

**TECSYS INC.**

as Purchaser

and

**NEVIS HOLDINGS LIMITED**

as Parent

and

**ODHOLD LTD.**

as OD Hold

and

**ODEXCHANGE LTD.**

as Vendor

and

**ORDERDYNAMICS CORPORATION**

as Corporation

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**SHARE PURCHASE AGREEMENT**

Dated November 14, 2018

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**Exhibits**

Exhibit 1.1(ss)

Illustrative Calculation of Net Indebtedness

Exhibit 1.1(bbbb)

Illustrative Calculation of Working Capital

## SHARE PURCHASE AGREEMENT

Share purchase agreement dated November 14, 2018, among TECSYS Inc., a corporation incorporated under the *Canada Business Corporations Act* (the "**Purchaser**"), Nevis Holdings Limited, a corporation incorporated under the Laws of England and Wales (the "**Parent**"), ODHold Ltd., a corporation incorporated under the *Business Corporations Act (Ontario)* ("**OD Hold**"), ODExchange Ltd., a corporation incorporated under the *Business Corporations Act (Ontario)* (the "**Vendor**") and OrderDynamics Corporation, a corporation amalgamated under the *Canada Business Corporations Act* (the "**Corporation**").

### RECITALS:

- (a) The Vendor owns all of the issued and outstanding shares of the Corporation.
- (b) The Purchaser wishes to acquire all of the issued and outstanding shares in the capital of the Corporation and the Vendor wishes to sell such shares to the Purchaser.
- (c) This Agreement sets forth the terms and conditions upon which the Purchaser will purchase from the Vendor, and the Vendor will sell to the Purchaser, all of the issued and outstanding shares in the capital of the Corporation.

IN CONSIDERATION OF THE ABOVE AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, the Parties agree as follows:

### ARTICLE 1 INTERPRETATION

#### 1.1 Defined Terms

As used in this Agreement, the following capitalized terms have the following meanings:

- (a) "**Accounts**" means a bank account specified by the Vendor, OD Hold, the Parent or the Corporation to the Purchaser in writing prior to Closing.
- (b) "**Adjustment Holdback Amount**" means [Redacted].
- (c) "**Adjustment Statement**" means a statement substantially in the form of Exhibit 1.1(ss) (Net Indebtedness) and Exhibit 1.1(bbbb) (Working Capital), and including an estimate of the Purchase Price at Closing or a calculation of the Purchase Price at Closing, as the case may be.
- (d) "**Affiliate**" means, in relation to a Person that is not an individual, any other Person which, directly or indirectly, Controls, is Controlled by or is under common Control with such Person.
- (e) "**Agreement**" means this share purchase agreement as it may from time to time be amended, supplemented or novated.

- (f) "**ASPE**" means accounting standards for private enterprises as issued by the Canadian Institute of Chartered Accountants and which have been prescribed as being Canadian generally accepted accounting principles for private accountable enterprises for financial years beginning on or after January 1, 2011 and as amended from time to time by the Canadian Institute of Chartered Accountants or any successor institute, in effect as at the date on which such reference is being applied or is required to be applied.
- (g) "**Audited Financial Statements**" means the consolidated financial statements for the Corporation as at and for the years ended on March 31, 2018 and March 31, 2017, respectively, consisting in each case of a balance sheet and the accompanying statements of income, retained earnings and cash flow for the year then ended and notes to the financial statements together with the report of the auditors thereon to be prepared following Closing.
- (h) "**Authorization**" means, with respect to any Person, any order, decree, permit, certificate, certificate of authorization, approval, registration, waiver, license, consent, agreement, directive, notice or similar authorization of any Governmental Entity having jurisdiction over the Person.
- (i) "**Books and Records**" means all information relating to the Corporation and in its possession, including books of account, Tax records, sales and purchase records, customer and supplier lists, Software, technical documents including specifications, business reports, plans and projections and all other documents, files, correspondence and Corporate Records, whether in written or electronic form.
- (j) "**Business Day**" means any day of the year, other than a Saturday, Sunday or any day on which principal commercial banks in Montreal, Québec or in Toronto, Ontario are not open for business during normal business hours.
- (k) "**Cash**" means the sum of all cash and cash equivalents (including marketable securities, cheques, bank deposits and short term investments and deposits with third parties) of the Corporation, calculated by including cheques issued by the Corporation to a third party that have not yet cleared, and by including cheques issued to the Corporation that have been deposited in the Corporation's bank account but that have not yet cleared.
- (l) "**Closing**" means the completion of the purchase and sale transaction contemplated by this Agreement by the delivery to the Purchaser of the Purchased Shares in form and substance satisfactory to the Parties, acting reasonably, and the payment to the Vendor of the Purchase Price in accordance with Section 2.3.
- (m) "**Closing Date**" means the date on which Closing occurs.
- (n) "**Consent**" means, with respect to any Person, the unconditional consent of a contracting party to, or as a result of, the transactions contemplated by this Agreement and each of the Restrictive Covenant Undertakings, if required by the terms of any Contract, between such contracting party and such Person.

- (o) "**Contract**" means any agreement, purchase order, contract, instrument, undertaking and commitment of any nature, whether written or oral, including any Leases.
- (p) "**Control**" means (and any derivatives thereof, including "**Controlled**") (i) in relation to a Person that is a corporation, the ownership, directly or indirectly, of voting shares of such Person carrying more than 50% of the voting rights attaching to all voting shares of such Person and which are sufficient, if exercised, to elect a majority of its board of directors; and (ii) in relation to a Person that is a partnership, limited partnership, trust or other unincorporated entity (A) the ownership, directly or indirectly, of voting securities of such Person carrying more than 50% of the voting rights attaching to all voting securities of the Person, or (B) the ownership of other interests or the holding of a position (such as trustee) entitling the holder to exercise control and direction over the activities of such Person.
- (q) "**Corporate Records**" means the corporate records of the Corporation including, (i) all Governing Documents; (ii) all minutes of meetings and resolutions of shareholders and directors (and any committees); and (iii) the share certificate book, securities register, register of transfers and register of directors.
- (r) "**CRA**" means Canada Revenue Agency or any successor tax authority.
- (s) "**Damages**" means any loss, liability, Taxes, damage, expense (whether or not involving a Third Party Claim) including reasonable fees and expenses of legal counsel.
- (t) "**Direct Claim**" means any cause, matter, thing, act, omission or state of facts not involving a Third Party Claim which entitles an Indemnified Party to make a claim for indemnification under this Agreement.
- (u) "**Disclosure Schedule**" means the disclosure schedule dated the date of this Agreement and delivered by the Vendor to the Purchaser with this Agreement.
- (v) "**Employee Plans**" means all the employee benefit, fringe benefit, supplemental unemployment benefit, deferred compensation, bonus, incentive, profit sharing, notice, termination, severance, change of control, retention, pension, retirement, stock option, stock purchase, stock appreciation, phantom stock, health, welfare, medical, dental, disability, life insurance and similar plans, programs, arrangements or practices relating to current or former employees, consultants or other service providers, officers or directors of the Corporation maintained, sponsored or funded by the Corporation, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered, other than government-sponsored employment insurance, workers' compensation, parental insurance, health insurance or pension plans.
- (w) "**Estimated VDP Liability Amount**" means [Redacted].
- (x) "**FACFOA**" means the *Freezing Assets of Corrupt Foreign Officials Act*, S.C. 2011, c. 10.

- (y) "**Final Judgment**" means a final judgment or decision of a court or tribunal of competent jurisdiction that is non-appealable or in respect of which the delay to file an appeal has expired without any appeal having been filed.
- (z) "**Financial Statements**" means the internally prepared financial statements for the Corporation as at and for the years ended on March 31, 2018 and comparative financial information as at March 31, 2017, respectively, consisting in each case of a balance sheet, a statement of retained earnings (deficit) and a statement of income for the year then ended, a true copy of which has been delivered to the Purchaser.
- (aa) "**Foreign Corruption Acts**" means (i) the *Foreign Corrupt Practices Act of 1977* (United States), 5 U.S.C. § 78dd-1, et seq, (ii) the *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34, (iii) the *Bribery Act 2010* (United Kingdom), 2010 Chapter 23, (iv) the SEMA, (v) the FACFOA, or (vi) other similar Laws.
- (bb) "**Governing Documents**" means (i) the certificate and articles of incorporation (or equivalent, including letters patent and memorandum and articles of association) and the by-laws; (ii) all shareholders' or equityholders' agreements, limited liability company agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of such Person or relating to the rights, duties and obligations of the shareholders or equityholders of such Person; and (iii) any amendment or supplement to any of the foregoing.
- (cc) "**Governmental Entity**" means (i) any governmental or public department, central bank, court, commission, board, bureau, agency, commissioner, minister, governor-in-council, cabinet, tribunal or instrumentality whether international, multinational, national, federal, provincial, state, municipal, local or other; (ii) any subdivision or authority of any of the above; and (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.
- (dd) "**GST/HST**" means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada).
- (ee) "**Indebtedness**" means, with respect to the Corporation, the amount equal to the sum (without duplication) of (a) all indebtedness for borrowed money, including any related fees or expenses (including overdraft facilities) (whether short term or long term) or any loans from shareholders or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money, whether current or funded, or secured or unsecured, (b) all obligations of the Corporation for the deferred purchase price of property (whether real or intangible) other than with respect to any trade account included in Working Capital, (c) all obligations of the Corporation evidenced by notes, bonds, debentures or other similar instruments, (d) any indebtedness arising under capitalized leases, conditional sales contracts and other similar title retention instruments, (e) any obligation in respect of letters of credit and bankers' acceptances, other than instruments supporting or guaranteeing any obligations of the Corporation, (f) all liabilities less all assets arising under any interest

rate swap or other interest rate protection agreement or other similar interest rate agreement, (g) all loans due to any related party (within the meaning of the Tax Act), (h) all indebtedness of others referred to in paragraphs (a) through (g) above guaranteed by the Corporation, (i) any bonus that was declared, accrued or otherwise payable by the Corporation prior to Closing but not paid as at the date hereof, (j) any declared dividend not paid by the Corporation as at the date hereof, (k) all deferred revenue, (l) all income Taxes accrued or payable, (m) any intercompany loans including amount due to the Parent or any of **[Redacted]** or Affiliates thereof, (n) the Nevis Closing Liability Amount, (o) the Optionholder Liability Amount, (p) the VDP Liability Amount, (q) the OD Hold Closing Liability Amount, (r) cost and premium of the tail or run-off insurance policy referred to in Section 7.3, (s) OD HoldCos' Canadian legal counsel's fees, (t) accrued liabilities for pending or threatened litigation, and (u) all accrued interest, fees, prepayment penalties or other similar obligations with respect to any of the foregoing.

- (ff) "**Indemnified Party**" means any Party being indemnified under this Agreement.
- (gg) "**Indemnifying Party**" means any Party which is providing indemnification under this Agreement.
- (hh) "**Indemnity Holdback Amount**" means **[Redacted]**.
- (ii) "**Indemnity Holdback Release Date**" means two years from the date of this Agreement.
- (jj) "**Intellectual Property**" means all domestic and foreign whether registered or unregistered:
  - (i) patents, applications for patents and reissues, divisionals, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of patents or patent applications;
  - (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing;
  - (iii) copyrights, copyright registrations and applications for copyright registration;
  - (iv) designs, design registrations, design registration applications, industrial designs, industrial design registrations, industrial design registration applications, integrated circuit topographies, mask works, mask work registrations and applications for mask work registrations;
  - (v) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law (unregistered) trade-marks, trade-

mark registrations, trade-mark applications, trade dress and logos, and the goodwill associated with any of the foregoing;

- (vi) Software;
  - (vii) all rights to assert, defend and recover title to any of the foregoing;
  - (viii) all rights to sue and recover for any past, present and future infringement, misappropriation, violation, damages, lost profits, royalties, payments and proceeds relating to any of the foregoing; and
  - (ix) any other intellectual property, proprietary rights, and industrial property.
- (kk) "**Intellectual Property Agreements**" means all Contracts concerning any Intellectual Property to which the Corporation is a party or beneficiary or by which the Corporation, or any of its properties or assets, may be bound, including all (i) licenses of or rights to any Intellectual Property by the Corporation to any Person, (ii) licenses of or rights to any Intellectual Property by any Person to the Corporation, (iii) Contracts between any Person and the Corporation relating to the transfer, assignment, development, maintenance or use of any Intellectual Property, and (iv) consents, settlements or judgment, decree or order governing the use, infringement, validity or enforceability of any Intellectual Property.
- (ll) "**Interim Financial Statements**" means the reviewed consolidated financial statements of the Corporation as at and for the six-month period ended September 30, 2018 and comparative financial information as at September 30, 2017 respectively, consisting in each case of a balance sheet and the accompanying statements of income, retained earnings and cash flow for the year then ended for the period then ended.
- (mm) "**Laws**" means (i) all constitutions, treaties, laws, statutes, codes, ordinances, principles of common law, notices, orders, decrees, rules, regulations and municipal by-laws, whether domestic, foreign or international; (ii) all judgments, orders, writs, injunctions, decisions, rulings, decrees, directions, sanctions and awards of any Governmental Entity; and (iii) policies, guidelines, notices and protocols of any Governmental Entity to the extent that they have the force of law.
- (nn) "**Leased Property**" means the lands and premises listed and described in Disclosure Schedule 3.2.18.
- (oo) "**Lease**" means the lease of the Leased Property described in Disclosure Schedule 3.2.18.
- (pp) "**Lien**" means any hypothec, mortgage, charge, pledge, prior claim, security interest, assignment, lien (statutory or otherwise), *Bank Act* security, servitude, easement, title defect, restriction on transfer (such as a right of first refusal), restrictive covenant, conditional sale, resolutive condition, leasing, title retention agreement or other encumbrance, arrangement or condition of any nature which, in substance, secures payment or performance of an obligation.

- (qq) "**Material Adverse Change**" means any event, change, development, or circumstance that, individually or in the aggregate with any other event, change, development or circumstance, has, or would reasonably be expected to have, a material adverse effect on the business, operations, assets (including intangible assets), liabilities, prospects, operating results, customer or supplier relations, or financial condition of the Corporation or its business, except in the case of any adverse change to the extent related to or resulting from (i) business, political or economic conditions generally affecting the industry in which the Corporation operates, (ii) national or international political or social conditions, including the outbreak or escalation of war or major hostilities or any act of terrorism, any natural or man-made disaster or acts of God, (iii) any changes in financial, banking, commodity, or securities markets, or (iv) any changes in ASPE, except, with respect to clauses (i) and (ii), to the extent that any such change, condition or effect has a disproportionate effect on the condition or operations of the business of the Corporation.
- (rr) "**Monthly Financial Statements**" means the internally prepared financial statements of the Corporation for each month since the date of the Financial Statements consisting in each case of a balance sheet and as statement of income for the month then ended, true copies of which financial statements have been delivered to the Purchaser.
- (ss) "**Net Indebtedness**" means the aggregate of:
- a. Indebtedness; minus
  - b. Cash;
- (which amount may be positive or negative). The calculation of the estimated Corporation's Net Indebtedness as at the Closing Date on a basis consistent with the preparation of the Financial Statements is attached as Exhibit 1.1(ss).
- (tt) "**Nevis Closing Liability Amount**" means all liabilities of the Corporation in respect of amounts owing to the Parent as disclosed in Disclosure Schedule 1.1(ccc).
- (uu) "**OD HoldCos**" means the Vendor and OD Hold.
- (vv) "**OD Hold Closing Liability Amount**" means all liabilities of the Corporation in respect of amounts owing to OD Hold as disclosed in Disclosure Schedule 1.1(ccc).
- (ww) "**Option**" means the options granted, whether vested or unvested or exercised or not exercised, to certain employees of the Corporation pursuant to the Stock Option Plan.
- (xx) "**Optionholder**" means any Person who holds an Option or Options which are listed in Disclosure Schedule 1.1(xx).
- (yy) "**Optionholder Liability Amount**" means all liabilities of the Corporation, including for greater certainty employer contributions, in respect of amounts or shares owing to Optionholders and advanced to the Corporation by the Purchaser in accordance with Section 2.3(1)(d) and as disclosed in Disclosure Schedule 1.1(ccc).

- (zz) "**Option Surrender Agreements**" means the option surrender agreements to be entered into by the Corporation and each Optionholder on the date hereof.
- (aaa) "**Ordinary Course**" means, with respect to an action taken by a Person, that such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.
- (bbb) "**Party**" means any one of the Purchaser, the Parent, the Vendor, OD Hold and, subject to Section 8.12, their respective permitted assigns.
- (ccc) "**Pay-out Indebtedness**" means the Indebtedness of the Corporation set out in Disclosure Schedule 1.1(ccc).
- (ddd) "**Permitted Liens**" means as at any time, (i) non-consensual Liens for Taxes, assessments, charges or levies imposed by a Governmental Entity which are not due and delinquent at such time and are not published at such time on any register of Liens; (ii) requirements of any Law, including zoning, entitlements, building codes or other land use or environmental Laws of any Government Entity, so long as they do not materially restrict the use by the Corporation of the Leased Property; (iii) statutory Liens in favor of lessors arising in connection with any property leased to the Corporation; (iv) Liens solely created by or resulting from the acts or omissions of the Purchaser (or any of its Affiliates or their respective representatives); (v) purchase money Liens and Liens securing rental payments under capital lease arrangements incurred in the Ordinary Course; (vi) Liens arising under or created by this Agreement or any of the Restrictive Covenant Undertakings; and (vii) Liens listed and described in Disclosure Schedule 1.1(ddd) but only to the extent that such Liens conform to their description in Disclosure Schedule 1.1(ddd).
- (eee) "**Person**" is to be interpreted broadly and includes an individual, partnership, corporation, company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns are to have a similarly extended meaning.
- (fff) "**Personal Data**" means any personally identifiable information such as name, address, email address, photograph, IP address and unique device identifier collected by the Corporation, or by third parties on behalf of the Corporation.
- (ggg) "**Privacy Laws**" means the *Personal Information Protection and Electronic Documents Act* (Canada) and any similar Laws governing the protection of personal information.
- (hhh) "**Purchased Shares**" means all of the issued and outstanding shares in the capital of the Corporation as of Closing, the whole as set out in Disclosure Schedule 2.1 in respect of the Vendor.
- (iii) "**Purchaser's Core Representations**" means, collectively, the representations and warranties of the Purchaser in Sections 4.1.1 (Incorporation and Status of the Purchaser), 4.1.2 (Corporate Power of the Purchaser and Due Authorization) and 4.1.3 (No Contravention).

