arbitrator it may, within the time provided for the delivery of the Answer to the Complaint, also deliver to the Claimant and the Arbitrator a counter-complaint (the “**Countercomplaint**”) setting forth, with particularity, the nature of the Countercomplaint, the allegations of fact supporting the Countercomplaint and the relief or remedy sought, for the

Arbitrator to decide. Within 20 days of the delivery of a Countercomplaint, the Claimant shall deliver to the Respondent making a Countercomplaint and the Arbitrator a written response to such Countercomplaint (the “**Response to Countercomplaint**”) setting forth, with particularity, its position on the Countercomplaint and the allegations of fact supporting the Response to Countercomplaint. If the Claimant fails to deliver a Response to Countercomplaint within such 20 day period, the Claimant will be deemed, subject to Section 3(f), to have admitted the allegations of fact alleged in the Countercomplaint, and have accepted the Respondent’s entitlement to the relief and remedy set out in the Countercomplaint. Within 10 days after the delivery of a Response to Countercomplaint, the Respondent may deliver to the Claimant and the Arbitrator a written reply to such Response to Countercomplaint setting forth, with particularity, its response to such Response to Countercomplaint. Any Dispute submitted to arbitration in accordance with this Section 3(e) of this Schedule shall be governed by, and dealt with as if it were the subject of a Notice of Arbitration, that shall be determined by the same Arbitrator as part of the same arbitration proceeding as the Notice of Arbitration.

- (f) The time limits set for the delivery of the documents referred to in Sections 3(a) to (e) of this Schedule inclusive may be extended by agreement of the Parties or by the Arbitrator for such period, on such terms, and for such reasons as the Arbitrator may determine upon application made to the Arbitrator in writing by either the Claimant or the Respondent on Notice to the other, with such application being made either before the expiry of the time limit in issue or within 2 days after such expiry, and the Arbitrator may relieve the applying Party of the consequences of its failure to comply with the time limit in issue, provided, however, that the other Party shall be given an opportunity to make submissions on the application.
- (g) Within 20 days following the completion of the steps set out in Sections 3(a) to (e) of this Schedule, a Party may, upon Notice to the other Party and to the Arbitrator, request the Arbitrator to give directions and make any order which is, in the discretion of the Arbitrator, reasonable regarding any procedural matters which properly should be resolved before the arbitration proceeds further, including the amendment of any pleadings, the provision of particulars, the production of documents and the need for examinations for discovery in connection with the arbitration, either by way of oral examination or written interrogatories, and a determination as to the manner in which evidence shall be presented to the Arbitrator (by way of agreed statement of facts, sworn evidence and transcripts of cross-examinations on such sworn evidence or *viva voce*, or some combination thereof). In making any order or giving any direction in respect of any procedural matter the Arbitrator may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. The Notice requesting any direction or order pursuant to this subsection shall state the direction or order sought and set out the reasons for seeking such direction or order. Nothing in this Section shall be taken to limit the jurisdiction of the Arbitrator to deal with procedural matters in accordance with the Act.

- (h) If no Party has requested directions in accordance with Section 3(g) of this Schedule, the Arbitrator shall give directions regarding the further procedural steps in the arbitration, including any production of documents, any examinations for discovery, and the nature of any hearing (“**Hearing**”). In making any order or giving any direction in respect of any procedural matter the Arbitrator may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. Each of the Parties shall have an opportunity to make oral submissions to the Arbitrator in respect of such procedural steps.
 - (i) Unless the time for making an award is extended by agreement of the Parties or by court order, the Arbitrator shall make an award within 60 days after completion of any Hearing or other final procedural step in which evidence or argument are provided to the Arbitrator. The award shall be in writing and shall state the reasons on which it is based. Executed copies of all awards shall be delivered by the Arbitrator to each Party as soon as is reasonably possible.
- 4. **Agreement to be Bound** – No individual shall be appointed as Arbitrator unless he or she agrees in writing to be bound by all provisions of this Schedule, subject to any amendments that may be mutually agreed to between the Arbitrator and the Parties.
- 5. **Arbitrator Discretion** – Subject to the Act, the Agreement and this Schedule, the Arbitrator may conduct the arbitration in such manner as the Arbitrator considers appropriate.
- 6. **Interim Relief** – At the request of any Party, the Arbitrator may take such interim measures as the Arbitrator considers necessary in respect of the Dispute, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Arbitrator may require security for the costs of such measures.
- 7. **Remedies** – The Arbitrator may make final, interim, interlocutory and partial awards. An award may grant any remedy or relief which the Arbitrator considers just and equitable. The Arbitrator shall state in the award whether or not the Arbitrator views the award as final or interim, for purposes of any judicial proceedings in connection with such award.
- 8. **Experts** – The Arbitrator shall not, without the written consent of the Parties to the arbitration, appoint any expert or other consultant or retain any counsel to advise him or her.
- 9. **Costs of Arbitration** – The fees and expenses of the Arbitrator and costs of the arbitration facilities shall be periodically billed to and paid in equal proportions by the Parties to the arbitration as the Arbitration proceeds. The Arbitrator shall have the power to award costs, including the fees and expenses of the Arbitrator and costs of the arbitration facilities, in whole or in part, upon hearing submissions by any Party requesting same, and any responding submissions from the other Party. Unless otherwise specifically ordered by the Arbitrator, any costs awarded shall be on a full indemnity basis, as such term or equivalent amended term is used in the Ontario Superior Court of Justice.
- 10. **Interest** – The Arbitrator may award pre- and post-judgment interest in accordance with the *Courts of Justice Act*.

11. **Notices** – All Notices and all other documents required or permitted by this Schedule to be given by any Party to the arbitration to the other shall be given in accordance with Section 10.4 of the Agreement. All Notices and all other documents required or permitted by this Schedule to be given by any Party to the arbitration to the Arbitrator shall be given in accordance with the Arbitrator’s instructions.

12. **Confidentiality** – The existence of the arbitration and any element of the arbitration (including an appeal) shall be confidential and shall be subject to the provisions of Section 7.4 [Confidentiality] of the Agreement.

EXHIBIT 4.9
FORM OF NON-COMPETITION AGREEMENT

[Redacted – commercially sensitive]

EXHIBIT 4.10
LIST OF EMPLOYEES

[Redacted – commercially sensitive]