

**AGENCY AGREEMENT**

May 6, 2019

Pender Growth Fund Inc.  
1066 West Hastings Street, Suite 1640  
Vancouver, British Columbia, V6E 3X1

PI Financial Corp. (the "**Lead Agent**"), as lead agent and bookrunner, and Canaccord Genuity Corp., GMP Securities L.P. and Raymond James Ltd. (collectively with the Lead Agent, the "**Agents**" and each individually, an "**Agent**") understand that Pender Growth Fund Inc. (the "**Company**") proposes to issue from treasury and sell to the public in British Columbia, Alberta, Saskatchewan, Manitoba and Ontario (collectively, the "**Qualifying Jurisdictions**") up to 5,125,000 Class C Participating Common Shares of the Company (the "**Agency Shares**"). In addition, the Agents understand that the Company proposes to grant to the Agents an option (the "**Option**") to purchase additional Class C Participating Common Shares from the Company, for the sole purpose of covering over-allotments, in an amount equal to up to 15% of the number of Agency Shares (the "**Option Shares**" and, together with the Agency Shares, the "**Offered Shares**") sold pursuant to the Offering (as hereinafter defined) on the Closing Date (as hereinafter defined). The Offered Shares shall have the material attributes described in and contemplated by the prospectus supplement dated May 6, 2019 (the "**Prospectus Supplement**") to the short form base shelf prospectus of the Company dated April 11, 2019 with respect to the issuance of up to an aggregate amount of \$19,987,500 of Class C Participating Common Shares of the Company ("**Common Shares**") in each of the Qualifying Jurisdictions (the "**Shelf Prospectus**" and, together with the Prospectus Supplement, the "**Supplemented Prospectus**") to be filed with the British Columbia Securities Commission, in its capacity as principal regulator pursuant to the Passport System (as hereinafter defined) in respect of the public offering of the Offered Shares (the "**Offering**") immediately following the execution and delivery of this Agreement.

**APPOINTMENT OF AGENTS**

Upon and subject to the terms and conditions set out below, the Company hereby:

- (a) appoints the Agents, and the Agents hereby agree to act, as the Company's exclusive agents in respect of the offering of the Agency Shares at the price (the "**Offering Price**") of \$3.90 per Agency Share pursuant to the Supplemented Prospectus and any amendment or supplement thereto and the Agents agree to use their commercially reasonable efforts to solicit and procure purchasers (the "**Purchasers**") for the Agency Shares, provided that no Agent will be under any obligation to purchase any of the Agency Shares; and
- (b) grants to the Agents the Option to purchase the Option Shares at the price of \$3.90 per Option Share, which Option may be exercised by written notice given on behalf of the Agents by the Lead Agent at any time prior to 5:00 p.m. (Toronto time) on the date which is 30 days following the Closing Date (as hereinafter defined) for the Agency Shares or, if such day is not a Business Day (as hereinafter defined), on the Business Day immediately preceding such day, specifying the number of Option Shares to be purchased pursuant to the Option.

In consideration for the services of the Agents in:

- (i) assisting in the preparation of the Shelf Prospectus, the Prospectus Supplement, the Management Presentation (as hereinafter defined), the Term Sheets (as hereinafter defined) and any Supplemental Material (as hereinafter defined) and marketing materials (as hereinafter defined);
- (ii) forming and managing banking, selling or other groups for the distribution of the Offered Shares; and
- (iii) distributing the Offered Shares to the public both directly and through Selling Firms (as hereinafter defined),

the Company agrees to pay to the Agents unconditionally at the Closing Time (as hereinafter defined) or the Option Closing Time (as hereinafter defined), as the case may be, a fee (the “**Agents’ Fee**”) in an amount equal to:

- A. 5.0% of the gross proceeds from the sale of Offered Shares, other than to Purchasers on the President’s List (as defined herein); and
- B. 2.25% of the gross proceeds from the sale of Offered Shares to Purchasers on President’s List,

in the manner specified in Subsection 16.3.

The obligations of the Agents set out herein are several and not joint. An Agent will not be liable hereunder with respect to any act, omission or conduct of any other Agent in this Agreement.

## **TERMS AND CONDITIONS**

### **1. Definitions and Interpretation**

1.1 As used herein, unless the context otherwise requires:

- (a) “**affiliate**” has the meaning ascribed thereto in the *Securities Act* (British Columbia);
- (b) “**Agency Shares**” has the meaning ascribed thereto in the first paragraph of this Agreement;
- (c) “**Agents**” has the meaning ascribed thereto in the first paragraph of this Agreement;
- (d) “**Agents’ Fee**” has the meaning ascribed thereto in the fourth paragraph of this Agreement;
- (e) “**Agreement**” means the agreement resulting from the acceptance by the Company of the offer made by the Agents by this letter;
- (f) “**associate**” has the meaning ascribed thereto in the *Securities Act* (British Columbia);
- (g) “**BasicGov**” means BasicGov Systems Inc., a subsidiary of the Company;