- (jjj) "**Purchaser's Indemnified Persons**" means (i) Purchaser; (ii) Purchaser's Affiliates (including the Corporation); and (iii) their respective directors, managers and officers.
- (kkk) "**Required Consents**" means all Consents that are necessary in order to permit the consummation of the transactions contemplated by this Agreement, including the Consents listed in Disclosure Schedule 1.1(kkk);
- (lll) "**SEMA**" means the *Special Economic Measures Act*, S.C. 1992, c. 17.
- (mmm) "**Software**" means all (i) software, computer programs, applications, systems, code, data and database, including system monitoring software, algorithms, methodologies, program interfaces, source code, object code and executable code (other than "off-the-shelf" software and program), (ii) Internet and intranet websites, databases and compilations, including data and collections of data, (iii) development and design tools, utilities, and libraries, (iv) technology supporting websites, digital contents, user interfaces, and the contents and audiovisual displays of websites, and (v) media, documentation and other works of authorship, including forms, user manuals, support, maintenance and training materials, relating to or embodying any of the foregoing or on which any of the foregoing is recorded.
- (nnn) "**Stock Option Plan**" means the stock option plan of the Corporation dated February 26, 2016.
- (ooo) "**Subsidiary**" means Order Dynamics US Inc., a corporation incorporated under the Laws of Delaware.
- (ppp) "**Target Working Capital**" means [Redacted]
- (qqq) "**Tax Act**" means the *Income Tax Act*, R.S.C. 1985 (5<sup>th</sup> Supp.) c.1.
- (rrr) "**Tax Returns**" means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and statements (including estimated tax returns and reports, withholding tax returns and reports, and information returns and reports) filed or required to be filed in respect of Taxes.
- (sss) "**Taxes**" means (i) any and all federal, provincial, state, municipal, local and foreign taxes, assessments, contributions and other governmental charges, duties, impositions and liabilities including Canada Pension Plan and provincial pension plan contributions, provincial health plan contributions, insurance contributions, unemployment insurance contributions, parental insurance premiums, worker's compensation and deductions at source, and including taxes based on or measured by gross receipts, income, profits, sales, capital, use, occupation, goods and services, value added, *ad valorem*, transfer, escheat or unclaimed property, franchise, withholding, customs duties, payroll, contributions, premiums, recapture, employment, excise and property Taxes; (ii) all withholding on amounts paid or deemed to be paid to or by the relevant person; (iii) all interest, penalties, fines and additions to tax or other additional amounts imposed on or with respect to amounts of the type described in paragraph (i) or (ii) above; (iv) any liability for the payment of any amounts of the type described in

paragraph (i), (ii) or (iii) above as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (v) any liability for the payment of any amounts of the type described in paragraph (i), (ii) or (iii) above as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts or as a result of being a transferee, and including any liability for Taxes of a predecessor entity.

- (ttt) "**Third Party Claim**" means any action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Entity, against an Indemnified Party which entitles the Indemnified Party to make a claim for indemnification under this Agreement.
- (uuu) "**VDP Damages**" means [Redacted].
- (vvv) "**VDP Holdback Amount**" means [Redacted].
- (www) "**VDP Liability Amount**" means all liabilities of the Corporation in respect of amounts owing to the CRA as more particularly described in Disclosure Schedule 1.1(ccc).
- (xxx) "**VDP Submission**" means the submission made by Bennett Jones LLP on behalf of the Corporation to the CRA on November 1, 2018 as disclosed in Disclosure Schedule 1.1(xxx).
- (yyy) "**VDP Surplus**" means [Redacted].
- (zzz) "**Selling Optionholders**" means [Redacted] and [Redacted].
- (aaaa) "**Vendor's Core Representations**" means, collectively, the representations and warranties of the OD HoldCos and the Parent in (A) Section 3.1 (Separate Representations and Warranties as to the OD HoldCos) and (B) Sections 3.2.1 (Incorporation and Corporate Power), 3.2.2 (Qualification) 3.2.3 (No Default), 3.2.4 (No Conflict), 3.2.8 (Authorized and Issued Capital) and 3.2.9 (Subsidiaries).
- (bbbb) "**Working Capital**" means, with respect to the Corporation, an aggregate amount equal to the sum of current assets (excluding Cash) minus the sum of current liabilities (excluding items included in the definition of Indebtedness). An illustrative calculation of the Corporation's Working Capital as at September 30, 2018, based on the Financial Statements is attached as Exhibit 1.1(bbbb).

## 1.2 Other Defined Terms

In addition to the defined terms in Section 1.1, each of the following capitalized terms has the meaning ascribed thereto in the corresponding Section:

	<u>Terms</u>	<u>Sections</u>
BAR.....		7.2(1)
Cash Amount.....		2.2(1)(a)

<u>Terms</u>	<u>Sections</u>
Closing Certifications .....	5.1(k)
Closing Date Statement.....	2.5.3
Corporation.....	Recitals
Draft Closing Statement.....	2.5.2(1)
Estimated Closing Date Statement .....	2.5.1
Estimated Net Indebtedness .....	2.5.1(a)
Estimated Working Capital .....	2.5.1(b)
Final Net Indebtedness .....	2.5.4(1)
Final Negative Adjustment Amount.....	2.5.4(3)
Final Positive Adjustment Amount.....	2.5.4(4)
Final Working Capital.....	2.5.4(2)
Indemnity Holdback Asserted Amount.....	2.6(2)
Indemnity Holdback Claim.....	2.6(2)
Indemnity Holdback Claim Notice .....	2.6(2)
Indemnification Notice .....	6.5(1)
ITCs.....	3.2.31(1)(p)
Licensed Intellectual Property .....	3.2.22(a)
Material Contracts .....	3.2.19
Restrictive Covenant Undertakings .....	5.1(l)
Ministry .....	3.2.32(m)
Notice.....	8.3
OD Hold.....	Recitals
OD HoldCos .....	2.5.2(1)
OHSA.....	3.2.32(m)
Open Source Materials.....	3.2.22(o)
Owned Intellectual Property .....	3.2.22(a)
Parent.....	Recitals
Purchase Price .....	2.2(1)
Purchaser.....	Recitals
Objector .....	2.5.3(1)
Required Authorizations .....	3.2.21(a)
Resolved Claim .....	2.6(3)(a)
Resolved Claim Amount.....	2.6(3)(b)
Third Party Auditors.....	2.5.3(2)
Unresolved Claim.....	2.6(3)(c)
Unresolved Claim Asserted Amount.....	2.6(3)(d)
Unresolved Claim Final Amount .....	2.6(3)(e)
Vendor .....	Recitals

### 1.3 Gender and Number

Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and *vice versa*.

#### **1.4 Headings, etc.**

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect the interpretation of this Agreement. The recitals to this Agreement are an integral part of this Agreement.

#### **1.5 Currency**

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

#### **1.6 Certain Phrases**

In this Agreement (i) the words "including", "includes" and "include" and any derivatives of such words mean "including (or includes or include) without limitation"; and (ii) the words "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of". The expression "Article", "Section" and other subdivision followed by a number, mean and refer to the specified Article, Section or other subdivision of this Agreement.

#### **1.7 Knowledge**

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of the Corporation, it will be deemed to refer to the knowledge of any of Nicholas McLean, Laurence Sacks or Michael Hazelden, after due inquiry of those persons who, having regard to their positions, job descriptions and responsibilities, would reasonably be expected to have knowledge relevant to the representation and warranty in question.

#### **1.8 Accounting Terms**

All accounting terms used in this Agreement are to be interpreted in accordance with ASPE unless otherwise specified.

#### **1.9 Disclosure Schedules and Exhibits**

The disclosures set forth in the Disclosure Schedules and the Exhibits attached to this Agreement form an integral part of this Agreement. Any information contained or referred to in the Disclosure Schedules is to be treated as a disclosure in respect of each and every representation and warranty contained in this Agreement to which such information may reasonably be regarded as being relevant (regardless of the section number references) and not solely in respect of any particular representation and warranty contained in this Agreement. Matters reflected in the Disclosure Schedules and Exhibits are not necessarily limited to matters required by the Agreement to be disclosed in the Disclosure Schedules and Exhibits. Such additional matters are set forth for informational purposes and do not imply that matters of a similar nature are or are not required to be disclosed.

### 1.10 References to Persons

Any reference in this Agreement to a Person includes its trustees, heirs, administrators, liquidators, executors, successors and permitted assigns.

### 1.11 Statutes

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

### 1.12 Non-Business Days

Whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment will be made or such action will be taken on or not later than the next succeeding Business Day.

### 1.13 Computation of Time Periods

If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the first day of the period is not counted, but the day of its expiry is counted.

## ARTICLE 2 PURCHASE AND SALE; PURCHASE PRICE

### 2.1 Purchase and Sale

Subject to the terms and conditions of this Agreement, the Vendor agrees to sell, assign and transfer to the Purchaser and the Purchaser agrees to purchase from the Vendor, as of Closing on the Closing Date, all (but not less than all) of the Purchased Shares held by the Vendor as of Closing as set forth in Disclosure Schedule 2.1.

### 2.2 Purchase Price

(1) Subject to the adjustment in accordance with this Article 2, the purchase price payable by the Purchaser to the Vendor for the Purchased Shares (the "**Purchase Price**") is as follows:

- (a) \$13,375,000; minus
- (b) the Indebtedness which is assumed by the Purchaser; plus
- (c) Cash; plus
- (d) the amount by which Estimated Working Capital exceeds the Target Working Capital, if applicable; minus

- (e) the amount by which the Target Working Capital exceeds the Estimated Working Capital, if applicable; plus or minus
- (f) the aggregate amount of any adjustments made pursuant to Section 2.5.

### 2.3 Payment of Purchase Price

(1) The Purchase Price shall be satisfied as follows:

- (a) at Closing, by the payment by wire transfer of immediately available funds to the Account of the Vendor:
  - (i) **[\$Redacted]; minus**
  - (ii) the Net Indebtedness (other than the amounts listed in Sections 2.3(1)(b) to 2.3(1)(f)) as reflected in the calculation of the Estimated Net Indebtedness; plus
  - (iii) the amount by which Estimated Working Capital exceeds the Target Working Capital, if applicable; minus
  - (iv) the amount by which the Target Working Capital exceeds the Estimated Working Capital, if applicable; minus
  - (v) **[Redacted]**% of the Adjustment Holdback Amount; minus
  - (vi) **[Redacted]**% of the Indemnity Holdback Amount; minus
  - (vii) **[Redacted]**% of the VDP Holdback Amount;
- (b) at Closing, by the payment by wire transfer of immediately available funds to the Account of OD Hold:
  - (i) an amount equal to the OD Hold Closing Liability Amount; minus
  - (ii) **[Redacted]**% of the Adjustment Holdback Amount; minus
  - (iii) **[Redacted]**% of the Indemnity Holdback Amount; minus
  - (iv) **[Redacted]**% of the VDP Holdback Amount;
- (c) at Closing, by the payment by wire transfer of immediately available funds to the Account of the Parent an amount equal to the Nevis Liability Amount
- (d) at Closing, by the advance of funds to the Corporation by wire transfer of immediately available funds to the Account of the Corporation:
  - (i) an amount equal to the Optionholder Liability Amount; minus

- (ii) **[Redacted]**% of the Adjustment Holdback Amount; minus
- (iii) **[Redacted]**% of the Indemnity Holdback Amount; minus
- (iv) **[Redacted]**% of the VDP Holdback Amount;

for further distribution by the Corporation to the Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx);

- (e) at Closing, by the payment, for and on behalf of the Corporation, of the amount of the Pay-out Indebtedness owing to the creditors other than the amounts listed in Sections 2.3(1)(b) to 2.3(1)(d) and 2.3(1)(f) by wire transfer of immediately available funds pursuant to instructions provided to the Purchaser by the Vendor;
- (f) 2 Business Days prior to each payment date indicated in the payment schedule agreed with the CRA (or, in the absence of any such agreement, 2 Business Days prior to the date on which the CRA requires payment) with respect to the amount owing by the Corporation in respect of the VDP Liability Amount or agreed in writing by the Parent and the Purchaser, each acting reasonably, or unless otherwise agreed between the Parties, with respect to the VDP Submission and VDP Liability Amount, by wire transfer of immediately available funds to the Account of the Corporation of the VDP Liability Amount;
- (g) by the payment by wire transfer of immediately available funds to the Account of the Vendor, the Account of the Corporation, the Account of OD Hold or to the account designated by the Purchaser as applicable, of the amount of any adjustments to the Purchase Price in favour of the Vendor, on its behalf or on behalf of the Selling Shareholders, OD Hold, the Corporation, on behalf of the Optionholders, or the Purchaser, as the case may be, if any, determined pursuant to Section 2.5, subject to, and at the times specified in Section 2.5;
- (h) by the payment by wire transfer of immediately available funds to the Account of the the Vendor, on its behalf or on behalf of the Selling Shareholders, OD Hold, the Corporation, on behalf of the Optionholders, as applicable, an amount equal to the Indemnity Holdback Amount, subject to, and at the times specified in Section 2.6;
- (i) by the payment by wire transfer of immediately available funds to the Account of the Vendor, on its behalf or on behalf of the Selling Shareholders, OD Hold, the Corporation, on behalf of the Optionholders, as applicable, an amount equal to the VDP Holdback Amount, subject to, and at the times specified in Section 2.7.

## **2.4 Pay-out Indebtedness**

On or before the Closing Date, the Vendor will provide or cause to be provided to the Purchaser customary pay-out letters delivered pursuant to Section 5.1(j) from all holders of all

such Indebtedness, and will make arrangements reasonably satisfactory to the Purchaser for such holders to provide to the Purchaser recordable form lien releases, securities discharges, and other documents reasonably requested by the Purchaser simultaneously with or promptly following the Closing.

## 2.5 Adjustment to Purchase Price

### 2.5.1 Estimated Closing Date Statement

Attached as Disclosure Schedule 2.5.1 is an Adjustment Statement (the "**Estimated Closing Date Statement**") signed by an executive officer of the Corporation that:

- (a) sets out a good faith estimate of the Net Indebtedness as at Closing (the "**Estimated Net Indebtedness**"), the whole in accordance with ASPE applied on a basis consistent with the preparation of the Financial Statements;
- (b) sets out a good faith estimate of the Working Capital as at 11:59 pm on the day before the Closing Date (the "**Estimated Working Capital**"), and itemizes the balance of each component of such estimate Working Capital in a manner consistent with the Working Capital sample calculation set forth in Exhibit 1.1(bbbb), the whole in accordance with ASPE applied on a basis consistent with the preparation of the Financial Statements; and
- (c) sets out an estimate of the Purchase Price at Closing.

### 2.5.2 Preparation of Draft Closing Statement

- (1) Within 30 days after the Closing Date (or such other date as is mutually agreed to by the Vendor and the Purchaser in writing), the Purchaser will procure that the Corporation will prepare and deliver to the Purchaser and the Vendor a draft unaudited Adjustment Statement (the "**Draft Closing Statement**") setting out:
  - (a) the Net Indebtedness as at Closing, the whole in accordance with ASPE applied on a basis consistent with the preparation of the Audited Financial Statements;
  - (b) the Working Capital as at 11:59 pm on the day before the Closing Date, and itemizes the balance of each component of such estimate Working Capital in a manner consistent with the Working Capital sample calculation set forth in Exhibit 1.1(bbbb), the whole in accordance with ASPE applied on a basis consistent with the preparation of the Audited Financial Statements; and
  - (c) the Purchase Price at Closing.

The Draft Closing Statement shall be prepared on a basis consistent with the preparation of the Audited Financial Statements.

### 2.5.3 Settlement of Dispute

- (1) The Purchaser and the Vendor will have a period of 20 days to review the Draft Closing Statement following receipt of it. Each must notify the other in writing if it has any objections to the Draft Closing Statement within such 20 day period and a party notifying such objection is hereinafter referred to as an "**Objector**". The notice of objection must contain a statement of the Objector's objections and each amount in dispute. The Purchaser and the Corporation shall, upon request, provide the Vendor and its representatives with reasonable access to all Books and Records and all employees of the Corporation necessary or desirable to permit the Vendor to verify the accuracy, presentation and other matters relating to the preparation of the Draft Closing Statement.
- (2) If either the Purchaser or the Vendor sends a notice of objection of the Draft Closing Statement within the 20 day period set forth in Section 2.5.3(1), the Vendor and the Purchaser will work expeditiously and in good faith in an attempt to resolve such objections within a further period of 5 Business Days following the date of notification by the Objector of such objection. Failing resolution of any objection to the Draft Closing Statement raised by the Objector, the dispute will be submitted for determination to an independent firm of chartered accountants (the "**Third Party Auditors**") mutually agreed to by the Vendor and the Purchaser (and, failing such agreement between the Vendor and the Purchaser within a further period of five Business Days, such independent firm of chartered accountants shall be Ernst & Young LLP, or if such firm is unable to act, another independent national accounting firm). The determination of the Third Party Auditors will be final and binding upon the Vendor and the Purchaser and will not be subject to appeal, absent manifest error. The Vendor and the Purchaser shall use commercially reasonable efforts to cause the Third Party Auditors to make their determination within 30 days of their engagement. While the Third Party Auditors are performing their engagement, the Parties shall not communicate with the Third Party Auditors on the subject matter of their work relating to this Agreement, except by joint conference call, joint meeting or letter with copy simultaneously delivered to the other Parties. The Third Party Auditors shall allow each Party to present their respective positions regarding the Draft Closing Statement, and each Party will have the right to present additional documents, materials and other information, and make an oral presentation to the Third Party Auditors regarding the dispute. The Third Party Auditors shall consider such additional documents, materials and other information and such oral presentations. Any such other documents, materials or other information will be copied to each Party and each Party will be entitled to attend any such oral presentation, and to reply thereto. The determination of the Third Party Auditors will be final and binding upon the Parties and will not be subject to appeal, absent manifest error. The Third Party Auditors will be acting as experts not as arbitrators.
- (3) If no notice of objection is filed within the 20 day period set forth in Section 2.5.3(1), the Purchaser and the Vendor will be deemed to have accepted and approved the Draft Closing Statement and such Draft Closing Statement will be final, conclusive and binding upon the Vendor and the Purchaser, and will not be subject to appeal, absent manifest error. The Draft Closing Statement will become the "**Closing Date Statement**"

on the next Business Day following the earlier of (i) the end of such 20 day period and (ii) the date on which the Purchaser and the Vendor agree in writing, that they have no objection to the Draft Closing Statement.

- (4) If either the Purchaser or the Vendor sends a notice of objection within the 20 day period set forth in Section 2.5.3(1), the Purchaser shall cause the Corporation to revise the Draft Closing Statement to reflect the final resolution or final determination of such objections under Section 2.5.3(2) within two Business Days following such final resolution or determination. Such revised Draft Closing Statement will be final, conclusive and binding upon the Vendor and the Purchaser, and will not be subject to appeal, absent manifest error. The Draft Closing Statement will become the "**Closing Date Statement**" on the next Business Day following revision of the Draft Closing Statement under this Section 2.5.3(4).
- (5) The Vendor and the Purchaser will each bear its own fees and expenses in preparing or reviewing, as the case may be, the Draft Closing Statement and the Closing Date Statement. In the case of a dispute and the retention of the Third Party Auditors to determine such dispute, the costs and expenses of such firm of chartered accountants shall be borne by the party whose position was not correct, provided that in those cases of compromise where neither party's position is clearly correct, as compared to the final resolution or determination of the firm of chartered accountants, the costs and expenses of such firm of chartered accountants shall be borne by the party whose position deviated further from the final resolution or determination, as determined by such firm of chartered accountants. However, the Vendor and the Purchaser will each bear its own costs in presenting their respective cases to such firm of chartered accountants.
- (6) The Vendor and the Purchaser agree that the procedure set forth in this Section 2.5.3 for resolving disputes with respect to the Draft Closing Statement is the sole and exclusive method of resolving such disputes. This Section 2.5.3(6) will not prohibit the Vendor or the Purchaser from instigating litigation to compel specific performance of this Section 2.5.3 or to enforce the determination of the Third Party Auditors.

#### **2.5.4 Payment of Adjustment to Purchase Price**

- (1) The aggregate Purchase Price shall be increased or decreased, as the case may be, if the Net Indebtedness as determined from the Closing Date Statement (the "**Final Net Indebtedness**") is more or less than the Estimated Net Indebtedness, as follows:
  - (a) if the Final Net Indebtedness is less than the Estimated Net Indebtedness, there shall be a corresponding dollar-for-dollar increase to the Purchase Price, the amount of such increase will be owed by the Purchaser to the Vendor and paid as provided below; or
  - (b) if the Final Net Indebtedness is greater than the Estimated Net Indebtedness, there shall be a corresponding dollar-for-dollar decrease to the Purchase Price, the amount of such decrease will be owed by the Vendor to the Purchaser and paid as provided below.

- (2) The aggregate Purchase Price shall be increased or decreased, as the case may be, if the Working Capital as determined from the Closing Date Statement (the "**Final Working Capital**") is more or less than the Estimated Working Capital, as follows:
- (a) if the Final Working Capital is less than the Estimated Working Capital, there shall be a corresponding dollar-for-dollar decrease to the Purchase Price, the amount of such decrease will be owed by the Vendor to the Purchaser and paid as provided below; or
  - (b) if the Final Working Capital is greater than the Estimated Working Capital, there shall be a corresponding dollar-for-dollar increase to the Purchase Price, the amount of such increase will be owed by the Purchaser to the Vendor and paid as provided below.
- (3) If the net amount based on the calculations set forth in Section 2.5.4(1) and Section 2.5.4(2) is owed by the Vendor to the Purchaser (the "**Final Negative Adjustment Amount**"), then within five Business Days of the determination of the Final Closing Statement:
- (a) if the Final Negative Adjustment Amount is less than the Adjustment Holdback Amount, then Purchaser shall subtract the amount of the Final Negative Adjustment Amount from the Adjustment Holdback Amount and pay:
    - (i) **[Redacted]**% of the difference to the Corporation, on behalf of the Optionholders, for further distribution by the Corporation to the Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx);
    - (ii) **[Redacted]**% of the difference to OD Hold;
    - (iii) **[Redacted]**% of the difference to the Vendor, on behalf of the Selling Optionholders, for further distribution by the Vendor to the Selling Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx); and
    - (iv) **[Redacted]**% of the difference to the Vendor;  
  
by wire transfer of immediately available funds to the Accounts of the Corporation, OD Hold or the Vendor, as the case may be; or
  - (b) if the Final Negative Adjustment Amount is equal to the Adjustment Holdback Amount, then no payment shall be made by either the Purchaser or the Vendor and the Purchaser shall be entitled to permanently keep the Adjustment Holdback Amount (and will no longer have any obligation to pay to the Vendor); or
  - (c) if the Final Negative Adjustment Amount is greater than the Adjustment Holdback Amount, then:

- (i) the Purchaser shall be entitled to permanently keep (and will no longer have any obligation to pay to the Vendor) the Adjusted Holdback Amount; and
  - (ii) the Vendor will be required to pay or cause to be paid to the Purchaser an amount equal to the difference between the Final Negative Adjustment Amount and the Adjustment Holdback Amount (it being agreed that the Purchaser may set off any unpaid amount of such difference from any amount released to the Vendor of the Indemnity Holdback Amount or the VDP Holdback Amount).
- (4) If the net amount based on the calculations set forth in Section 2.5.4(1) and Section 2.5.4(2) is owed by the Purchaser to the Vendor (the "**Final Positive Adjustment Amount**"), then within five Business Days of the determination of the Final Closing Statement, the Purchaser will pay to:
- (a) the Corporation, on behalf of the Optionholders, **[Redacted]**% of the Adjustment Holdback Amount for further distribution by the Corporation to the Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx);
  - (b) OD Hold, **[Redacted]**% of the Adjustment Holdback Amount;
  - (c) the Vendor, on behalf of the Selling Optionholders, **[Redacted]**% of the Adjustment Holdback Amount for further distribution by the Vendor to the Selling Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx); and
  - (d) the Vendor, on its behalf, an aggregate amount equal to the sum of the Final Positive Adjustment Amount and **[Redacted]**% of the Adjustment Holdback Amount;
- by wire transfer of immediately available funds to the Accounts of the Corporation, OD Hold or the Vendor, as the case may be.

## 2.6 Indemnity Holdback Amount

- (1) The Purchaser will be entitled, in accordance with the provisions of this Section 2.6, to withhold, deduct from, and set-off against, the Indemnity Holdback Amount, all or any portion of any Damages claimed by the Purchaser or the Corporation pursuant to Section 6.2. The Vendor and the Parent will pursuant to this Section 2.6 be jointly and severally liable with respect to all Damages, up to the Indemnity Holdback Amount, in respect of which the Purchaser or the Corporation is entitled to be indemnified pursuant to Section 6.2. Once the entirety of the Indemnity Holdback Amount has been claimed by the Purchaser or the Corporation pursuant to Section 6.2, the Vendor and the Parent shall be liable as provided in Section 6.4(1). For greater certainty, nothing in this Section 2.6 shall limit the right of the Purchaser or the Corporation to be indemnified pursuant to Section 6.2.

- (2) From time to time prior to the Indemnity Holdback Release Date, the Purchaser may give a written notice (each, an “**Indemnity Holdback Claim Notice**”) to the Vendor specifying the dollar amount (the “**Indemnity Holdback Asserted Amount**”) that the Purchaser claims it is entitled pursuant to this Section 2.6 to withhold, deduct from, and set-off against, the Indemnity Holdback Amount in connection with any claim for indemnification pursuant to Section 6.2 (each such claim made by the Purchaser in an Indemnity Holdback Claim Notice given by the Purchaser to the Vendor prior to the Indemnity Holdback Release Date is referred to as an “**Indemnity Holdback Claim**”).
- (3) For the purposes of this Agreement:
- (a) “**Resolved Claim**” means an Indemnity Holdback Claim, made pursuant to an Indemnity Holdback Claim Notice given to the Vendor prior to the Indemnity Holdback Release Date, which has been finally determined before the Indemnity Holdback Release Date, either pursuant to a written agreement between the Purchaser and the Vendor or pursuant to a Final Judgment;
  - (b) “**Resolved Claim Amount**” means, in respect of a Resolved Claim, the dollar amount which the Purchaser is entitled to deduct from and set-off against the Indemnity Holdback Amount in respect of such Resolved Claim, as finally determined either pursuant to a written agreement between the Purchaser and the Vendor or pursuant to a Final Judgment;
  - (c) “**Unresolved Claim**” means an Indemnity Holdback Claim, made pursuant to an Indemnity Holdback Claim Notice given to the Vendor prior to the Indemnity Holdback Release Date, which has not been finally determined before the Indemnity Holdback Release Date, either pursuant to a written agreement between the Purchaser and the Vendor or pursuant to a Final Judgment;
  - (d) “**Unresolved Claim Asserted Amount**” means, in respect of an Unresolved Claim, the Indemnity Holdback Asserted Amount specified by the Purchaser in its Indemnity Holdback Claim Notice in respect of such Unresolved Claim;
  - (e) “**Unresolved Claim Final Amount**” means, in respect of an Unresolved Claim, the dollar amount which the Purchaser is entitled to deduct from and set-off against the Indemnity Holdback Amount in respect of such Unresolved Claim, as finally determined either pursuant to a written agreement between the Purchaser and the Vendor or pursuant to a Final Judgment.
- (4) No later than ten Business Days following the Indemnity Holdback Release Date, the Purchaser will pay to, by wire transfer of immediately available funds to the Accounts of the Corporation, OD Hold or the Vendor, as the case may be:
- (a) the Corporation, on behalf of the Optionholders, for further distribution by the Corporation to the Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx), [**Redacted**] % of an amount equal to:
    - (i) the Indemnity Holdback Amount; less

- (ii) an aggregate amount, if any, equal to the sum of (i) the aggregate amount of any and all Resolved Claims Amounts, if any, and (ii) the aggregate amount of any and all Unresolved Claims Asserted Amounts, if any;
- (b) OD Hold, **[Redacted]**% of an amount equal to:
  - (i) the Indemnity Holdback Amount; less
  - (ii) an aggregate amount, if any, equal to the sum of (i) the aggregate amount of any and all Resolved Claims Amounts, if any, and (ii) the aggregate amount of any and all Unresolved Claims Asserted Amounts, if any;
- (c) the Vendor, on behalf of the Selling Optionholders, for further distribution by the Vendor to the Selling Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx), **[Redacted]**% of an amount equal to:
  - (i) the Indemnity Holdback Amount; less
  - (ii) an aggregate amount, if any, equal to the sum of (i) the aggregate amount of any and all Resolved Claims Amounts, if any, and (ii) the aggregate amount of any and all Unresolved Claims Asserted Amounts, if any; and
- (d) the Vendor, **[Redacted]**% of an amount equal to:
  - (i) the Indemnity Holdback Amount; less
  - (ii) an aggregate amount, if any, equal to the sum of (i) the aggregate amount of any and all Resolved Claims Amounts, if any, and (ii) the aggregate amount of any and all Unresolved Claims Asserted Amounts, if any.
- (5) On or before the tenth Business Day following the date on which an Unresolved Claim is finally determined, either pursuant to a written agreement between the Purchaser and the Vendor or pursuant to a Final Judgment, the Purchaser will pay to, by wire transfer of immediately available funds to the Accounts of the Corporation, OD Hold or the Vendor, as the case may be:
  - (a) the Corporation, on behalf of the Optionholders, for further distribution by the Corporation to the Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx), **[Redacted]**% of an amount equal to the amount, if any, by which the Unresolved Claim Asserted Amount in respect of such Unresolved Claim exceeds the Unresolved Claim Final Amount in respect of such Unresolved Claim;

- (b) OD Hold, **[Redacted]**% of an amount equal to the amount, if any, by which the Unresolved Claim Asserted Amount in respect of such Unresolved Claim exceeds the Unresolved Claim Final Amount in respect of such Unresolved Claim;
- (c) the Vendor, on behalf of the Selling Optionholders, for further distribution by the Vendor to the Selling Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx), **[Redacted]**% of an amount equal to the amount, if any, by which the Unresolved Claim Asserted Amount in respect of such Unresolved Claim exceeds the Unresolved Claim Final Amount in respect of such Unresolved Claim; and
- (d) the Vendor, **[Redacted]**% of an amount equal to the amount, if any, by which the Unresolved Claim Asserted Amount in respect of such Unresolved Claim exceeds the Unresolved Claim Final Amount in respect of such Unresolved Claim.

For greater certainty, the Purchaser may not be required, pursuant to this Section 2.6(5) to pay in the aggregate an amount that exceeds the aggregate amount of Unresolved Claims Asserted Amounts that has reduced the Indemnity Holdback Amount pursuant to Section 2.6(4).

- (6) The Purchaser will permanently retain any and all Resolved Claim Amounts and any and all Unresolved Claim Final Amounts.
- (7) No interest will be payable in respect of any amounts payable by the Purchaser pursuant to this Section 2.6.

## **2.7 VDP Holdback Amount**

- (1) The Purchaser will be entitled, in accordance with the provisions of this Section 2.7 , to withhold, deduct from, and set-off against, the VDP Holdback Amount, all or any portion of the VDP Damages. For greater certainty, nothing in this Section 2.7 shall limit the right of the Purchaser or the Corporation to be indemnified pursuant to Section 6.2.
- (2) No later than ten Business Days following confirmation by the CRA of the amount owing by the Corporation in respect of the VDP Liability Amount or agreed in writing by the Parent and the Purchaser, the Purchaser will pay to, by wire transfer of immediately available funds to the Accounts of the Corporation, OD Hold, the Vendor, as the case may be:
  - (a) the Corporation, on behalf of the Optionholders, for further distribution by the Corporation to the Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx), **[Redacted]**% of an amount equal to:
    - (i) the VDP Holdback Amount; less
    - (ii) the VDP Damages, if any;

- (b) OD Hold, **[Redacted]**% of an amount equal to the amount:
    - (i) theVDP Holdback Amount; less
    - (ii) the VDP Damages, if any;
  - (c) the Vendor, on behalf of the Selling Optionholders, for further distribution by the Vendor to the Selling Optionholders in the proportion set forth next to their names in Disclosure Schedule 1.1(xx), **[Redacted]**% of an amount equal to:
    - (i) theVDP Holdback Amount; less
    - (ii) the VDP Damages, if any; and
  - (d) the Vendor, **[Redacted]**% of an amount equal to the amount:
    - (i) theVDP Holdback Amount; less
    - (ii) the VDP Damages, if any; and
  - (e) the Vendor, the VDP Surplus.
- (3) In the event the VDP Damages is greater than the VDP Holdback Amount, then the Purchaser shall be entitled to permanently keep (and will no longer have any obligation to pay to the Vendor) (i) the VDP Holdback Amount and (ii) an amount equal to the difference between the VDP Damages and the VDP Holdback Amount (being understood that such difference should be deducted from the Indemnity Holdback Amount).
- (4) No interest will be payable in respect of any amounts payable by the Purchaser pursuant to this Section 2.7.

## **2.8 Holdbacks**

For greater certainty, all amounts to be received by the Corporation, on behalf of the Optionholders, OD Hold and the Vendor, on behalf of the Selling Optionholders, under Sections 2.5.4(3)(a), 2.5.4(4), 2.6(4), 2.6(5) and 2.7(2) shall not exceed in the aggregate \$100,000.

## **2.9 No Effect on Other Rights**

The determination and adjustment of the Purchase Price in accordance with the provisions of this Article 2 will not limit or affect any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities contained in this Agreement.