- (h) **“Book-Entry Only System”** means the record-entry securities transfer and pledge system known, as of the date hereof, by such name, which is administered by CDS in accordance with the operating rules and procedures of the Securities Settlement Services of CDS in force from time to time, or any successor system which CDS may offer from time to time;
- (i) **“Business Day”** means a day other than a Saturday, Sunday or any other day which is a statutory holiday in the City of Toronto, Ontario;
- (j) **“CDS”** means CDS Clearing and Depository Services Inc.;
- (k) **“CFPOA”** has the meaning ascribed thereto in Clause 9.3(aa);
- (l) **“Claim”** has the meaning ascribed thereto in Subsection 13.1;
- (m) **“Closing”** means the completion of the issue and sale by the Company and the purchase by the Agents or Purchasers of the Agency Shares pursuant to this Agreement;
- (n) **“Closing Date”** means, in respect of the Agency Shares, May 10, 2019 or such other date or dates to which the Company and the Lead Agent may agree, but in any event no later than August 10, 2019;
- (o) **“Closing Time”** means 8:00 a.m. (Toronto time) on the Closing Date or such other time on the Closing Date to which the Company and the Lead Agent may agree;
- (p) **“Common Shares”** has the meaning ascribed thereto in the first paragraph of this Agreement;
- (q) **“Company”** has the meaning ascribed thereto in the first paragraph of this Agreement;
- (r) **“distribution”** means a **“distribution”** or **“distribution to the public”** as defined in the *Securities Act* (British Columbia) and “distribute” has a corresponding meaning;
- (s) **“Final Receipt”** means the receipt issued by the British Columbia Securities Commission, in its capacity as principal regulator under the Passport System, representing the deemed receipt of each of the Securities Commissions (other than the Ontario Securities Commission) and evidencing the receipt of the Ontario Securities Commission of the Shelf Prospectus;
- (t) **“Financial Statements”** means the financial statements of the Company incorporated by reference in the Prospectus Supplement or any Supplemental Material, together with any auditors’ report thereon and the notes thereto;
- (u) **“Indemnified Party”** has the meaning ascribed thereto in Subsection 13.1;
- (v) **“Indemnifying Party”** has the meaning ascribed thereto in Subsection 13.1;

- (w) **“Initial Term Sheet”** means the term sheet dated April 26, 2019 and filed on SEDAR by the Company;
- (x) **“Lead Agent”** has the meaning ascribed thereto in the first paragraph of this Agreement;
- (y) **“Locked-Up Securities”** has the meaning ascribed thereto in Clause 11.1(i);
- (z) **“Lock-Up Agreement”** has the meaning ascribed thereto in Clause 11.1(i);
- (aa) **“Lock-Up Period”** has the meaning ascribed thereto in Clause 11.1(i);
- (bb) **“Management Agreement”** means the third amended and restated management agreement dated as of May 1, 2017 between the Company and the Manager pursuant to which the Manager agrees to provide management and administrative services for the Company, as amended pursuant to Amendment No. 1 to Management Agreement, dated as of March 7, 2019, and as it may be further amended from time to time;
- (cc) **“Management Presentation”** means the management presentation dated April 26, 2019 and filed on SEDAR by the Company;
- (dd) **“Manager”** means PenderFund Capital Management Ltd., the manager of the Company;
- (ee) **“marketing materials”** has the meaning given to it in NI 41-101;
- (ff) **“material change”** has the meaning ascribed thereto under applicable Securities Laws;
- (gg) **“material fact”** has the meaning ascribed thereto under applicable Securities Laws;
- (hh) **“misrepresentation”** has the meaning ascribed thereto under applicable Securities Laws;
- (ii) **“Money Laundering Laws”** has the meaning ascribed thereto in Clause 9.3(bb);
- (jj) **“NI 41-101”** means National Instrument 41-101 – *General Prospectus Requirements*;
- (kk) **“Offered Shares”** has the meaning ascribed thereto in the first paragraph of this Agreement;
- (ll) **“Offering”** has the meaning ascribed thereto in the first paragraph of this Agreement;
- (mm) **“Offering Documents”** means, collectively, the Supplemented Prospectus and any Supplemental Material;
- (nn) **“Offering Price”** has the meaning ascribed thereto under the heading “Appointment of Agents” above;

- (oo) “**One45**” means One45 Software Incorporated, a subsidiary of the Company;
- (pp) “**Option**” has the meaning ascribed thereto in the first paragraph of this Agreement;
- (qq) “**Option Closing**” means the completion of the issue and sale by the Company and the purchase by the Agents of the Option Shares pursuant to this Agreement;
- (rr) “**Option Closing Date**” has the meaning ascribed thereto in Subsection 18.1;
- (ss) “**Option Closing Time**” has the meaning ascribed thereto in Subsection 18.1;
- (tt) “**Option Expiry Date**” has the meaning ascribed thereto in Subsection 18.1;
- (uu) “**Option Notice**” has the meaning ascribed thereto in Subsection 18.1;
- (vv) “**Option Shares**” has the meaning ascribed thereto in the first paragraph of this Agreement;
- (ww) “**Party**” means a party to this Agreement;
- (xx) “**Passport System**” means the procedure provided for under Multilateral Instrument 11-102 – *Passport System* and National Policy 11-202 – *Process for Prospectus Reviews in Multiple Jurisdictions*;
- (yy) “**Plan**” has the meaning ascribed thereto in Clause 14.1(a)(xiv);
- (zz) “**President’s List**” means the list of potential Purchasers of Offered Shares mutually agreed upon by the Lead Agent and the Company;
- (aaa) “**Prospectus Supplement**” has the meaning ascribed thereto in the first paragraph of this Agreement;
- (bbb) “**provides**” (and variations thereof), in the context of sending or making available marketing materials to a potential investor of Prospectus Shares, has the meaning ascribed to such term under Securities Laws;
- (ccc) “**Purchasers**” has the meaning ascribed thereto in the third paragraph of this Agreement;
- (ddd) “**Qualifying Jurisdictions**” means British Columbia, Alberta, Saskatchewan, Manitoba and Ontario and “**Qualifying Jurisdiction**” means any one of them;
- (eee) “**Registrar and Transfer Agent**” means AST Trust Company (Canada);
- (fff) “**reorganization**” has the meaning ascribed thereto in Clause 11.1(i)(i);
- (ggg) “**Revised Term Sheet**” means the term sheet dated May 6, 2019 and filed on SEDAR by the Company;
- (hhh) “**Securities Commissions**” means, collectively, the securities commission or other securities regulatory authority in each of the Qualifying Jurisdictions;

- (iii) “**Securities Laws**” means, collectively, the applicable securities laws of each of the Qualifying Jurisdictions and the respective regulations and rules made under those securities laws together with all applicable policy statements, blanket orders and rulings of the Securities Commissions and all discretionary orders and rulings, if any, of the Securities Commissions made in connection with the transactions contemplated by this Agreement together with applicable published policy statements and instruments of the Canadian Securities Administrators;
- (jjj) “**SEDAR**” means the computer system for the transmission, receipt, acceptance, review and dissemination of documents filed in electronic format known as the System for Electronic Document Analysis and Retrieval established pursuant to National Instrument 13-101 – *System for Electronic Document Analysis and Retrieval (SEDAR)*;
- (kkk) “**Selling Firms**” means any registered investment dealers or brokers with which the Agents have a contractual relationship for the distribution of Offered Shares pursuant to the Offering;
- (III) “**Shelf Procedures**” means the rules and procedures established pursuant to NI 44-102;
- (mmm) “**Shelf Prospectus**” has the meaning ascribed thereto in the first paragraph of this Agreement;
- (nnn) “**Specified Parties**” means One45 and BasicGov, together with their respective subsidiaries, and “**Specified Party**” means either one, together with its subsidiaries;
- (ooo) “**Standard Listing Conditions**” has the meaning ascribed thereto in Subsection 3.3;
- (ppp) “**Subsequent Term Sheets**” means any term sheet filed on SEDAR by the Company in respect of the Offering other than the Initial Term Sheet and the Revised Term Sheet;
- (qqq) “**subsidiary**” has the meaning ascribed to it in the *Securities Act* (British Columbia);
- (rrr) “**Supplemental Material**” means, collectively, any amendment to the Prospectus Supplement or the Shelf Prospectus and any amendment or supplemental prospectus or ancillary materials that may be filed by or on behalf of the Company under applicable Securities Laws relating to the qualification for distribution of the Offered Shares;
- (sss) “**Supplemented Prospectus**” has the meaning ascribed thereto in the first paragraph of this Agreement;
- (ttt) “**Tax Act**” means the *Income Tax Act* (Canada), as amended;

- (uuu) “**template version**” has the meaning ascribed to such term in NI 41-101 and includes any revised template version of marketing materials as contemplated by NI 41-101;
  - (vvv) “**Term Sheets**” means collectively, the Initial Term Sheet, the Revised Term Sheet and any Subsequent Term Sheets;
  - (www) “**to the knowledge of**” means, when used in relation to the Company, the actual knowledge of the officers of the Company;
  - (xxx) “**TSXV**” means the TSX Venture Exchange.
- 1.2 Unless the context otherwise requires, reference to this “**Agreement**” and the expressions “**hereof**”, “**herein**”, “**hereto**”, “**hereunder**”, “**hereby**” and similar expressions refer to this Agreement as a whole, as the same may be amended, modified, supplemented or restated from time to time; and unless otherwise indicated, references to a “**Section**”, “**Subsection**”, “**Clause**”, “**Subclause**” or “**paragraph**” followed or preceded by a number means and refers to the specified Section, Subsection, Clause, Subclause or paragraph of this Agreement.
- 1.3 The division of this Agreement into Sections, Subsections, Clauses, Subclauses and paragraphs and the headings appearing in this Agreement are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 1.4 In this Agreement, unless the context otherwise requires:
- (a) words importing the singular include the plural and *vice versa*;
  - (b) words importing gender include all genders;
  - (c) words importing persons include individuals, partnerships, limited partnerships, joint ventures, syndicates, sole proprietorships, companies or corporations with or without share capital, unincorporated associations, societies, trusts, trustees, executors, administrators or other legal personal representatives, governmental authorities, regulatory authorities, and self-regulating organizations, bodies or entities however designated or constituted;
  - (d) the word “or” is not exclusive; and
  - (e) the word “including” is not limiting, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto.
- 1.5 Except as required in the third paragraph of this Agreement and in Subsection 18.1, if any action is required to be taken under this Agreement on a day that is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.
- 1.6 Whenever reference is made in this Agreement to a calculation to be made or financial statements or documents to be prepared in accordance with “International Financial Reporting Standards”, such reference will be deemed to be to the International Financial

Reporting Standards from time to time adopted by the International Accounting Standards Board, or any successor institute, applicable as at the date on which such calculation is made or required to be made or such financial statements or documents are prepared or required to be prepared in accordance with International Financial Reporting Standards, with such variations therefrom as are specified or required by Securities Laws.