## **2.10 Allocation of Purchase Price**

The Purchase Price shall be allocated in the manner set out in Exhibit 2.10 hereof. The Parties shall report the transactions described herein in a manner consistent with Exhibit 2.10

hereof, and shall not take any position inconsistent therewith with a Tax Governmental Entity, in the filing of their Tax Returns or in the course of any audit by any Governmental Entity, Tax review or Tax proceeding relating to such Tax Returns.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES OF THE OD HOLDCOS AND THE PARENT**

**3.1 Separate Representations and Warranties as to the OD HoldCos and the Parent**

Each of the OD HoldCos and the Parent separately represents and warrants to the Purchaser as follows as of the date hereof with respect to himself or itself only, as the case may be, and acknowledges and agrees that the Purchaser is relying upon such representations and warranties in connection with the purchase by the Purchaser of the Purchased Shares:

**3.1.1 Incorporation and Status**

Each of the OD HoldCos and Parent is a corporation, duly and validly incorporated, organized and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to own and sell its property and enter into and perform its obligations under this Agreement and each of the Restrictive Covenant Undertakings to which it is a party.

**3.1.2 Corporate Power of the OD HoldCos; Due Authorization**

Each of the OD HoldCos and the Parent has the corporate power and capacity to enter into, and to perform its obligations under this Agreement and each of the Restrictive Covenant Undertakings to which each of them is a party. This Agreement and each of the Restrictive Covenant Undertakings to which each of them is a party have been duly authorized by all necessary corporate and other action on the part of each of the OD HoldCos and the Parent. This Agreement and each of the Restrictive Covenant Undertakings to which each of them is a party have been duly executed and delivered by each of the OD HoldCos and the Parent and are a valid and binding obligation of each of the OD HoldCos and the Parents, enforceable in accordance with its terms, subject to limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

**3.1.3 No Conflict**

The execution, delivery and performance by the OD HoldCos and the Parent of this Agreement and each of the Restrictive Covenant Undertakings to which the OD HoldCos or the Parent is a party:

- (a) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach, default or violation of, or conflict with, or allow any other Person to exercise any rights under, any term, condition or provision of (i) its Governing Documents or any resolutions of its board of directors, shareholders, trustees or partners, as the case may be; or (ii) any Contracts to which the OD HoldCos or the Parent is a party or

pursuant to which any of the OD HoldCos' or the Parent's assets, business, activities, or share capital may be affected; and

- (b) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or violation of any Law.

### **3.1.4 Required Authorizations**

There is no requirement of the OD HoldCos or the Parent to make any filing with, give any notice to, or obtain or maintain any Authorization of, any Governmental Entity as a condition to the lawful completion of the transactions contemplated by this Agreement and each of the Restrictive Covenant Undertakings to which the OD HoldCos or the Parent is a party.

### **3.1.5 Required Consents**

There is no requirement of the OD HoldCos or the Parent to obtain any Consent.

### **3.1.6 Title to Purchased Shares**

The Vendor is the sole and unconditional owner of the Purchased Shares, in the number and class set out beside its name in Disclosure Schedule 2.1, with good and valid title thereto, free and clear of all Liens. At Closing, such shares will constitute all of the outstanding shares or other equity interests in the Corporation, whether issued or unissued, and the Vendor will transfer good and valid title to Purchaser of such Purchased Shares, free and clear of all Liens.

### **3.1.7 No Other Agreements to Purchase**

Except for the Purchaser's rights under this Agreement, no Person has any written or oral agreement, option or warrant, or any right or privilege (whether by Law or by Contract) capable of becoming such, for the purchase or acquisition from the Vendor of any of the Purchased Shares or any other equity interests in the Corporation other than the Optionholders.

### **3.1.8 Shareholders Agreements, etc.**

Each of the OD HoldCos is and has not, and the Corporation is and has not been subject to, or affected by, any shareholders' agreement, voting trust or similar arrangement with respect to the voting or ownership of shares of the Corporation.

### **3.1.9 Residence of OD HoldCos**

Each of the OD HoldCos is not a non-resident of Canada within the meaning of the Tax Act.

### **3.1.10 Litigation**

There is no action or proceeding pending or threatened against the OD HoldCos or the Parent by or before any court or Governmental Entity or by or before an arbitrator or arbitration

board that, individually or in the aggregate, would or would reasonably be expected to impede the ability of the OD HoldCos or the Parent to perform its obligations hereunder.

### **3.2 Representations and Warranties as to the Corporation**

The OD HoldCos and the Parent jointly and severally, each waiving the benefit of division and discussion, represent and warrant to the Purchaser as follows as of the date hereof, and acknowledge and confirm that the Purchaser is relying upon such representations and warranties in connection with the purchase by the Purchaser of the Purchased Shares:

#### **3.2.1 Incorporation and Corporate Power**

The Corporation is a corporation duly and validly incorporated, organized, in good standing and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to own and operate its property and conduct its business and activities as currently conducted.

#### **3.2.2 Qualification**

Except as disclosed in Disclosure Schedule 3.2.2, (i) the Corporation is duly qualified, licensed or registered to carry on business in the Province of Ontario and (ii) the Subsidiary is duly qualified, licensed or registered to carry on business in the State of Delaware and there are no other jurisdictions where the Corporation or the Subsidiary is required to be qualified or licensed.

#### **3.2.3 No Default**

The Corporation is not in breach, default or violation (and no event has occurred that with the giving of notice, the lapse of time, or both, or the happening of any other event or condition, would constitute a breach, default or violation) of any term, condition or provision of its Governing Documents or of any resolutions of its board of directors or shareholders.

#### **3.2.4 No Conflict**

Except for the Consents disclosed in Disclosure Schedule 3.2.6, the lawful completion, execution and delivery of the transactions contemplated by this Agreement and each of the Restrictive Covenant Undertakings to which the Corporation is a party:

- (a) have been duly authorized by all necessary corporate action on the part of the Corporation;
- (b) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach, default or violation of, or conflict with, or allow any other Person to exercise any rights under, any of the term, condition or provision of (i) the Corporation's Governing Documents or of any resolutions of its board of directors or shareholders; or (ii) any Material Contracts to which the Corporation is a party or pursuant to which any of its assets, business, activities or share capital may be affected;

- (c) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach, default or violation of, or cause the termination or revocation of, any Authorization held by the Corporation or necessary to the ownership or the use of the assets or the operation of any of the business or activities of the Corporation;
- (d) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the creation, acceleration or imposition of any Lien on any material assets of the Corporation; and
- (e) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or violation of any Law.

### **3.2.5 Required Authorizations**

There is no requirement of the Corporation to make any filing with, give any notice to, or obtain or maintain any Authorization of, any Governmental Entity as a condition to the lawful completion of the transactions contemplated by this Agreement and each of the Restrictive Covenant Undertakings to which it is a party, or to the continued operation of any of the business and activities of the Corporation.

### **3.2.6 Required Consents**

There is no requirement of the Corporation to obtain any Consent except for the Consents described in Disclosure Schedule 3.2.6.

### **3.2.7 Regulatory Filings**

The aggregate value of all assets in Canada of the Corporation and its annual gross revenues from sales in and from Canada generated from all such assets do not exceed, in either case, \$92 million as determined pursuant to subsection 110(3) of the *Competition Act* (Canada).

### **3.2.8 Authorized and Issued Capital**

- (a) The authorized capital of the Corporation consists of an unlimited number of common shares and of which only the Purchased Shares are issued and outstanding.
- (b) The Purchased Shares are registered in the name of the Vendor as set forth in Schedule 2.1. The Purchased Shares have been duly authorized, validly issued without violation of any pre-emptive right or other right to purchase and are outstanding as fully paid and non-assessable shares. All of the Purchased Shares have been issued in compliance with all applicable Laws including applicable securities Laws.

- (c) The authorized capital of the Subsidiary consists of 10,000 shares of common stock and of which the only issued and outstanding shares of common stock are as set forth in Disclosure Schedule 3.2.8(c). All of the issued and outstanding shares of the Subsidiary (i) have been duly authorized and validly issued without violation of any pre-emptive right or other right to purchase and are outstanding as fully paid and non-assessable shares, (ii) have been issued in compliance with all applicable Laws, including securities Laws and (iii) are owned by the Corporation, as the registered and beneficial owner with a good title, free and clear of all Liens other than those restrictions on transfer, if any, contained in the articles of the Subsidiary.
- (d) There are no outstanding options, warrants, rights, securities, debentures, loans or notes convertible or exchangeable for any shares or other securities of the Corporation other than the Options.
- (e) The Corporation is not a reporting issuer (as such term is defined in the *Securities Act* (Ontario)) and there is no published market for the Purchased Shares. The Corporation is a "private issuer" as defined in Section 2.4 of National Instrument 45-106 – *Prospectus Exemptions*.

### **3.2.9 Subsidiaries**

- (a) The Corporation has no subsidiaries and holds no shares or other ownership, equity or other proprietary interests in any Person other than the Subsidiary.
- (b) The Subsidiary does not and has not, since its inception, carried on any business or operations and has no assets or liabilities.

### **3.2.10 Stand-Alone Business/Sufficiency of Assets**

Except as disclosed in Disclosure Schedule 3.2.10, no part of the business or of the activities of the Corporation is carried on by any Person other than the Corporation. The assets and properties owned, leased or licensed by the Corporation constitute all of the assets and properties used or held for use in connection with the business and activities of the Corporation as currently conducted and constitute all of the assets and properties used to conduct the business and activities. No assets used in the operation of the business or the activities of the Corporation are owned by any Person other than the Corporation except for the Leased Property, the movable or personal property leased by the Corporation pursuant to the Material Contracts and the Intellectual Property licensed to the Corporation and disclosed in Disclosure Schedule 3.2.22. Except as set forth in Disclosure Schedule 3.2.10, all of the assets of the Corporation are situated at the Leased Properties.

### **3.2.11 Corporate Records**

Except as set out in Disclosure Schedule 3.2.11, the Corporate Records are complete and accurate and all corporate proceeding and actions reflected in the Corporate Records have been conducted or taken in compliance with all applicable Laws and with the Governing Documents of the Corporation, in each case and contain copies of all of:

- (a) the Governing Documents and material resolutions adopted by the shareholders and directors of the Corporation since the date of its incorporation, all of which have been duly adopted;
- (b) the registers of all past or present securities, shareholders and securities issuances, redemptions and transfers;
- (c) the share certificate book; and
- (d) the registers of directors, listing all former and present directors of the Corporation, all of whom were properly elected.

### **3.2.12 Conduct of Business in Ordinary Course**

Except as disclosed in Disclosure Schedule 3.2.12, since March 31, 2018, the Corporation has carried on its business and activities in the Ordinary Course and, without limiting the generality of the foregoing, the Corporation has not:

- (a) ceased (either permanently or temporarily other than scheduled shut downs for routine maintenance) to carry on its business or its activities as operated or carried on in the Ordinary Course;
- (b) transferred to any Person any rights to the Owned Intellectual Property or Licensed Intellectual Property, except in connection with sales of the Corporation' products or services in the Ordinary Course;
- (c) terminated, entered into, amended or otherwise modified any agreements pursuant to which any Person is granted licensing, marketing, distribution or similar rights of any type or scope or any third party royalty rights with respect to any products or services of the Corporation, or entered into or amended any strategic alliance, license or sub-license agreement, or joint development agreement;
- (d) terminated, entered into, amended or otherwise modified any Material Contract other than modifications that are not individually or in the aggregate material and that are made in the Ordinary Course;
- (e) received notice from any Person regarding the acceleration, termination, material modification or cancelation of a Material Contract;
- (f) submitted any material or binding proposal or response to any request for proposal in respect of a new project;
- (g) sold or otherwise in any way alienated or disposed of any assets or property (tangible or intangible) other than in the Ordinary Course;
- (h) hired or terminated the employment or services of any director, officer or manager (or equivalent Persons) or granted any severance or termination pay to any director, officer or any employee, or to any consultant or service provider;

- (i) except in the Ordinary Course, made any change in the rate or form of compensation or remuneration or benefits payable or to become payable to any of its shareholders, directors, officers, employees, consultants or other service providers, or made any changes to any of its Employee Plans or entered into any new Employee Plans;
- (j) granted to any customer any special allowance or discount, or changed its pricing, credit or payment policies, other than in the Ordinary Course;
- (k) made any individual capital expenditure in excess of \$25,000 or aggregate capital expenditures in excess of \$50,000;
- (l) acquired any assets (including inventory) other than in the Ordinary Course;
- (m) instituted or suffered any material changes in the conduct of its business or made any material change in its accounting, cash management, management, marketing, operation and tax policies and practices as utilized, as applicable, in the preparation of the Financial Statements, removed any accountant, or had any accountant resign;
- (n) made any material changes to the Corporation's relationship with any customer or supplier;
- (o) incurred any Indebtedness greater than \$25,000;
- (p) forgiven, cancelled, compromised, waived or released any Indebtedness owed to it or any right, account receivable, trade account or claim in excess of \$25,000;
- (q) compromised or settled any litigation or claim, or suffered any judgments, requiring payment by the Corporation in excess of \$25,000 in the aggregate or granting injunctive relief or specific performance;
- (r) cancelled or reduced any of its insurance coverage, or received notice thereof or of non-renewal or increase in premium from the underwriters or the Corporation's brokers; or
- (s) authorized, agreed or otherwise committed to any of the foregoing.

### **3.2.13 No Material Adverse Change**

Except as disclosed in Disclosure Schedule 3.2.13, since March 31, 2018, there has been no Material Adverse Change and to the knowledge of the Corporation, there exists no actual alleged or anticipated event, occurrence, condition of act which may (or would with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in such a Material Adverse Change.

### **3.2.14 Compliance with Laws**

Except as disclosed in Disclosure Schedule 3.2.14, during the past seven years, the Corporation has conducted and it is now conducting its business and activities in material compliance with all applicable Laws of each jurisdiction in which its business is carried on. No event has occurred and no circumstance exists that is reasonably likely to constitute or result in (with or without notice or lapse of time) a material violation or breach of any applicable Law, and the Corporation has not received any written notice from any Governmental Entity regarding any actual or potential material violation or breach of applicable Law. There is no investigation, request for information or other proceeding by any Governmental Entity pending or, to the knowledge of the Corporation, threatened against the Corporation. In the event that compliance with a specific Law or Laws is the subject of a specific Warrant, that specific warranty shall replace this warranty 3.2.4 so far as the specific Law or Laws are concerned.

### **3.2.15 Related Parties**

Except as disclosed in Disclosure Schedule 3.2.15, neither of the OD HoldCos or the Parent, nor any officer, manager, partner or director of the Corporation or affiliates of any of the foregoing (i) has any interest in or owns any assets, properties, or rights used in the conduct of the business of the Corporation or (ii) is a party to any Contract, other than this Agreement and the Restrictive Covenant Undertakings, to which the Corporation is a party or which otherwise benefits the business.

### **3.2.16 Title to the Assets**

The Corporation owns (with good and valid title) all of the properties and assets (whether immovable, movable, real, personal or mixed and whether tangible or intangible) that it purports to own including all the properties and assets reflected as being owned by it in the financial Books and Records and the balance sheet which forms part of the Financial Statements and the Monthly Financial Statements, other than as sold in the Ordinary Course since March 31, 2018. The Corporation has legal and beneficial ownership of such properties and assets free and clear of all Liens except for Permitted Liens. The Corporation has not received, in respect of its assets, any notice from any Person asserting any conflicting rights.

### **3.2.17 Owned Property**

The Corporation does not own any real property nor has the Corporation ever owned any real property at any time in the past, and the Corporation is not a party to any Contract or option to purchase any immovable property or interest therein.

### **3.2.18 Leases**

The Corporation is not a party to, or under any agreement to become a party to, any lease with respect to immovable or real property other than the Lease, described in Disclosure Schedule 3.2.18 (including a description by municipal address and proper legal description, the term of the Lease, the rental payments under the Lease, any rights of renewal and the term thereof, and any restrictions on assignment or change of Control), a complete and accurate copy of which has been provided to Purchaser. The Lease is in good standing, creates a good and

valid interest in the Leased Property and is in full force and effect. With respect to the Lease (i) all rents and additional rents have been paid to date; (ii) no waiver, indulgence or postponement of the lessee's obligations has been granted by the lessors; (iii) the Corporation is not in breach, default or violation of the Lease or alleged to be in such breach, default or violation; (iv) there exists no event of material default or event, occurrence, condition or act (including the purchase of the Purchased Shares) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a material default of the Corporation under the Leases; (v) to the knowledge of the Corporation, all of the material covenants to be performed by any other party under the Lease have been fully performed; (vi) the Corporation does not owe or is not currently contractually bound to pay, in the future, any brokerage commissions or finder's fees with respect to the Lease; and (vii) except as disclosed in Disclosure Schedule 3.2.18, the Corporation has not subleased, assigned or otherwise granted to any other Person the right to use or occupy the Leased Property or any portion thereof and there are no Persons other than the Corporation occupying such Leased Property. The Lease listed in Disclosure Schedule 3.2.18 comprises of all the immovable property used by the Corporation in connection with its business.