- 1.7 Unless otherwise specified herein, all dollar amounts referred to in this Agreement are expressed in lawful money of Canada.
- 1.8 A reference to “approval”, “authorization” or “consent” in this Agreement means written approval, authorization or consent.
- 1.9 Unless otherwise specified herein, a reference in this Agreement to a statute includes all regulations or rules made thereunder, all amendments to the statute or the regulations or rules made thereunder, any statutes, regulations or rules that supplement or supersede such statute, regulation or rule and, with respect to the Securities Laws, includes any orders made thereunder and the applicable policy statements, instruments and notices issued or otherwise promulgated by the Securities Commissions.
- 1.10 This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, between the Agents and the Company. There are no representations, warranties, conditions or other agreements, express or implied, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth herein.
- 1.11 This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
- 1.12 To the fullest extent permitted by law, the Parties hereby irrevocably:
  - (a) attorn to the jurisdiction of the courts of Ontario and hereby waive objection to the laying of the venue of any suit, legal action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum;
  - (b) agree to bring any suit, legal action or proceeding with respect to this Agreement only before a competent court in Ontario; and
  - (c) agree that a final judgment in any suit, legal action or proceeding brought in the courts of Ontario or the Supreme Court of Canada will be conclusive and binding upon each of the Parties and may be enforced in any court in any jurisdiction in which any Party or any of the assets of any Party is or may be found or located by a suit upon such judgment, a certified copy of which will be conclusive evidence of the fact and of the amount of such judgment.
- 1.13 If any provision of this Agreement is determined to be void or unenforceable, in whole or in part, it will be deemed not to affect or impair the validity or enforceability of any other provision of this Agreement.

1.14 If any Party breaches any provision of this Agreement, the failure of any other Party to require strict performance will not constitute a waiver of such breach or otherwise prejudice the other Party from subsequently enforcing the provisions hereof as they relate to the breach in question or any similar or other breach. No waiver of, or extension of the time for compliance with, any of the provisions of this Agreement will be deemed to constitute a waiver or extension of any other provision (whether or not similar) of this Agreement, nor will such waiver or extension constitute a continuing waiver or extension unless otherwise expressly provided in writing duly executed by the Party to be bound thereby (except that any waiver may be signed by the Lead Agent on behalf of all of the Agents).

## 2. **Qualification**

2.1 The Company will, as soon as possible following the execution of this Agreement and in any event by the times and dates specified in this Subsection 2.1, fulfill all requirements which, under the Securities Laws, must be fulfilled in order to qualify the Offered Shares for distribution in each of the Qualifying Jurisdictions by the Agents and other Selling Firms (assuming that the Agents and any other Selling Firms hold the appropriate registration to trade in the Offered Shares in each relevant Qualifying Jurisdiction). Such requirements will include the filing of the Prospectus Supplement with the British Columbia Securities Commission, as principal regulator under the Passport System. Such requirements shall be fulfilled, to the reasonable satisfaction of the Agents, by not later than 11:00 p.m. (Toronto time) on May 6, 2019.

2.2 Until the distribution of the Offered Shares is completed, the Company will promptly take, or cause to be taken, all additional steps and proceedings that may from time to time be required under the Securities Laws to continue to qualify the Offered Shares for distribution in each of the Qualifying Jurisdictions by the Agents and other Selling Firms or, in the event that the Offered Shares have, for any reason, ceased to so qualify, to so qualify again the Offered Shares for such distribution.

## 3. **Delivery of the Prospectus Supplement, Supplemented Prospectus and Other Documents**

3.1 The Company shall deliver to the Agents, contemporaneously with or promptly after the filing of the Prospectus Supplement, a copy of the Supplemented Prospectus signed by the Company, in the manner required by the Securities Laws.

3.2 The Company shall deliver to the Agents, contemporaneously with or promptly after the filing of the Prospectus Supplement with the British Columbia Securities Commission, in its capacity as the principal regulator under the Passport System, a copy of any other document required to be filed by the Company with or prior to filing the Prospectus Supplement under the Passport System or the Securities Laws.

3.3 The Company shall deliver to the Agents, at or prior to the time the Prospectus Supplement is presented to the Agents for signing, evidence satisfactory to the Agents of the approval of the listing and posting for trading on the TSXV of the Offered Shares, subject only to satisfaction by the Company of customary conditions imposed by the TSXV in similar circumstances (the "**Standard Listing Conditions**").

- 3.4 The Company shall promptly, and in any event within all applicable time limitation periods, prepare and file with the Securities Commissions any Supplemental Material required to be filed under the Securities Laws. Such Supplemental Material shall be in form and substance satisfactory to the Agents, acting reasonably, and prior to the filing of such Supplemental Material with any Securities Commission, the Company shall deliver to the Agents:
- (a) a copy of the Supplemental Material signed by the Company, in the manner required by the Securities Laws;
  - (b) a copy of any other document required to be filed by the Company with or prior to the filing of the Supplemental Material under the Passport System or the Securities Laws; and
  - (c) such reports, comfort letters or opinions as may reasonably be requested by the Agents.
- 3.5 The delivery of any Offering Document by the Company to the Agents shall constitute the consent of the Company to the use thereof by the Agents and by any Selling Firms for the purpose of the Offering.

#### 4. **Commercial Copies**

- 4.1 The Company shall, as soon as possible but in any event not later than 10:00 a.m. (Toronto time) on the first Business Day after the filing of the Prospectus Supplement with the British Columbia Securities Commission, in its capacity as the principal regulator under the Passport System, and within two Business Days after the execution of any Supplemental Material, cause to be delivered to the Agents without charge, commercial copies of the Supplemented Prospectus or any Supplemental Material, as the case may be, in such numbers and to such Canadian cities as the Agents may reasonably request by written instructions given by the Agents to the printer of the Supplemented Prospectus or any Supplemental Material, as the case may be. The commercial copies of the Supplemented Prospectus and any Supplemental Material shall be identical in content to the electronically transmitted versions thereof filed with the Securities Commissions on SEDAR.

#### 5. **Due Diligence**

- 5.1 The Company shall at all times allow the Agents and their representatives to conduct all due diligence investigations and examinations which the Agents may reasonably require in order to fulfil their obligations as agents for the Offering, in order to avail themselves of a defence to any claim for misrepresentation in the Offering Documents and in order to enable the Agents to responsibly execute any certificate in the Offering Documents required to be executed by the Agents. It shall be a condition precedent to the Agents' execution of any certificate in any Offering Document that the Agents be satisfied, acting reasonably, as to the form and content of the Offering Document. The Agents shall not unreasonably withhold or delay the execution of any such Offering Document required to be executed by the Agents and filed in compliance with the Securities Laws for the purpose of the Offering.

**6. Marketing Materials**

6.1 During the distribution of the Offered Shares:

- (a) the Company shall prepare, in consultation with the Lead Agent, any marketing materials (including any template version thereof) to be provided to potential investors in the Offered Shares, and approve in writing (including by e-mail) any such marketing materials (including any template version thereof), as may reasonably be requested by the Lead Agent, such marketing materials to comply with Securities Laws and to be acceptable in form and substance to the Company and the Lead Agent, on behalf of the Agents, acting reasonably;
- (b) the Lead Agent, on behalf of the Agents, shall approve in writing any such marketing materials (including any template version thereof), as contemplated by Securities Laws (which approval shall constitute the Agents' authority to use such marketing materials, including any limited-use versions thereof, in connection with the Offering), prior to any marketing materials being provided to potential investors in the Offered Shares and/or filed with the Securities Commissions; and
- (c) the Company shall, to the extent required by Securities Laws, file any such marketing materials (or any template version thereof) with the Securities Commissions as soon as reasonably practicable after such marketing materials are so approved in writing by the Company and the Lead Agent, on behalf of the Agents, and in any event on or before the day the marketing materials are first provided to any potential investor in the Offered Shares.

6.2 The Company represents and warrants that it filed on April 26, 2019 and May 6, 2019 the Initial Term Sheet and the Revised Term Sheet, respectively, the Initial Term Sheet and Revised Term Sheet having been approved by the Company and the Agents in writing.

6.3 The Company represents and warrants that it filed on April 26, 2019 the Management Presentation, the Management Presentation having been approved by the Company and the Lead Agent, on behalf of the Agents, in writing.

6.4 The Company and each Agent, on a several basis, covenant and agree, during the distribution of the Offered Shares:

- (a) not to provide any potential investor in the Offered Shares with any marketing materials (including the Term Sheets and the Management Presentation) unless a template version of such materials has been filed by the Company with the Securities Commissions on or before the day such marketing materials are first provided to any potential purchaser in the Offered Shares;
- (b) not to provide any potential investor in Offered Shares with any materials or information in relation to the distribution of the Offered Shares or the Company other than: (i) the Term Sheets; (ii) the Management Presentation; (iii) marketing materials, other than the Term Sheets and the Management Presentation, that have been approved and filed in accordance with Subsection 6.1; (iv) any standard term sheets (provided they are in compliance with Securities Laws); and (v) the Supplemented Prospectus in accordance with this Agreement; and