### **3.2.19 Material Contracts**

Except for the Contracts disclosed in Disclosure Schedule 3.2.19 (Material Contracts) (all such Contracts disclosed, together with the Lease, being the "**Material Contracts**"), the Corporation is not a party to or bound by:

- (a) any services, distribution or sales Contract that is material to the Corporation;
- (b) any Contract (including, for greater certainty, any purchase order) pursuant to which the Corporation is expected to make or receive payments in excess of \$50,000 per year;
- (c) any Contract that may not be terminated by written notice at the option of the Corporation or that can only be terminated at the option of any Person other than the Corporation so as to terminate more than one year after the date of Closing (not taking into account automatic renewals);
- (d) any trust indenture, deed of hypothec, mortgage, promissory note, loan agreement or other Contract for the Indebtedness or borrowing of money, any currency exchange, swaps, commodities or other hedging or derivative arrangement, or any leasing transaction of the type required to be capitalized in accordance with ASPE;
- (e) any confidentiality, secrecy or non-disclosure Contract or any Contract limiting the freedom of the Corporation to engage in any line of business, compete with any other Person, solicit employees or clients, operate its assets at maximum production capacity or otherwise conduct its business and activities other than any confidentiality provisions included in Contracts;

- (f) any Contract involving any continuing representation, warranty or indemnification obligation of the Corporation to any other Person, other than in the Ordinary Course;
- (g) any Contract of guarantee, support, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person;
- (h) any Contract relating to grants or other forms of assistance received by the Corporation from any Governmental Entity and that is material to the Corporation;
- (i) any Contract under which a payment is required to be made to directors, officers or employees of the Corporation in connection with the Closing (including the amount of any payment due thereunder);
- (j) any h Contract pursuant to which the Corporation has agreed to provide any bonus, commission, pension, profit sharing, severance, retirement benefit or any other form of deferred compensation, whether formal or informal;
- (k) any employment, consulting or independent contractor Contract or other Contract with the Corporation's officers, directors, employees, contractors, sales representatives or agents providing for annual compensation in excess of \$50,000;
- (l) any Intellectual Property Agreement (excluding any publicly available, off-the-shelf or click-through software for which the Corporation pays an annual license fee of less than \$25,000);
- (m) any Contract pursuant to which the Corporation is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;
- (n) any Contract for capital expenditures in excess of \$50,000 in the aggregate;
- (o) any partnership, joint venture, alliance Contract or other Contract involving a sharing of profits, losses, costs or liabilities with any other Person; or
- (p) any Contract with any Person with whom the Corporation, or any of the OD HoldCos or the Parent, does not deal at arm's length within the meaning of the Tax Act.

### 3.2.20 No Breach of Contracts

- (a) **Material Contracts.** The Corporation has performed all obligations required to be performed by it and is entitled to all benefits under, and is not in breach, default or violation or alleged to be in such breach, default or violation of, any Material Contract except for certain acts of default or breach which are subject to a cure mechanism and reasonably likely to be cured within the applicable cure

period and, in the aggregate, are not material. To the knowledge of the Corporation, all of the covenants to be performed by any other party to the Material Contracts have been performed. Each of the Material Contracts is in full force and effect, unamended, and there exists no actual or, to the knowledge of the Corporation, alleged or anticipated default or event of default or event or condition (including the purchase of the Purchased Shares) which would with the giving of notice, the lapse of time, or both, or the happening of any other event or condition, result in a breach, default or violation under any Material Contract. Complete and accurate copies of all Material Contracts have been delivered to the Purchaser.

### 3.2.21 Authorizations

- (a) **Required Authorizations.** The Corporation holds all such Authorizations necessary to permit the Corporation to lawfully conduct, operate or occupy its business, activities and the Leased Property in the manner it currently conducts, operates or occupies such business, activities and Leased Property, and to own its assets (the "**Required Authorizations**"). The Required Authorizations are valid and in full force and effect. Disclosure Schedule 3.2.21(a) contains a complete and accurate list of all Required Authorizations.
- (b) **Compliance.** The Corporation and the Leased Property are, and at all times during the last five years have been, in material compliance with all of the terms and requirements of each of the Required Authorizations.
- (c) **No Default.**
  - (i) There is no actual, alleged or anticipated event or condition (including the purchase of the Purchased Shares) which (or would with the giving of notice, the lapse of time, or both, or the happening of any other event or condition), (i) constitutes a material breach, default or violation of any Required Authorization; or (ii) results directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any material modification to, any Required Authorization.
  - (ii) The Corporation has not received, at any time, any notice or other communication (whether oral or written) from any Governmental Entity or any other Person with respect to (i) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Required Authorization or (ii) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of, or material modification to, any Required Authorization.
- (d) **Renewal.** All applications required to have been filed for the renewal of the Required Authorizations have been duly filed on a timely basis with the appropriate Governmental Entity, and all other filings required to have been

made with respect to such Required Authorizations have been duly made on a timely basis with the appropriate Governmental Entity.

### 3.2.22 Intellectual Property

- (a) **Complete List.** Disclosure Schedule 3.2.22(a) contains a complete and accurate list of (A) all Intellectual Property owned by the Corporation which has been registered or for which applications for registration have been filed by or on behalf of the Corporation, (B) all material unregistered trademarks and Software owned by the Corporation ((A) and (B) collectively referred to as the "**Owned Intellectual Property**"), and (C) all material Intellectual Property (including Software) licensed to the Corporation in carrying on its business and activities (the "**Licensed Intellectual Property**").
- (b) **Registrations.** All of the Corporation's Owned Intellectual Property which has been registered or applied for has been properly maintained and renewed by the Corporation in accordance with all applicable Laws and has not been used or enforced, or to the knowledge of the Corporation, failed to be used or enforced, in a manner that would result in the abandonment, cancellation or unenforceability of any rights in such Intellectual Property.
- (c) **Title.** Except as set forth in Disclosure Schedule 3.2.22(c), the Corporation either (i) owns exclusively all right, title and interest in and to the Owned Intellectual Property, free and clear of all Liens other than Permitted Liens or (ii) has the right to use all the Licensed Intellectual Property in carrying on its business and activities. The Corporation has taken all reasonable steps to protect the Corporation's rights in and to its Owned Intellectual Property, including the validity and enforceability thereof, in each case in accordance with industry practice.
- (d) **No Restrictions.** Except as set forth in Disclosure Schedule 3.2.22(d), the Corporation is not a party to or bound by any Contract or other obligation that limits or impairs its ability to use, sell, transfer, assign or convey, or that otherwise affects, any of the Owned Intellectual Property. Except as set forth in Disclosure Schedule 3.2.22(d), the Corporation has not granted to any Person any right, license or permission to use all or any portion of, or otherwise encumbered any of its rights, other than Permitted Liens, in or to, any of the Owned Intellectual Property or Licensed Intellectual Property. Except as set forth in Disclosure Schedule 3.2.22(d), the Corporation is not obligated to pay any royalties, fees or other compensation to any Person in respect of its ownership, use or license of any Licensed Intellectual Property.
- (e) **No Infringement by the Corporation.** To the knowledge of the Corporation, the operation of the Corporation's business and activities does not infringe upon the Intellectual Property rights of any Person. Except as set forth in Disclosure Schedule 3.2.22(e), no claims have been asserted or are threatened alleging that the conduct of the Corporation, its business or its activities, including the use of

the Owned Intellectual Property or the Licensed Intellectual Property, infringes upon any of the Intellectual Property rights of any Person.

- (f) **No Breach.** The transaction contemplated by this Agreement and the continued operation of the Corporation's business and activities will not breach the terms of any license relating to the Licensed Intellectual Property, or entitle any other party to any such license to terminate or modify it, or otherwise adversely affect the Corporation's rights under it.
- (g) **Sufficiency of IP of the Corporation.** The Owned Intellectual Property with the Licensed Intellectual Property constitutes all Intellectual Property necessary for the conduct of the Corporation's business and activities as presently conducted.
- (h) **No Infringement by Third Parties.** To the knowledge of the Corporation, no Person is currently infringing any of the Owned Intellectual Property or the Licensed Intellectual Property.
- (i) **No Rights Retained.** Following the Closing, none of the OD HoldCos or the Parent or any Affiliate of the OD HoldCos or the Parent will retain any rights in the Owned Intellectual Property or the Licensed Intellectual Property.
- (j) **No Governmental Entity Assistance, etc.** Except for the use by the Corporation of ITCs which would not cause any Governmental Entity to have an interest in the Corporation's Owned Intellectual Property, none of the Corporation's Owned Intellectual Property has been developed with the assistance or use of any funding from third parties or third party agencies, including, but not limited to, any Governmental Entity.
- (k) **Confidentiality and Assignment of Proprietary Rights.** All current and former employees, officers, agents, consultants, contractors, sub-contractors or others of the Corporation whose duties or responsibilities included contributing to the creation, development or invention of Intellectual Property on behalf of the Corporation have entered into intellectual property assignment agreements that convey to the Corporation all right, title and interest that such Persons may possess in and to such Intellectual Property. Each such Person has irrevocably waived in writing any non-assignable rights (including moral rights) that he or she may possess in or to any and all such Intellectual Property. To the knowledge of the Corporation, no such Person has claimed an interest in any of the Owned Intellectual Property.
- (l) **Software and Technology.** Disclosure Schedule 3.2.22(l) contains a complete and accurate list of material Software owned by, licensed to or used by the Corporation identifying whether such Software is owned or licensed by the Corporation. The Software owned by the Corporation and, to the knowledge of the Corporation, the Software licensed to the Corporation, does not contain any undisclosed program routine, device or other feature, including viruses, worms, bugs, time locks, Trojan horses or back doors, in each case that is designed to delete, disable, deactivate, interfere with or otherwise harm such Software, and

any virus or other intentionally created, undocumented contaminant that may, or may be used to, access, modify, delete, damage or disable any hardware, system or data. Except as disclosed in Disclosure Schedule 3.2.22(l), none of the material Software owned by the Corporation depends upon any service, technology or data of any third party (other than the Internet, cloud services and hosted systems). The Corporation uses reasonable means to protect the security and integrity of all of such owned Software. The use in the ordinary course of any Software by the Corporation does not exceed the scope of any rights granted to the Corporation with respect thereto, including any applicable limitation upon the usage, type or number of licenses, users, hardware, time, services or systems.

- (m) **Source Code.** Disclosure Schedule 3.2.22(m) contains a complete and accurate list of material Software owned by, licensed to or used by the Corporation for which the Corporation has in its possession copies of the source code. The Corporation has treated such Software as confidential and proprietary business information, and has taken all reasonable steps to protect the same as trade secrets of the Corporation. Each Person listed in Disclosure Schedule 3.2.22(m) as having received source code or data relating to any Software distributed by the Corporation is bound by a confidentiality and non-disclosure agreement with respect such Software and, to the knowledge of the Corporation, there are no breach, default or violation of any such agreements or any threatened disputes or disagreements with respect to them. Such source code is documented in a manner that a reasonably skilled programmer could understand, modify, compile and otherwise utilize all aspects of the related computer programs without reference to other sources of information.
- (n) **Object Code.** Except as disclosed in Disclosure Schedule 3.2.22(n), all copies of any Software distributed by the Corporation have been distributed solely in object code form. Except as disclosed in Disclosure Schedule 3.2.22(n), there has been no disclosure of such Software other than through licensing of object code versions. Except as disclosed in Disclosure Schedule 3.2.22(n), each copy so distributed is the subject of a valid, existing and enforceable license agreement. All of the Software distributed by the Corporation operate within its specifications.
- (o) **Open Source, etc.** Disclosure Schedule 3.2.22(o) contains a complete and accurate list as of the date hereof of all material Software that is "open source", copyleft, community source code or Software which is distributed under a similar licensing or distribution model (including, but not limited to, the GNU General Public License) (collectively, "**Open Source Materials**") integrated in or used in connection with the Corporation's product, including identification under which such Open Source Materials are licensed. Except as described and set forth in Disclosure Schedule 3.2.22(o), the Corporation has not (i) embedded or integrated any Open Source Materials into, or combined Open Source Materials with, the Corporation's product, (ii) distributed any Open Source Materials in conjunction with the Corporation's product, (iii) modified any Open Source Materials, statically or dynamically, or (iv) used, modified or distributed any

Open Source Materials in a manner that would subject the Corporation's owned Intellectual Property to a license for Open Source Materials (including claims of infringement in connection with such license), or otherwise resulted in the loss or impairment of the Corporation's rights to the Corporation's owned Intellectual Property.

- (p) **Servers.** Disclosure Schedule 3.2.22(p) sets out the physical locations of the computer servers that are currently hosting the Corporation's owned Software and Internet websites. Such servers are validly owned or leased by the Corporation.
- (q) **Support.** There have been no material interruptions in the technology support of the Corporation in the past two (2) years that have resulted in the Corporation granting service credits or paying penalties to its customers in accordance with the Corporation's service levels commitments.
- (r) **Unauthorized Access.** To the knowledge of the Corporation, except as disclosed in Disclosure Schedule 3.2.22(r), no individual or entity has gained unauthorized access to: (A) any computers, computer software, firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, or other information technology equipment, (B) associated documentation used by or on behalf of the Corporation or any service provider of the Corporation, or (C) any data stored on such information technology equipment.

### 3.2.23 Product and Service Warranties

- (a) **Written Warranties.** Disclosure Schedule 3.2.23 sets forth complete and accurate copies of the written warranties and guarantees by the Corporation currently in effect with respect to its products and services. There are no oral warranties outstanding. There have not been any material deviations from such warranties and guarantees.
- (b) **Warranty and Repair Claims.** Except as set out in Disclosure Schedule 3.2.23, there are no presently pending or, to the knowledge of the Corporation, threatened, civil, criminal or administrative investigations or proceedings or material warranty or repair claims which exclude, for the avoidance of doubt, Ordinary Course non material return merchandise authorizations relating to (i) any alleged hazard or alleged defect, latent or not, in design, manufacture, construction, installation, materials or workmanship, including any failure to warn or alleged breach, default or violation of express or implied warranty or representation, relating to any product or service manufactured, constructed, installed, distributed, shipped or sold, as applicable, by or on behalf of the Corporation; or (ii) any breach, default or violation of any of the product warranties, indemnities or performance guarantees made to customers of the business of the Corporation. Except as set out in Disclosure Schedule 3.2.23, within each of the past three years, all warranty and repair claims made with respect to, or in connection with, the products or services distributed by the

Corporation have not individually exceeded \$25,000 and, in the aggregate, have not exceeded \$50,000 annually in total replacement and servicing cost.

### **3.2.24 Customers and Suppliers**

Disclosure Schedule 3.2.24 contains a list of the top ten customers of the Corporation (determined on the basis of revenues) for each of the last two fiscal years and the top ten suppliers of the Corporation (determined on the basis of cost of goods and services purchased) for each of the last two fiscal years. Since March 31, 2018, except as disclosed in Disclosure Schedule 3.2.24, none of such customers or suppliers has ceased to do business with the Corporation other than as a result of ordinary course of business project completion. To the knowledge of the Corporation, no such customer or supplier is in financial distress or threatened with bankruptcy or insolvency. To the knowledge of the Corporation, none of such customers or suppliers has notified the Corporation that it will cease doing business with the Corporation or that it will materially adversely modify the levels of the terms and conditions of its purchases from, or supplies to, the Corporation.

### **3.2.25 Books and Records**

All accounting and financial Books and Records (i) are complete in all material respects, (ii) have been maintained in accordance with material applicable Laws and good business practices on a basis consistent with prior years, (iii) are stated in reasonable detail and fairly reflect the material transactions and dispositions of the assets of the Corporation, and (iv) fairly reflect the basis for the Financial Statements and the Monthly Financial Statements.

### **3.2.26 Financial Statements**

(A) The Financial Statements and the Monthly Financial Statements have been prepared in accordance with ASPE applied on a basis consistent with those of previous fiscal years and (B) the Financial Statements and the Monthly Financial Statements fairly present in all material respects (i) the assets, liabilities, income, losses, retained earnings, reserves and financial position of the Corporation; (ii) the results of operations of the Corporation; and (iii) only with respect to the Financial Statements, the changes in the financial position of the Corporation, all as at the dates and for the periods therein specified, subject to, in the case of the Monthly Financial Statements, normal year-end adjustments and the absence of notes thereto.

### **3.2.27 No Undisclosed Liabilities**

Except (i) as reflected or reserved against in the Financial Statements or the Monthly Financial Statements, (ii) for current liabilities or obligations incurred in the Ordinary Course since March 31, 2018 or (iii) as reflected in the Books and Records, the Corporation has no material liabilities or obligations of any nature (whether absolute, accrued, contingent or otherwise).

### 3.2.28 Accounts Receivable

All accounts receivable of the Corporation are *bona fide* subject to a reserve for doubtful accounts, result from the Ordinary Course and have been properly recorded in the Ordinary Course in the Books and Records.

### 3.2.29 Bank Accounts and Powers of Attorney

Disclosure Schedule 3.2.29 is a complete and accurate list showing (i) the name of each financial institution in which the Corporation has an account or safety deposit box and the names of all Persons authorized to draw on the account or to have access to the safety deposit box; and (ii) the names of all Persons holding powers of attorney from the Corporation. Complete and accurate copies of the powers of attorney have been provided to the Purchaser.

### 3.2.30 Trade Allowances

Except as set forth in Disclosure Schedule 3.2.30, no customers of the Corporation 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 with or concessions granted to any customer. All customer discounts, allowances, rebates, credits, preferential terms, or similar reductions in price or other trade terms have been accounted for in the Closing Date Statement.