- (c) that any marketing materials approved and filed in accordance with Subsection 6.1, and any standard term sheets shall only be provided to potential investors in the Offered Shares in those jurisdictions where it is lawful for such party to do so.
- 6.5 Notwithstanding Subsection 6.1 and Subsection 6.4, following the approval and filing of a template version of marketing materials in accordance with Subsection 6.1, the Agents may provide a limited-use version (within the meaning of NI 44-102) of such marketing materials to potential investors in the Offered Shares in accordance with Securities Laws.
- 7. Auditors' Comfort Letter**
- 7.1 The Company shall deliver to the Agents at the time the Agents sign the Prospectus Supplement a letter signed by the Company's auditors and dated the date of delivery thereof, in form and substance satisfactory to the Agents, acting reasonably, with respect to the financial information appearing in the Supplemented Prospectus and the documents incorporated by reference therein, which letter shall be in addition to the auditors' consent letter addressed to the Securities Commissions of the Qualifying Jurisdictions.
- 7.2 If any financial or accounting information is contained in any Supplemental Material which is required to be signed by the Agents, the Company shall deliver or cause to be delivered to the Agents at the time the Agents sign such Supplemental Material a letter signed by the Company's auditors and dated the date of delivery thereof, in form and substance satisfactory to the Agents, acting reasonably, with respect to the financial and accounting information relating to the Company and its business contained in the Supplemental Material and with respect to any material changes thereto up to a date within two Business Days of the date of such letter, which letter shall be in addition to any auditors' report contained in the Supplemental Material and the auditors' consent and comfort letters addressed to the Securities Commissions of the Qualifying Jurisdictions.
- 8. Distribution of Offered Shares**
- 8.1 The Agents shall offer the Offered Shares for sale to the public in the Qualifying Jurisdictions, directly and through other Selling Firms, only as permitted by and in compliance with the Securities Laws at the offering prices described in the Prospectus Supplement, any Supplemental Material and upon the terms of this Agreement. Each agreement entered into by the Agents with a Selling Firm shall contain a similar covenant by the Selling Firm.
- 8.2 The Agents shall not (and shall require each Selling Firm to agree not to), directly or indirectly, offer, sell or deliver any Offered Shares or deliver any Offering Documents to any person resident in any jurisdiction other than the Qualifying Jurisdictions except in a manner which is exempt from registration and prospectus requirements under applicable securities laws in such jurisdiction and which does not require the Company to register any of its securities or to comply with ongoing filing or disclosure requirements or other similar requirements in such jurisdiction. For the purposes of this section, the Agents shall be entitled to assume that the Offered Shares are qualified for distribution in any Qualifying Jurisdiction where a receipt for the Shelf Prospectus or any Supplemental Material under the Passport System has been obtained or is deemed to have been obtained from the British Columbia Securities Commission, in its capacity as principal regulator under the Passport System, and a Prospectus Supplement has been filed or been deemed to be filed under the Passport System. Any agreement required to be made by a Selling Firm

under this Subsection 8.2 shall be expressed to be taken in trust for the benefit of the Company.

- 8.3 Each of the Agents understands that the Offered Shares are not being registered under the United States Securities Act of 1933, as amended, and represents that it has not offered or sold, and agrees that it will not offer, sell or deliver at any time, directly or indirectly, in the United States (which term, as used herein, includes its territories or possessions) or to or for the account of any person who it knows or has reason to believe is a United States national or resident thereof, any of the Offered Shares, other than with the express prior written consent of the Company. Each of the Agents further agrees that it will use its commercially reasonable efforts to require any dealer who purchases from it or effects sales of any of the Offered Shares (whether as a Selling Firm or otherwise) to comply with this requirement.
- 8.4 The Agents shall:
- (a) use their commercially reasonable efforts to, and shall use their commercially reasonable efforts to cause the Selling Firms to, solicit and procure Purchasers for the maximum number of Agency Shares and terminate distribution to the public of the Agency Shares as promptly as possible thereafter. The Lead Agent, on behalf of the Agents, shall give prompt written notice to the Company when, in the opinion of the Agents, the Agents and the Selling Firms have ceased distribution of the Offered Shares and, promptly after completion of the distribution, will provide the Company, in writing, with a breakdown of the number of Offered Shares distributed in each of the Qualifying Jurisdictions where the breakdown is required by the Securities Commission of that jurisdiction for the purpose of calculating fees payable to that Securities Commission; and
  - (b) if the maximum number of Agency Shares has not been sold and the Agents nevertheless decide to terminate the public distribution of Agency Shares, give prompt written notice of the Lead Agent, on behalf of the Agents, to the Company when, in the opinion of the Agents, the Agents and the Selling Firms have ceased distribution to the public of the Agency Shares and, promptly after completion of the distribution, will provide the Company, in writing, with a breakdown of the number of Offered Shares distributed in each of the Qualifying Jurisdictions where that breakdown is required by the Securities Commission of that jurisdiction for the purpose of calculating fees payable to that Securities Commission.

## 9. **Representations, Warranties and Covenants**

- 9.1 Each certificate required to be provided in accordance with the terms of this Agreement signed by any officer of the Company and delivered to the Agents or the Agents' counsel will constitute a representation and warranty made by the Company to the Agents that the facts and statements contained therein are true and correct and contain no misrepresentations.
- 9.2 The delivery by the Company to the Agents of any Offering Document shall constitute the Company's representation and warranty to the Agents that at the time of delivery:
- (a) all information and statements (except information and statements furnished by and relating solely to the Agents) contained in such Offering Document are true

and correct in all material respects, and contain no misrepresentation and constitute full, true and plain disclosure of all material facts relating to the Company and the Offered Shares;

- (b) no material fact has been omitted from such Offering Document which is required to be stated or which is necessary to make any statements or information contained therein not misleading in light of the circumstances in which they are made; and
- (c) such Offering Document complies fully with the requirements of the Securities Laws.

9.3 In addition to the representations and warranties contained in Subsection 9.2, the Company represents and warrants to the Agents as follows:

- (a) the Company has been duly incorporated and organized and is validly existing under the laws of the Province of British Columbia;
- (b) the Manager has been duly incorporated and is validly existing under the laws of the Province of British Columbia;
- (c) the Company has the requisite corporate power, authority and capacity to own the investments described in the Supplemented Prospectus and any Supplemental Material, to execute, deliver and perform its obligations under this Agreement and the Management Agreement and, to issue, offer, sell and deliver the Offered Shares in accordance with the provisions of this Agreement and each of the Company and the Specified Parties has the requisite corporate power, authority and capacity to own, lease and operate its property and to carry on the business carried on by it, as described in the Supplemented Prospectus;
- (d) the Manager has the requisite corporate power, authority and capacity to carry on its business as now conducted and as described in the Supplemented Prospectus, to own or lease its assets and to execute, deliver and perform its obligations under the Management Agreement;
- (e) the Company, the Manager and each of the Specified Parties has conducted and is conducting its activities in compliance with all applicable laws, rules and regulations of each jurisdiction in which it carries on its activities or holds investments and is duly licensed, registered and qualified in all jurisdictions in which it carries on activities or holds investments to enable its activities to be carried on or its investments to be held as now conducted or held or as described in the Supplemented Prospectus and all such licences, registrations and qualifications are valid, existing and in good standing, and none of such licences, registrations or qualifications contains any burdensome term, provision, condition or limitation which has or is likely to have any material adverse effect on the business, operations, assets, liabilities, ownership, management, securities, capital, prospects or condition (financial or otherwise) of the Company, the Manager and each of the Specified Parties;
- (f) the Company:

- (i) was qualified to file a short form shelf prospectus that is a base shelf prospectus under National Instrument 44-101 – *Short Form Prospectus Distributions* and National Instrument 44-102 – *Shelf Distributions* at the time the Shelf Prospectus was filed and continues to be qualified to file a short form prospectus that is a base shelf prospectus under the Shelf Procedures; and
  - (ii) prepared and filed with the British Columbia Securities Commission, in its capacity as principal regulator pursuant to the Passport System, in accordance with National Instrument 44-101 – *Short Form Prospectus Distributions* and National Instrument 44-102 – *Shelf Distributions*, the Shelf Prospectus and has obtained from the British Columbia Securities Commission, in its capacity as principal regulator pursuant to the Passport System, the Final Receipt for the Shelf Prospectus for and on behalf of the Ontario Securities Commission and each of the other Securities Commissions. The aggregate offering price of all securities issued pursuant to the Shelf Prospectus does not and, upon completion of the Offering, will not, exceed \$50,000,000, being the maximum allowable amount thereunder;
- (g) the Company is authorized to issue an unlimited number of Common Shares, an unlimited number of Class B Non-Participating Common Shares and an unlimited number of Class R Senior Participating Redeemable Convertible Preference Shares, of which there are issued and outstanding on the date hereof and immediately prior to the Closing Time on the Closing Date 4,152,545 Common Shares, all of which are fully paid and non-assessable, no Class B Non-Participating Common Shares and no Class R Senior Participating Redeemable Convertible Preference Shares; and no person, firm or corporation (except for investors purchasing under the Supplemented Prospectus) has, as of the date hereof, or will have as at the Closing Time, any agreement, option, right or privilege (whether pre-emptive, contractual or otherwise) capable of becoming an agreement (including convertible securities or warrants) for the purchase, subscription and issuance of any Offered Shares or other securities of the Company except pursuant to this Agreement;
- (h) the only subsidiaries that are material to the Company are the Specified Parties; other than its holdings of securities of the Specified Parties and D-Wave Systems, Inc., the Company has no other investments in an entity that make up more than 10% of the Company's net asset value;
- (i) the Company beneficially owns 575,000 common shares in the capital of One45 (representing 80.9% of the issued and outstanding common shares in the capital of One45), free and clear of all liens, mortgages, charges, pledges, security interests and other encumbrances, claims and demands whatsoever, and all of such common shares have been duly authorized and validly issued and are outstanding as fully paid and non-assessable shares, and no person has any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option, for the purchase from the Company of any interest in any of such common shares or, to the knowledge of the Company, for the issue or allotment of any unissued common shares in the capital of One45

or any other security convertible into or exchangeable for any such common shares;