### 3.2.31 Tax Matters

- (1) Except as disclosed in the VDP Submission,
  - (a) except as set forth in Disclosure Schedule 3.2.31, the Corporation has correctly computed all Taxes owing by it, correctly prepared and duly and timely filed all Tax Returns required to be filed by it. The information contained in such Tax Returns is correct and complete in all material respects and such Tax Returns reflect accurately all material liability for Taxes of the Corporation for the periods covered thereby;
  - (b) the Corporation has correctly computed all Taxes owing by it and paid all Taxes which were due and payable by it on or before the date hereof within the time required by applicable Laws and made adequate provision for Taxes in the Books and Records. The Corporation has made adequate and timely installments or prepayments of Taxes required to be made. The Corporation has not received any refund of Taxes to which it not entitled. There are no Liens for Taxes (other than any Permitted Liens) upon the Purchased Shares or any assets of the Corporation;
  - (c) since March 31, 2018, the Corporation has only incurred liabilities, whether actual or contingent, for Taxes in the Ordinary Course;
  - (d) the liability for Taxes of the Corporation has been assessed by all relevant Governmental Entities for all periods ending before the Closing Date. There are

no outstanding agreements, arrangements, waivers or objections extending the statutory period or providing for an extension of time with respect to the assessment or reassessment of Taxes or the filing of any Tax Return by, or any payment of Taxes by, the Corporation. Any proposed deficiencies have been paid and settled;

- (e) except as disclosed in Disclosure Schedule 3.2.31, there are no material claims, actions, suits, audits, proceedings, investigations or other action pending or threatened against the Corporation in respect of Taxes and, to the knowledge of the Corporation, there is no reason to expect that any such material claim, action, suit, audit, proceeding, investigation or other action may be asserted against the Corporation by a Governmental Entity for any period ending on or prior to the Closing Date. The Corporation do not have any outstanding assessment for Taxes. The Corporation is not negotiating any final or draft assessment or reassessment in respect of Taxes with any Governmental Entity and the Corporation has not received any indication from any Governmental Entity that an assessment or reassessment is proposed or may be proposed in respect of any Taxes for any period ending on or prior to the Closing Date. Except as disclosed in Disclosure Schedule 3.2.31, there has not been since January 1, 2013, an examination or written notice of potential examination of the Tax Returns filed with respect to the Corporation by any taxing authority;
- (f) the Corporation has withheld and collected from each payment made or deemed to have been made to any of its past and present direct and indirect shareholders, directors, officers, employees, mandataries and agents all amounts required by applicable Law to be withheld or collected by it on account of Taxes and has remitted all such amounts to the appropriate Governmental Entity within the time prescribed under any applicable Law, or, if not yet due, has made adequate provision in the Books and Records for the remittance of such amounts to the proper Governmental Entities;
- (g) the Corporation has not been deemed or was ever deemed to have for purposes of the Tax Act, acquired or had the use of property for proceeds greater than the fair market value thereof from, or disposed of property for proceeds less than the fair market value thereof to, or received or performed services or had the use of property for other than the fair market value from or to, or paid or received interest or any other amount other than at a fair market value rate to or from, any Person with whom it does not deal at arm's length within the meaning of the Tax Act. The Corporation is not subject to liability for Taxes of any other person. The Corporation has not acquired property from any person in circumstances where the Corporation did or could become liable for any Taxes of such person. The Corporation has not entered into any agreement with, or provided any undertaking to, any person pursuant to which it has assumed liability for the payment of income Taxes owing by such person;
- (h) for all transactions between the Corporation, on the one hand, and any non-resident Person with whom the Corporation is not dealing at arm's length, for

the purposes of the Tax Act, on the other hand, during a taxation year ending on or before the Closing Date, the Corporation has made or obtained records or documents that satisfy transfer-pricing requirements under the applicable Law including paragraphs 247(4)(a) to (c) of the Tax Act;

- (i) except as disclosed in Disclosure Schedule 3.2.31, no facts, circumstances or events exist or have existed that have resulted in or may result in the application of any of sections 79 to 80.04 of the Tax Act (or analogous provincial or similar provisions) to the Corporation;
- (j) except as disclosed in Disclosure Schedule 3.2.31, the Corporation has not claimed any reserves for purposes of the Tax Act (or analogous provincial or similar provisions) for the most recent taxation year ending prior to the Closing Date;
- (k) the Corporation has not made any payment, or is obligated to make any payment, and is party to any agreement under which it could be obligated to make any payment, that may not be deductible by virtue of section 67 or 78 of the Tax Act (or analogous provincial or similar provisions);
- (l) the Corporation is, and its predecessors was, duly registered with the under Part IX of the *Excise Tax Act* (Canada) for purposes of the GST/HST. The Corporation has, and its predecessors have, complied with all registration, reporting, payment, collection and remittance requirements in respect of GST/HST and provincial sales tax, harmonized tax legislation, and any federal, state and local sales tax;
- (m) the Corporation is not subject to any joint venture, partnership or other arrangement or contract that is treated as a partnership for income tax purposes in any jurisdiction;
- (n) to the knowledge of the Corporation, no material claim has ever been made by a Governmental Entity in respect of Taxes in a jurisdiction where the Corporation does not file Tax Returns that the Corporation is or may be subject to Tax by that jurisdiction;
- (o) the Corporation has not been and is not currently required to file any Tax Returns with any taxation authority located in any jurisdiction outside Canada;
- (p) all research and development investment tax credits ("ITCs") were claimed by the Corporation or accounted for in the Closing Date Statement in accordance with the Tax Act and the relevant provincial Tax Laws and the Corporation satisfied at all times the relevant criteria and conditions entitling it to such ITCs;
- (q) the Corporation has never been subject to the application of section 212.3 of the Tax Act (or analogous provincial or similar provisions);

### 3.2.32 Employees

- (a) The Corporation has complied during the last three years, and is in compliance, in each case, in all material respects, with all applicable Laws relating to employment, and labour matters, including relating to wages, hours of work, vacation pay, overtime pay, pay equity, occupational health and safety, human rights, workers' compensation, termination of employment and conditions of employment, and there are no outstanding claims, complaints, investigations or orders under any such Laws and to the knowledge of the Corporation, there is no basis for such claim.
- (b) There is no collective agreement in force with respect to the employees of the Corporation, nor is there any Contract with any employee association. No collective agreement is currently being negotiated by the Corporation or any other Person in respect of the Corporation, and there are no current or, to the knowledge of the Corporation, threatened attempts to organize or establish any trade union or employee association with respect to the Corporation, nor has there been any such attempts within the last three years.
- (c) The Corporation has not engaged in any unfair labour practice. There is no unfair labour practice complaint, investigation, grievance or arbitration proceeding pending or, to the knowledge of the Corporation, threatened against the Corporation, or which could have an adverse effect on the Corporation.
- (d) Except as disclosed in Disclosure Schedule 3.2.32, all amounts due and owing or accrued due but not yet owing for all salary, wages, overtime, vacation pay, sick days with pay, bonuses, commissions, or other incentive payments, pension benefits or other benefits under the Employee Plans have been paid or, if accrued, are reflected in the Books and Records.
- (e) The Corporation is not subject to any claim for wrongful dismissal, constructive dismissal or any other claim, investigation, complaint or litigation relating to employment, harassment, violence, discrimination or termination of employment of any of its employees or former employees or relating to any failure to hire a candidate for employment.
- (f) To the knowledge of the Corporation, no managerial or key employee and no group of employees of the Corporation have any plans to terminate his, her or their employment with the Corporation.
- (g) Disclosure Schedule 3.2.32 contains a complete and accurate list of each director, officer and employee of the Corporation, whether actively at work or not, listed by their employee number, if any, or title without listing their names, but including their salaries, wage rates, commissions, bonus arrangements, status as full-time or part-time, position, hire date, location, recognized length of service, annual vacation entitlement in days and accrued and unused vacation days. In addition, Disclosure Schedule 3.2.32 lists any employee currently on leave of absence, together with the type of leave, their expected date of return to work, if

known, and indicating whether the employee is in receipt of disability benefits or workers' compensation benefits.

- (h) Disclosure Schedule 3.2.32 contains a complete and accurate list of each independent contractor, agent and consultant of the Corporation currently providing services, including the nature of the services and the approximate compensation paid by the Corporation in the twelve month period ended March 31, 2018.
- (i) All written agreements of the Corporation with its employees and with its independent contractors, agents and consultants with whom the Corporation has a binding obligation to use their services, as the case may be, have been provided to the Purchaser. There are no verbal agreements with such employees, independent contractors, agents and consultants that provide for different terms than those contained in a written agreement.
- (j) Each independent contractor has been properly classified by the Corporation as an independent contractor and the Corporation has not received, nor are there any pending or threatened notices from any Person disputing such classification.
- (k) Disclosure Schedule 3.2.32 discloses in respect of each employee who is employed pursuant to a work permit the expiry date of such work permit and whether the Corporation has made any attempts to renew such work permit.
- (l) There are no outstanding assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workers' compensation legislation in respect of the Corporation and the Corporation has not been reassessed in any material respect under such legislation during the past three years and, to the knowledge of the Corporation, no audit of the Corporation is currently being performed pursuant to any applicable workers' compensation legislation. To the knowledge of the Corporation, there are no claims or potential claims which may materially adversely affect the Corporation's accident cost experience.
- (m) All orders and inspection reports issued by the Ministry of Labour (Ontario) (the "**Ministry**") under Ontario Occupational Health and Safety legislation ("**OHSA**") relating to the Corporation have been provided to the Purchaser. There are no charges pending under OHSA in respect of the Corporation. The Corporation has complied in all material respects with any orders issued by the Ministry under OHSA and there are no appeals of any such orders currently outstanding.

### 3.2.33 Employee Plans

- (a) Disclosure Schedule 3.2.33 lists completely and accurately describes all Employee Plans. The Corporation has delivered to Purchaser complete and accurate copies of all the Employee Plans. No Person other than the employee of the Corporation participates in any Employee Plan.

- (b) All obligations regarding the Employee Plans have been satisfied and there are no outstanding breaches, defaults or violations by any party to any Employee Plan and no Taxes, penalties or fees are owing or due and payable under or in respect of any of the Employee Plans.
- (c) To the knowledge of the Corporation, no Employee Plan is subject to any pending investigation, examination or other proceeding, action or claim initiated by any Governmental Entity or by any other Person (other than routine claims for benefits).
- (d) None of the Employee Plans (other than pension plans, if any) provide for retiree benefits or for benefits to retired employees or to the beneficiaries or dependants of retired employees.
- (e) Subject to the requirements of applicable Laws, no provision of any Employee Plan or of any agreement, and no act or omission of the Corporation, in any way limits, impairs, modifies or otherwise affects the right of the Corporation to unilaterally amend or terminate any Employee Plan, and no commitments to improve or otherwise amend any Employee Plan have been made.
- (f) All contributions or premiums required to be collected and remitted or paid by the Corporation under the terms of each Employee Plan or by Law have been collected and remitted or paid in a timely fashion and are properly recorded in the Books and Records. The Corporation does not have any liability (other than liabilities accruing after the date hereof) with respect to any of the Employee Plans. Contributions or premiums for the period up to the date hereof have been paid or collected and remitted by the Corporation within the time required by applicable Laws.
- (g) No insurance policy or any other agreement affecting any Employee Plan requires or permits a retroactive increase in contributions, premiums or other payments due thereunder.
- (h) No Employee Plan, arrangement or agreement exists that could require as a result of the transactions contemplated by this Agreement, (i) the payment to any Person of any money, benefits or other property; (ii) accelerated or increased funding requirements for any Employee Plan; or (iii) the acceleration or provision of any other increased rights or benefits to any Person.

### **3.2.34 Privacy**

- (a) The Corporation has complied in all material respects with its internal privacy policies and privacy notices relating to the use, collection, storage, disclosure and transfer of Personal Data.
- (b) No Personal Data is stored or otherwise maintained outside Canada or the United States by the Corporation or any other Person.

- (c) To the knowledge of the Corporation, except as disclosed in Disclosure Schedule 3.2.34, no unauthorized access to or unauthorized acquisition, use, loss, destruction, compromise or disclosure of any Personal Data maintained or stored by the Corporation has occurred. The Corporation takes reasonable measures to ensure that Personal Data is protected against unauthorized access, use modification, or other misuse.
- (d) There are no restrictions on the Corporation's collection, use, disclosure and retention of Personal Data except as provided by the Corporation's privacy policy and applicable Privacy Laws.
- (e) To the knowledge of the Corporation, there have been no audits or investigations of the Corporation performed by any Governmental Entity under any applicable Privacy Laws.
- (f) All third party vendors or Persons with access to Personal Data collected and/or maintained by or on behalf of the Corporation have entered into contracts or written agreements with the Corporation requiring that such vendors or persons use commercially reasonable efforts to protect the integrity and confidentiality of such Personal Data.

### **3.2.35 Insurance**

Disclosure Schedule 3.2.35 contains a complete and accurate list of insurance policies which are maintained by the Corporation setting out, in respect of each policy, a description of the type of policy, the name of the insurer, the coverage allowance, the deductible, the expiration date, the annual premium, any pending claims and the claims history for the last three years. The Corporation is not in default in any material respects with respect to any of the provisions contained in the insurance policies or the payment of any premiums under any insurance policy, nor has it failed to give any notice or to present any claim under any insurance policy in a due and timely fashion, and the Corporation's insurance policies are sufficient for compliance with all applicable Laws and Contracts to which the Corporation is a party or by which it is bound. Except as disclosed in Disclosure Schedule 3.2.35 and to the knowledge of the Corporation, there are no circumstances in respect of which a claim could be made under the insurance policies and there are no outstanding claims under the insurance policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights.

### **3.2.36 Litigation**

Except as described in Disclosure Schedule 3.2.36, there are no and have not been at any time in the last five years any (i) actions, claims, suits or proceedings by any Person (including the Corporation); (ii) arbitration or alternative dispute resolution processes; or (iii) administrative or other proceedings by or before (or, to the knowledge of the Corporation, any investigation by) any Governmental Entity, in each case, pending or, to the knowledge of the Corporation, threatened against or affecting the Corporation or its business, activities or assets. Except as described in Disclosure Schedule 3.2.36, the Corporation is not, and has not at any time in the last five years been, subject to any judgment, report of findings, order or decree

entered in any lawsuit or proceeding nor has the Corporation settled any claim before being prosecuted in respect of it or otherwise entered into any undertaking or compliance agreement. Except as described in Disclosure Schedule 3.2.36, the Corporation has not, and has not at any time in the last five years been, the plaintiff or complainant in any action, claim, suit or proceeding, arbitration or alternative dispute resolution process.

### **3.2.37 Foreign Corrupt Practices, etc.**

The Corporation has not or, to the knowledge of the Corporation, the directors, officers, agents, mandataries, employees or representatives of the Corporation has not, in the course of its, or their, actions for, or on behalf of, the Corporation:

- (a) knowingly used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
- (b) unlawfully offered or provided, directly or indirectly, anything of value to, or unlawfully received anything of value from, any, foreign or domestic, government employee, official or any other Person;
- (c) violated any provision of the Foreign Corruption Acts;
- (d) directly or indirectly, taken any action in violation of any export restrictions, anti-boycott regulations, embargo regulations or other similar applicable Laws; or
- (e) engaged in any business with any Person with whom, or in any country in which, (A) it is prohibited for a United States person to engage under Law or under applicable United States sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury, or (B) it is prohibited for a Person to engage under SEMA, FACFOA, any United Nations resolution or regulation or any other Law.

### **3.2.38 Full Disclosure**

Neither this Agreement nor any Restrictive Covenant Undertakings to which the OD HoldCos or the Corporation is a party contains any untrue statement of a material fact in respect of the OD HoldCos, the affairs, prospects, operations or condition of the Corporation.

### **3.2.39 No Brokers, etc.**

No broker, finder, agent, mandatary or similar intermediary has acted on behalf of any of the OD HoldCos, the Parent or the Corporation in connection with this Agreement or the transactions contemplated hereby, and there are no brokerage commissions, finders' fees or similar fees or commissions payable by any of the OD HoldCos, the Parent or the Corporation in connection with this Agreement or the transactions contemplated hereby.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

**4.1 Representations and Warranties of the Purchaser**

The Purchaser represents and warrants to the OD HoldCos and the Parent as follows as of the date hereof and acknowledges and confirms that the OD HoldCos and Parent are relying on such representations and warranties in connection with the transactions contemplated by this Agreement:

**4.1.1 Incorporation and Status of the Purchaser**

The Purchaser is duly incorporated and validly existing under the Laws of its jurisdiction of incorporation.

**4.1.2 Corporate Power of the Purchaser and Due Authorization**

The Purchaser has the corporate power and capacity to enter into, and to perform its obligations under this Agreement. This Agreement has been duly authorized by all necessary corporate and other action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser and is a valid and binding obligation of the Purchaser, enforceable in accordance with its terms, subject to limitations with respect to enforcement imposed by law in connection with bankruptcy or similar proceedings and to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought.

**4.1.3 No Contravention**

Neither the entering into of this Agreement nor the performance by the Purchaser of any of its obligations under this Agreement, as applicable, will contravene, breach or result in any default under (i) the articles, by-laws, constating documents or other organizational documents of the Purchaser, or (ii) any Contract or Laws to which it is a party or by which it may be bound, except in the case of clause (ii) where the contravention, breach or default would not prevent, or materially and adversely affect the ability of, the Purchaser to satisfy its obligations under this Agreement, as applicable.

**4.1.4 No Finder's Fees**

The Purchaser has not taken, and agrees that it will not take, any action that would cause the other party to become liable to any claim or demand for a brokerage commission, finder's fee or other similar payment.

**ARTICLE 5**  
**CLOSING DELIVERIES**

**5.1 Vendor's Closing Deliveries**

At Closing, the Vendor shall deliver, or cause to be delivered, to the Purchaser the following in form and substance satisfactory to Purchaser, acting reasonably:

- (a) share certificates representing the Purchased Shares duly endorsed in blank for transfer, or accompanied by irrevocable stock transfer powers duly executed in blank, in either case, by the holders of record, together with evidence satisfactory to the Purchaser that the Purchaser has been entered upon the books of the Corporation as the holder of the Purchased Shares;
- (b) certified copies of (i) the Governing Documents of each of the Corporation and the Subsidiary, the OD HoldCos and the Parent, (ii) the resolutions of the directors, and if required the shareholders, of each of the Corporation, the OD HoldCos and the Parent approving the entering into and completion of the transactions contemplated by this Agreement and the Restrictive Covenant Undertakings to which each of them is a party and (iii) a certified list of the officers and directors of each of the OD HoldCos, the Parent and the Corporation authorized to sign agreements together with their specimen signatures;
- (c) the Corporate Records as rectified to ensure that the Corporate Records include, without limitation, (i) all resolutions of the shareholders and the directors of the Corporation authorizing, approving or ratifying, without limitation, the annual financial statements, the appointment of directors and officers, the issuance of any securities of the Corporation, loans to any third party or Affiliate of the Corporation and the amalgamation of the Corporation with MBC Development Ltd. and (ii) the minute book, the share certificates, the securities register, the register of transfers and the register of directors;
- (d) a certificate of status, compliance, good standing or similar certificate with respect to each of the Corporation, the Subsidiary, the OD HoldCos and the Parent issued by the appropriate government officials of its jurisdiction of incorporation;
- (e) all Required Consents;
- (f) duly executed resignations and releases effective as at Closing of each director and non-employee officer of each of the Corporation and the Subsidiary;
- (g) a release in favour of the Purchaser and the Corporation from the Vendor, the Parent, OD Hold, **[Redacted]**;
- (h) duly executed Optionholder Surrender Agreements by each Optionholder;
- (i) evidence of issuance of shares by the Corporation to **[Redacted]** and **[Redacted]** and purchase of such shares by the Vendor;
- (j) the pay-out letters with respect to the Pay-out Indebtedness which authorize the Corporation to discharge all security in respect of such Pay-out Indebtedness upon the receipt by such creditors of such outstanding amounts;
- (k) a certificate certifying the amount of the Nevis Closing Liability Amount, the OD Hold Closing Liability Amount, the Optionholder Closing Liability Amount and

the VDP Liability Amount (the "**Closing Certifications**") as at the Closing Date, which amounts will be used for purposes of determining the Purchase Price to be paid at Closing in accordance with Section 2.3;

- (l) a non-competition, non-solicitation and confidentiality agreement duly executed by each of the Vendor, the Parent and OD Hold and a non-solicitation and confidentiality agreement duly executed by each of **[Redacted]** in favor of the Purchaser and the Corporation (the "**Restrictive Covenant Undertakings**");
- (m) resignation of **[Redacted]** of his employment with the Parent and waiver of any rights under any Options or under the Stock Option Plan; and
- (n) evidence of forgiveness of a portion of the debt owed by the Corporation to OD Hold.

## 5.2 Purchaser's Closing Deliveries

The Purchaser shall have delivered or caused to be delivered to the Vendor and the Parent the following in form and substance satisfactory to the Vendor and the Parent acting reasonably:

- (a) certified copies of (i) the Governing Documents of the Purchaser, (ii) the resolutions of the board of directors of Purchaser approving the entering into and completion of the transactions contemplated by this Agreement to which it is a party and (iii) a certified list of the officers and directors of the Purchaser authorized to sign agreements together with their specimen signatures;
- (b) a certificate of status, compliance, good standing or similar certificate with respect to the Purchaser issued by the appropriate government officials of its jurisdiction of incorporation; and
- (c) employment offer letter duly executed by TECSYS Europe Limited and **[Redacted]** effective upon Closing.

## ARTICLE 6 INDEMNIFICATION

### 6.1 Survival

- (1) The representations and warranties contained in this Agreement will survive the Closing and continue in full force and effect for a period of two years after the Closing Date, except that:
  - (a) the Vendor's Core Representations and the Purchaser's Core Representations will survive and continue in full force and effect without limitation of time;
  - (b) the representations and warranties set out in Section 3.2.31 (Tax Matters) will survive and continue in full force and effect until the date that is 90 days from the first date on which no assessment, reassessment or other recognized

document assessing liability for the relevant Taxes may be issued by a Governmental Entity in respect of any taxation year to which such representations and warranties extend, having regard to any waiver given; and

- (c) any representation and warranty involving fraud or deliberate misconduct by the party giving that representation and warranty will survive and continue in full force and effect without limitation of time.
- (2) No Party has any obligation or liability with respect to any representation or warranty made by such Party in this Agreement after the end of the applicable time period specified in Section 6.1(1), except for claims relating to the representations and warranties that the Party has been notified of prior to the end of the applicable time period and in accordance with the provisions of Section 6.5.
- (3) The covenants and obligations of each of the Parties set forth in this Agreement, including the indemnification obligations set forth in Article 6, shall survive Closing indefinitely, unless any such covenant by its terms expire or is to be fulfilled on or before Closing, and each Party shall be entitled to the full performance thereof by the other Parties without limitation as to time or amount.

## **6.2 Indemnification in Favour of the Purchaser**

- (1) The OD HoldCos and the Parent jointly and severally shall indemnify and save the Purchaser's Indemnified Persons harmless for and from any Damages suffered by, imposed upon or asserted against the Purchaser's Indemnified Persons, as a result of, in respect of, connected with, or arising out of, under or pursuant to:
  - (a) any failure of the Vendor, OD Hold, the Parent, **[Redacted]** to perform or fulfill any of such Vendor', OD Hold's, Parent's, **[Redacted]**'s covenants under this Agreement or the Restrictive Covenant Undertaking to which such Vendor, OD Hold, the Parent, **[Redacted]** is a party;
  - (b) any breach or inaccuracy of any representation or warranty given by the OD HoldCos or the Parent contained in this Agreement or the Restrictive Covenant Undertaking to which the OD HoldCos or the Parent is a party;
  - (c) any liabilities or obligations of the Corporation for Taxes in connection with any period or portion thereof ending on or before the Closing Date other than to the extent recorded as a liability for Taxes payable in the Closing Date Statement in a manner that reduces the Purchase Price or as a VDP Liability Amount;
  - (d) all Net Indebtedness as at Closing to the extent not deducted from the Purchase Price pursuant to Section 2.2(1) or any post-Closing adjustment pursuant to Section 2.5; and
  - (e) any VDP Damages.

- (2) For greater certainty, the right to indemnification under Sections 6.2(1)(a), 6.2(1)(c), 6.2(1)(d) and 6.2(1)(e) exists notwithstanding the right to indemnification under Section 6.2(1)(b) and notwithstanding any representation and warranty in Article 3. Subject to the time limitations set forth in Section 6.1 and the limitations on Damages set forth in Section 6.4, the right to indemnification under Section 6.2(1)(b) is a right that is separate and independent from any other right or remedy under this Agreement.

### **6.3 Indemnification in Favour of the OD HoldCos**

- (1) The Purchaser shall indemnify and save each of the OD HoldCos and the Parent harmless for and from any Damages suffered by, imposed upon or asserted against the OD HoldCos or the Parent as a result of, in respect of, connected with, or arising out of, under or pursuant to:
  - (a) any failure of the Purchaser to perform or fulfill any covenant of the Purchaser under this Agreement; and
  - (b) any breach, default or violation of any representation or warranty given by the Purchaser contained in this Agreement.
- (2) For greater certainty, the right to indemnification under Section 6.3(1)(a) exists notwithstanding the right to indemnification under Section 6.3(1)(b) and notwithstanding any representation and warranty in Article 4. Subject to the time limitations set forth in Section 6.1 and the limitations on Damages set forth in Section 6.4, the right to indemnification under Section 6.3(1)(b) is a right that is separate and independent from any other right or remedy under this Agreement.

### **6.4 Limitation on Damages**

- (1) The representations, warranties, covenants and indemnification obligations of the OD HoldCos and the Parent in this Agreement are made jointly and severally by the OD HoldCos and the Parent with the OD HoldCos or the Parent, as the case may be, in accordance with the terms of this Agreement without the benefit of division or discussion.
- (2) Subject to Section 6.4(4), neither the OD HoldCos nor the Parent shall be liable for a claim under their representations and warranties and the indemnification obligations in Section 6.2 unless the amount of their liability in respect of such claim, either individually or when aggregated with their liability for all other claims exceeds \$50,000, in which case they shall be liable for the whole amount claimed (and not just the amount above the threshold specified in this Section 6.4(2)).
- (3) Notwithstanding any other provisions hereof, (i) the maximum aggregate liability of the OD HoldCos and the Parent for their indemnification obligations in Section 6.2 shall not exceed \$[Redacted], and (ii) the maximum aggregate liability of the Purchaser for its indemnification obligations in Section 6.2 shall not exceed \$[Redacted].

- (4) Sections 6.4(2) and 6.4(3) do not apply to (i) indemnification claims with respect to Vendor's Core Representations; (ii) indemnification claims with respect to Purchaser's Core Representations; (iii) indemnification claims made pursuant Sections 6.2(1)(c) or 6.2(1)(e); or (iv) claims based on fraud or deliberate misconduct by any of the OD HoldCos, the Parent or the Purchaser.

## **6.5 Notification**

- (1) Promptly upon obtaining knowledge thereof, the Indemnified Party shall notify in writing the Indemnifying Party of any cause which the Indemnified Party has determined has given or could give rise to a claim for indemnification under this Article 6 (an "**Indemnification Notice**").
- (2) If the Indemnification Notice is made pursuant to a Third Party Claim, such notice must be made in writing and specify in reasonable detail, the identity of the Person making the Third Party Claim and, to the extent known, the nature and estimated amount of the Damages.
- (3) Upon receipt of an Indemnification Notice by an Indemnifying Party, the provisions of Section 6.7 will apply to any Third Party Claim and the provisions of Section 6.6 will apply to any Direct Claim.
- (4) The omission to so notify the Indemnifying Party does not relieve the Indemnifying Party from any duty to indemnify and hold harmless which otherwise might exist with respect to such cause unless the notification occurs after the expiration of the applicable time limit, if any, as set out in Section 6.1 or (and only to the extent that) the omission to so notify materially prejudices the ability of the Indemnifying Party to exercise its right to defend provided in Section 6.7.

## **6.6 Direct Claims**

- (1) Following receipt of Indemnification Notice pursuant to Section 6.5(1) relating to a Direct Claim, the Indemnifying Party has 45 days to investigate the Direct Claim and respond in writing. For purposes of the investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Direct Claim, together with such other information, books and records and access to employees as the Indemnifying Party may reasonably request.
- (2) If the Indemnifying Party disputes the validity or amount of the Direct Claim, the Indemnifying Party shall provide written notice of the dispute to the Indemnified Party within the 45-day period specified in Section 6.6(1). The dispute notice will describe in reasonable detail the nature of the Indemnifying Party's dispute. During the 30-day period immediately following receipt of a dispute notice by the Indemnified Party, the Indemnifying Party and the Indemnified Party shall attempt in good faith to resolve the dispute. If the Indemnifying Party and the Indemnified Party fail to resolve the dispute within that 30-day time period, the Indemnified Party is free to pursue all rights and remedies available to it, subject only to this Agreement. If the Indemnifying Party fails to respond in writing to the Direct Claim within the 45-day period specified in

Section 6.6(1), the Indemnifying Party is deemed to have rejected the Direct Claim in which event the Indemnified Party is free to pursue all rights and remedies available to it, subject to this Agreement.

## **6.7 Defense of Third Party Claim**

- (1) After receipt of the Indemnified Party's Indemnification Notice pursuant to Section 6.5(1) relating to a Third Party Claim, the Indemnifying Party has the right to participate in the investigation and defense of the Third Party Claim and has the right to elect to assume the defense of the Third Party Claim.
- (2) The Indemnifying Party may elect to assume the defense of the Third Party Claim at its own cost and expense with counsel of its own selection by giving notice to the Indemnified Party within not more than 15 Business Days of such receipt of the Indemnifying Party's Indemnification Notice pursuant to Section 6.5(1) relating to such Third Party Claim, provided that:
  - (a) the Indemnified Party has at all times the right to participate in the defense at its own cost and expense (provided, however, that the Indemnifying Party reimburses to the Indemnified Party all defense costs and expenses of the Indemnified Party reasonably incurred before the date the Indemnifying Party validly exercises its right to elect to assume to defend the Third Party Claim);
  - (b) where the Third Party Claim is with respect to Taxes, (i) the Indemnifying Party causes to be paid any amount in connection therewith to the relevant Tax authorities to suspend collection measures in respect of such Taxes, and (ii) the Indemnifying Party's defense thereof cannot reasonably be expected to have a material adverse effect on the Indemnified Party's Taxes or Tax attributes in a taxation period beginning on or after the Closing Date;
  - (c) the Third Party Claim does not relate to a matter the defense of which the Indemnified Party determines in good faith could set a materially adverse precedent for the operations of the Purchaser and its Affiliates following the Closing Date;
  - (d) the Third Party Claim seeks only monetary damages and does not seek any injunctive or other relief against the Indemnified Party;
  - (e) the Indemnifying Party acknowledges in writing that the Third Party Claim is within the scope of its obligations to indemnify the Indemnified Party in accordance with and subject to the terms of this Section 6.7; and
  - (f) legal counsel chosen by the Indemnifying Party is satisfactory to the Indemnified Party, acting reasonably.
- (3) If the Indemnifying Party is not entitled to assume the investigation and defense of a Third Party Claim as aforesaid, does not elect to assume the investigation and defense of a Third Party Claim, or assumes the investigation and defense of a Third Party Claim

but fails to diligently pursue such investigation and defense, the Indemnified Person has the right (but not the obligation) to undertake the investigation and defense of the Third Party Claim. In the case where the Indemnifying Party fails to diligently pursue the investigation and defense of the Third Party Claim, the Indemnified Person may not assume the investigation and defense of the Third Party Claim unless the Indemnified Person gives the Indemnifying Party written demand to diligently pursue the investigation and defense and the Indemnifying Party fails to do so within 15 Business Days after receipt of the demand, or such shorter period as may be required to respond to any deadline imposed by a court.

- (4) If the Indemnifying Party assumes the defense of the Third Party Claim, the Indemnifying Party will not be permitted to compromise and settle or to cause a compromise and settlement of any Third Party Claim without the prior written consent of the Indemnified Party, which consent may not be unreasonably withheld or delayed unless:
  - (a) the terms of the compromise and settlement require only the payment of money for which the Indemnified Party is entitled to indemnification under this Agreement;
  - (b) the terms of the compromise and settlement do not require the Indemnified Party to admit any wrongdoing, take or refrain from taking any action, acknowledge any rights of the third Person making the Third Party Claim or waive any rights that the Indemnified Party may have against such third Person making the Third Party Claim; and
  - (c) the Indemnified Party receives, as part of the compromise and settlement, a legally binding and enforceable unconditional release, which is in form and substance satisfactory to the Indemnified Party, acting reasonably, from any and all obligations or liabilities it may have with respect to the Third Party Claim.
- (5) If the Indemnified Party undertakes the defense of the Third Party Claim, the Indemnifying Party shall not be bound by any determination of the Third Party Claim or any compromise or settlement of the Third Party Claim effected without the consent of the Indemnifying Party (which consent may not be unreasonably withheld or delayed).
- (6) If the Indemnifying Party participates in the defense or elects to assume the defense of a Third Party Claim, then the Indemnified Party shall use its commercially reasonable efforts to make available to the Indemnifying Party those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in evaluating, participating and defending, as applicable, such claim.
- (7) The Indemnified Party shall, at the request of the Indemnifying Party, make available to the Indemnifying Party or its representatives on a timely basis all documents, records and other materials in the possession of the Indemnified Party, at the expense of the Indemnifying Party, reasonably required by the Indemnifying Party for its use in defending any Third Party Claim, the defense of which it has elected to participate in or

assume, and the Indemnified Party shall otherwise cooperate on a timely basis with the Indemnifying Party in the defense of such claim.

- (8) Notwithstanding the foregoing, in cases where the Indemnifying Party is also party to the Third Party Claim and the Indemnified Party receives an opinion from outside legal counsel that joint representation would not be appropriate, then the Indemnified Party may, by notice to the Indemnifying Party, assume at its risk and expense the exclusive right to defend, compromise or settle such Third Party Claim.
- (9) The Indemnified Party and the Indemnifying Party agree to keep the other Party on a regular basis informed of the status of any Third Party Claim and related proceedings.
- (10) Notwithstanding the foregoing, the defense and negotiation of the VDP Submission and the VDP Liability Amount shall not follow the procedure and rules set out in the foregoing provisions of this Section 6.7, but shall be governed by the following procedure and rules:
  - (a) Parent shall assume the defense and negotiation of the VDP Submission and the VDP Liability Amount at its own cost and expense, represented by Bennett Jones LLP or other counsel of its selection (provided any such other counsel is satisfactory to the Purchaser, acting reasonably), provided that the Parent may at any time elect in writing to the Purchaser to no longer take carriage of the defense and negotiation.
  - (b) The Purchaser and the Corporation have at all times the right to participate in the defense and negotiations at their own cost and expense.
  - (c) In the case where Parent fails to diligently pursue the defense and negotiation of the VDP Submission and the VDP Liability Amount, neither the Purchaser nor the Corporation may assume such defense and negotiation unless it gives the Parent written demand to diligently pursue the defense and negotiation and the Parent fails to do so within 15 Business Days after receipt of the demand.
  - (d) The Parent will not be permitted to accept or settle with CRA the VDP Liability Amount without the prior written consent of the Purchaser, which consent may not be unreasonably withheld or delayed.
  - (e) The Purchaser and the Corporation shall each use its commercially reasonable efforts to make available to the Parent those employees whose assistance, testimony or presence is necessary to assist the Parent in evaluating, negotiating and defending the VDP Submission and the VDP Liability Amount.
  - (f) The Purchaser and the Corporation shall, at the request of the Parent, make available to the Parent or its representatives on a timely basis all documents, records and other materials in the possession of the Corporation, at the expense of the Parent, reasonably required by the Parent for its use in evaluating, negotiating and defending the VDP Submission and the VDP Liability Amount,

and the Purchaser and the Corporation shall otherwise cooperate on a timely basis with the Parent in such defense and negotiation.

- (g) The Parent, on the one hand, and the Purchaser and the Corporation, on the other hand, agree to keep the other Party on a regular basis informed of the status of the VDP Submission and the VDP Liability Amount.

## **6.8 Right of Compensation**

The Purchaser has the right, in addition to the other remedies provided in this Article 6 to extinguish by compensation its debt to pay to the OD HoldCos such amount of the Purchase Price pursuant to Section 2.3 (and any adjustment thereof pursuant to Section 2.5) against any certain, liquid and exigible equivalent amount in Damages due to Purchaser's Indemnified Persons under this Agreement. Save as expressly provided in this Section 6.8 and for the Adjustment Holdback Amount, the Indemnity Holdback Amount and the VDP Holdback Amount, each payment to be made by the Purchaser under this agreement shall be made free and clear of all deductions, withholdings, counterclaims or set-off of any kind.

## **6.9 Exclusion of Other Remedies**

- (1) Except as provided in this Section 6.9, the indemnities provided in Section 6.2 and Section 6.3 constitute the only remedy of the Purchaser, on the one hand, or the OD HoldCos and the Parent, on the other hand against a Party in the event of any breach of a representation, warranty, covenant or agreement of such Party contained in this Agreement. The Parties may exercise their right to payment of an adjustment in Section 2.5. 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 requirement of posting a bond or other security).
- (2) Nothing in this Agreement limits or restricts in any way any remedies available, or Damages payable, for claims involving fraud or intentional or gross fault.

## **6.10 One Recovery**

No Indemnified Party shall be entitled to double recovery for any claim even though such claim may have resulted from the breach of more than one of the representations, warranties, covenants and obligations of the Indemnifying Party in this Agreement. No Party shall have any liability or obligation with respect to any claim for indemnification to the extent that such matter was reflected as an adjustment to the adjusted Purchase Price in Section 2.5.

## **6.11 Adjustment to Purchase Price**

Any payment made by the OD HoldCos or the Parent as an Indemnifying Party pursuant to this Article 6 will constitute a dollar-for-dollar decrease of the Purchase Price and

any payment made by Purchaser as an Indemnifying Party pursuant to this Article 6 will constitute a dollar-for-dollar increase of the Purchase Price.

#### **6.12 After Tax Basis**

In determining the amount of any Damages under this Article 6, such Damages will be increased to take into account any net Tax cost incurred by the Indemnified Party as a result of the matter giving rise to such Damages and the receipt of an indemnity payment hereunder. For greater certainty, any net Tax cost will include any further cost resulting from such increased payment.

#### **6.13 Indemnity Holdback Amount**

The Purchaser agrees that so long as there are any funds forming part of the Indemnity Holdback Amount, that any claims any of the Purchaser's Indemnified Persons has against either of the Vendor, OD Hold, the Parent, [Redacted] as the case may be, for indemnification claims shall be first made against the Indemnity Holdback Amount and only after the Indemnity Holdback Amount has been exhausted will a claim be made against the OD HoldCos or the Parent, as the case may be.

### **ARTICLE 7 POST-CLOSING COVENANTS**

#### **7.1 Covenants regarding Tax Matters**

- (1) The Purchaser shall cause the Corporation to prepare and file all of the Tax Returns due after the Closing Date in respect of periods ending on or prior to Closing, which Tax Returns shall be prepared and filed on a timely basis consistent with existing procedures for preparing such Tax Returns and in a manner consistent with prior practice with respect to the treatment of specific items on the Tax Returns (to the extent such treatment is reasonable in the circumstances or unless required by Law).
- (2) The Purchaser shall cause the Corporation to prepare and file Tax Returns due after the Closing Date in respect of periods beginning before and ending after the Closing Date, which Tax Returns shall be prepared and filed on a timely basis consistent with existing procedures for preparing such Tax Returns and in a manner consistent with prior practice of the Corporation with respect to the treatment of specific items on the Tax Returns (to the extent such treatment is reasonable in the circumstances or unless required by Law), provided that the Tax Returns may be prepared on the basis that the Corporation does not claim the maximum amount of discretionary deductions.
- (3) The Vendor and the Purchaser shall co-operate fully with each other and make available to each other in a timely fashion such data and other information as may reasonably be required for the preparation of any Tax Return of the Corporation for a period ending on, ending before or including the Closing Date and shall preserve such data and other information until the expiration of any applicable limitation period under any applicable Tax Laws.

- (4) The Purchaser will provide notice to the Vendor of any formal Tax audits by any Governmental Entity to the extent that the subject matter thereof relates to representations, covenants or obligations of the Vendor hereunder or could reasonably give rise to a right of indemnity hereunder. The Purchaser will forthwith advise the Vendor of the substance of any such Tax audits and provide the Vendor with copies of any written communications from any Governmental Entity relating thereto. The Purchaser will provide the Vendor a reasonable opportunity to comment on any representations or submissions with respect to such matters;
- (5) The Purchaser and the Corporation will, upon reasonable request of the Vendor, use all reasonable commercial efforts to take reasonable steps, including obtaining any certificate or other document from, or effect any filing with, any Governmental Entity as may be considered desirable to mitigate, reduce or eliminate any Taxes that could be imposed on the Corporation with respect to a taxation period that ended on or prior to Closing and that could reasonably give rise to a right of indemnity hereunder.

(6) **[Redacted.]**

## **7.2 Financial and Disclosure Cooperation**

- (1) The Vendor shall, at the Purchaser's sole cost and expense, use its commercially reasonable efforts to provide, to the Purchaser, cooperation reasonably requested by the Purchaser to prepare the Audited Financial Statements, the Interim Financial Statements and to satisfy the disclosure obligations of the Purchaser under applicable securities Laws in connection with the transactions contemplated by this Agreement. Such cooperation shall include, without limitation furnishing the Purchaser and its accountants, as promptly as reasonably practicable, with such financial and other reasonably required information regarding the Corporation required to prepare the Audited Financial Statements, the Interim Financial Statements and any financial information with respect to the Corporation to be included in a prospectus, marketing materials or continuous disclosure documentation, including without limitation, a business acquisition report ("**BAR**") in the form required by National Instrument 51-102 - *Continuous Disclosure Obligations*; provided that: (A) such requested cooperation is made on reasonable notice; (B) such requested cooperation shall not be considered to constitute a breach of the representations, warranties or covenants of the Vendor under this Agreement; (C) such requested cooperation is not, in the opinion of the Vendor or the Vendor's counsel, acting reasonably, prejudicial to the Vendor or the Parent; and (D) such requested cooperation does not require the directors, officers, employees or agents of the Vendor or the Parent to take any action in any capacity other than as a director, officer or employee or agent.
- (2) The Purchaser shall provide prompt notice to the Vendor of any public disclosure in connection with the transaction contemplated by this Agreement of any information which reasonably relates to the Vendor and the Parent, and the Vendor shall have a reasonable opportunity to comment on such disclosure and the Purchaser shall consider those comments in good faith.

- (3) The Purchaser indemnifies and holds (i) the Vendor and its Affiliates (ii) the Parent and its Affiliates and (iii) their respective directors, managers and officers harmless from and against any Damages suffered or incurred by it in connection with or as a result of the cooperation provided under this Section 7.2 or any actions or omissions by it requested by the Purchaser pursuant to this Section 7.2, except to the extent resulting from, or by reason of, information provided in writing by the Vendor or to the extent that such Damages resulted from the fraud of the Vendor.

### **7.3 Run-Off Policy**

Within 30 days following the Closing, the Corporation shall subscribe, for a six-year period commencing on the Closing Date, to tail or run-off insurance with respect to its current directors and officers and errors and omissions liability insurance policy; provided, however, that if any claim is asserted or made within such six-year period, such insurance shall be continued in respect of such claim until the final disposition thereof. The cost of the tail or run-off insurance shall be included as Indebtedness in the Closing Date Statement.

### **7.4 Software Transition**

For a period of six months following Closing, the Parent shall cooperate with the Corporation and the Purchaser to operate and access the accounting system used by the Corporation at the time of Closing. The Parent shall further cooperate with the Corporation and the Purchaser to transfer and migrate the data relating to the Corporation contained in the accounting system to the software(s) put in place by the Corporation or the Purchaser in replacement of such accounting system.

### **7.5 [Redacted.]**

## **ARTICLE 8 MISCELLANEOUS**

### **8.1 Further Assurances**

From time to time, each Party shall, at the request of any other Party, execute and deliver, or cause to be executed and delivered, such additional conveyances, transfers and other assurances and take, or cause to be taken, all such action as is reasonably required to effectively transfer the Purchased Shares to the Purchaser and carry out the purposes and intent of this Agreement.

### **8.2 Restrictive Covenant Undertakings**

Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that: (i) no portion of any amount paid pursuant to the terms of this Agreement will be received or receivable by the Vendor for granting any "restrictive covenant" (as defined in subsection 56.4(1) of the Tax Act) set forth in the Restrictive Covenant Undertakings and (ii) each such restrictive covenant, if any, set forth in the Restrictive Covenant Undertakings is being granted to maintain or preserve the fair market value of the Purchased Shares.

### 8.3 Notices

All notices and other communications given pursuant to this Agreement (each a "Notice") will be in writing (regardless of the fact that a specific provision of this Agreement specifies or fails to specify that a particular notice will be in writing) and will be deemed given only if (i) delivered personally, or by same-day courier; (ii) sent by a Canadian or internationally-recognized overnight courier; (iii) mailed by registered mail to the Parties; or (iv) sent by e-mail, at the addresses set forth below or to such other address as the Party to whom Notice is to be given may have furnished to the other Parties in writing in accordance with this Section 8.3. Any subsequent Notice will be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be deemed not to be changed.

(a) If to Purchaser, at:

TECSYS Inc.  
Suite 800  
1 Place Alexis Nihon  
Montréal, Québec  
H3Z 3B8

Attention: Berty Ho-Wo Cheong, Vice-President Mergers and Acquisitions  
Email: berty.ho@tecsys.com

with a copy to:

McCarthy Tétrault LLP  
Suite 2500  
1000 De La Gauchetière Street West  
Montréal, Québec  
H3B 0A2

Attention: Sonia Struthers  
Email: sstruthers@mccarthy.ca

(b) If to the Vendor, the OD HoldCos or the Parent, at:

Nevis Holdings Limited  
1st Floor West Davidson House  
Forbury Square  
Reading  
Berkshire  
England RG1 3EU

Attention: Paul Davidson/ [Redacted]  
Email: [Redacted]

with a copy to:

[Redacted]

Attention: [Redacted]

Email : [Redacted]

A Notice will be deemed to have been delivered and received (i) in the case of personal delivery or same-day courier, on the date of such delivery, except that if the same-day courier delivery is made at or after 4:00 p.m. (local time in place of receipt), then the Notice will be deemed to have been delivered and received on the next Business Day; (ii) in the case of a Canadian or internationally-recognized overnight courier in circumstances under which such courier guarantees next Business Day delivery, on the next Business Day after the date when sent; (iii) in the case of mailing, on the third Business Day following that on which the envelope containing such communication is posted; and (iv) in the case of e-mail, the date sent if a Business Day (or else on the next Business Day). A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice shall be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send or deliver a copy of a Notice to legal counsel does not invalidate any Notice given under this Section 8.3.

#### **8.4 Time of the Essence**

Time is of the essence in this Agreement.

#### **8.5 Announcements and Public Communications**

- (1) A Party who wishes to make a release, public announcement or publicity with respect to the transaction contemplated in this Agreement shall obtain approval of the other Parties to the form, nature and extent of such disclosure, which approval shall not be unreasonably withheld; provided, however, that to the extent the disclosure is required by Law or by a recognized securities exchange, the disclosing Party shall use reasonable commercial efforts to give prior notice to the other Parties and a reasonable opportunity for the other Parties to review or comment on the disclosure.
- (2) The Parties consent to, and nothing in this Section 8.5 or elsewhere in this Agreement shall prohibit, the use and disclosure by the Purchaser of information with respect to the Corporation, the transactions contemplated hereby, the Audited Financial Statements, the Interim Financial Statements, the BAR or any other document required by the Purchaser to comply with disclosure obligations under applicable Canadian securities law and the rules of the Toronto Stock Exchange, including the public filing of this Agreement on [www.sedar.com](http://www.sedar.com) (subject to (i) redacting commercially sensitive information to the extent permitted under applicable Laws and (ii) the Purchaser notifying the Vendor in advance of the information being so disclosed and reasonable consideration being given to any comments made by the Vendor, provided that all

information relating solely to the Vendor or the Corporation shall be in form and content satisfactory to the Vendor, acting reasonably).

### **8.6 Third Party Beneficiaries**

Except as provided in Section 6.2 and Section 6.3, this Agreement will not benefit or create any right, stipulation for the benefit of, delegation open for acceptance by, or cause of action in favour of, any Person, other than the Parties and their respective successors and permitted assigns. No Person, other than the Parties, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

### **8.7 Expenses**

Subject to Section 2.5.3(5) and Article 6, the Purchaser will pay for its own costs and expenses and the OD HoldCos will pay for their own costs and expenses (including the costs and expenses of the Parent, the Corporation and the Subsidiary which are, in each case, incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated by them including the fees and expenses of legal counsel, investment advisers and accountants).

### **8.8 Amendments**

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by the Parties.

### **8.9 Waiver**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) or be deemed to be a waiver with respect to any other future instance involving the same provisions. No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any further exercise of that right or the exercise of any other right it may have.

### **8.10 Non-Merger**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties will not merge on and will survive Closing.

### **8.11 Entire Agreement**

This Agreement and the Restrictive Covenant Undertakings constitute the entire agreement among the Parties with respect to the transactions contemplated by this Agreement and in the Restrictive Covenant Undertakings and supersedes all prior agreements, understandings, negotiations, correspondence and discussions, whether oral or written, of the Parties including the provisions of the letter of intent dated September 21, 2018 executed by the Corporation and the Purchaser. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, conventional, legal or otherwise, among the

Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement. If there is any conflict or inconsistency among the provisions of this Agreement and the provisions of any Restrictive Covenant Undertaking, the provisions of this Agreement will govern.

#### **8.12 Successors and Assigns**

- (1) This Agreement is binding upon and enures to the benefit of the Parties and their respective successors, heirs, liquidators, executors, administrators and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned, transferred or delegated, by a Party without the prior written consent of all Parties to this Agreement. Any purported assignment, transfer or delegation without such written consent will be null and void and of no effect.
- (3) The Purchaser may assign, transfer or delegate, as applicable, this Agreement or any of its rights and obligations under this Agreement, in whole or in part, to any of its Affiliates, without the prior written consent of the Vendor, provided that the Purchaser, as the case may be, will not, by reason of such assignment, transfer or delegation, be released from its obligations under this Agreement.

#### **8.13 Severability**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable, in whole or in part, by an arbitrator or any court of competent jurisdiction from which no appeal exists or is taken, that provision or part thereof will be severed from this Agreement and the remaining part of such provision and all other provisions will continue in full force and effect.

#### **8.14 Governing Law and Jurisdiction**

- (1) This Agreement is governed by, and will be interpreted and enforced in accordance with the Laws of the province of Ontario and the federal Laws of Canada applicable therein.
- (2) The Parties agree that the courts of the Province of Ontario (District of York) shall have exclusive jurisdiction for the adjudication of any disputes, claims, questions, controversies, differences or disagreements relating to this Agreement except with respect to a dispute relating to the adjustment to the Purchase Price to be resolved in accordance with Section 2.5.3.

#### **8.15 Interest**

- (1) If any Party fails to make any payment due to another Party under this agreement by the due date then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

- (2) Interest under this Section will accrue at 4% a year above the base rate of Bank of Canada from time to time, but at 4% a year for any period when that base rate is below 0%.
- (3) In relation to payments disputed in good faith, interest under this Section is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.

#### **8.16 Counterparts**

This Agreement may be executed and delivered in any number of counterparts (including by facsimile, email or other electronic means), each of which is deemed to be an original, and such counterparts together constitute one and the same agreement.

*[Signature page(s) follow(s)]*

The Parties have signed this Share Purchase Agreement as of the date first written above.

**TECSYS INC.**

By: (S) Peter Brereton  
Name: Peter Brereton  
Title: President & CEO

By: (S) Mark J. Bentler  
Name: Mark J. Bentler  
Title: CFO & Secretary

**NEVIS HOLDINGS LIMITED**

By: (S) Paul Davidson  
Name: Paul Davidson  
Title: Director

**OD HOLD LTD.**

By: (S) Paul Davidson  
Name: Paul Davidson  
Title: Director

**OD EXCHANGE LTD.**

By: (S) Paul Davidson  
Name: Paul Davidson  
Title: Director

**ORDERDYNAMICS CORPORATION**

By: (S) Paul Davidson  
Name: Paul Davidson  
Title: Director and Chairman

Exhibit 1.1 (rr)

ILLUSTRATIVE CALCULATION OF NET INDEBTEDNESS

[Redacted.]

Exhibit 1.1(bbb)

**ILLUSTRATIVE CALCULATION OF WORKING CAPITAL**

**[Redacted.]**

Exhibit 2.10

**ALLOCATION OF PURCHASE PRICE**

Purchase Price is allocated as follows:

- **[Redacted]** to the Purchased Shares; and
- balance to the Net Indebtedness.

For greater certainty, any adjustment to the Purchase Price under this Agreement shall be allocated to the Purchased Shares.