- (j) the Company beneficially owns 11,711,712 common shares in the capital of BasicGov (representing 46.2% of the issued and outstanding shares in the capital of BasicGov), free and clear of all liens, mortgages, charges, pledges, security interests and other encumbrances, claims and demands whatsoever, and all of such common shares have been duly authorized and validly issued and are outstanding as fully paid and non-assessable common shares, and no person has any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option, for the purchase from the Company of any interest in any of such common shares or, to the knowledge of the Company, other than 40,000 outstanding common share purchase warrants held by the Company and stock options issued pursuant to BasicGov's employee stock option plan, for the issue or allotment of any unissued common shares in the capital of BasicGov or any other security convertible into or exchangeable for any such common shares;
- (k) One45 beneficially owns 10,219,041 Class A Preferred Shares in the capital of BasicGov (representing 40.3% of the issued and outstanding shares in the capital of BasicGov), free and clear of all liens, mortgages, charges, pledges, security interests and other encumbrances, claims and demands whatsoever, and all of such Class A Preferred Shares have been duly authorized and validly issued and are outstanding as fully paid and non-assessable Class A Preferred Shares, and no person has any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option, for the purchase from One45 of any interest in any of such Class A Preferred Shares or, to the knowledge of the Company, for the issue or allotment of any unissued Class A Preferred Shares in the capital of BasicGov or any other security convertible into or exchangeable for any such Class A Preferred Shares;
- (l) the attributes of the Offered Shares conform in all material respects with the descriptions thereof in the Supplemented Prospectus;
- (m) upon their issue by the Company in accordance with this Agreement, the Offered Shares will be validly issued and outstanding as fully paid and non-assessable shares and the sole registered holder thereof will be CDS or its nominee;
- (n) at or prior to the Closing Time on the Closing Date, all actions required to be taken by or on behalf of the Company shall have occurred so as to validly authorize the issue and sale of the Offered Shares;
- (o) except as set out in the Supplemented Prospectus, no person has any agreement, option, right or privilege (whether present or future, contingent or absolute, preemptive or contractual) or any right capable of becoming an agreement, option, right or privilege, for the issue of any unissued Common Shares or any other security convertible into or exchangeable for any Common Shares or to require the Company to purchase, redeem or otherwise acquire any of the issued and outstanding Common Shares;

- (p) except as set out in the Supplemented Prospectus, there is no, and as of the Closing Time there will not be any, agreement in force or effect that in any manner affects or will affect the voting or control of any of the issued and outstanding securities of the Company;
- (q) the execution, delivery and performance by the Company of this Agreement has been validly authorized and approved by the Company, and this Agreement constitutes a valid and legally binding instrument enforceable against the Company, subject to bankruptcy, insolvency and other similar laws affecting creditors' rights generally and to the availability of equitable rights and to the fact that rights to indemnity, contribution and waiver may be limited by applicable law;
- (r) none of the execution, delivery and performance by the Company of this Agreement or the issue, sale and delivery of the Offered Shares as provided for herein conflicts with or will conflict with or results or will result in a breach of or default under (or give rise to the acceleration of or the maturity of any debt under):
  - (i) any of the terms, conditions or provisions of the articles or by-laws of the Company or the resolutions of the Company's shareholders or directors;
  - (ii) the Management Agreement or any other material agreement or instrument to which the Company is a party;
  - (iii) any material licence, registration or qualification issued to the Company; or
  - (iv) any law or any judgment, order or decree of any governmental body, agency, court or arbitrator having jurisdiction over the Company or any of its respective assets or properties;
- (s) there are no material contracts, agreements or documents relating to the Company, the Manager or any other person that are required to be described in the Supplemented Prospectus and that are not described therein;
- (t) other than as disclosed in the Supplemented Prospectus, the Management Agreement has not been amended since the date of its execution and delivery and the Management Agreement will, at the Closing Time, be in full force and effect;
- (u) no order ceasing or suspending trading in the Common Shares of the Company, prohibiting the sale of such securities or preventing or suspending the use of the Supplemented Prospectus has been issued to the Company or the Company's directors or officers and, to the knowledge of the Company, no investigations or proceedings for such purposes are pending or threatened;
- (v) except as contemplated in this Agreement or as described in the Supplemented Prospectus, there is no person acting or purporting to act for the Company entitled to any brokerage or finder's fee in connection with the issue, sale and delivery of the Offered Shares or any of the transactions described in the Supplemented Prospectus;
- (w) except as disclosed in the Supplemented Prospectus, none of the directors or officers of the Manager or any associate or affiliate of the Manager has, or to the

knowledge of the Company intends to have, any interest, direct or indirect, in any transaction contemplated hereunder or any proposed transaction with the Company which materially affects, is material to or will materially affect the Company;

- (x) the Company is current and up-to-date with all material filings required to be made by it under the laws of Canada and the provinces and territories thereof, including all Securities Laws, all such filings comply with all Securities Laws, and no confidential filings have been made by the Company with any securities regulatory authority, the contents of which have not since been disclosed to the public in accordance with Securities Laws;
- (y) other than as publicly disclosed, there are no actions, suits, proceedings, investigations, or requests for information, whether on behalf of or against the Company, the Manager or any of their respective affiliates or associates pending, or, to the knowledge of the Company, threatened against or affecting the Company, the Manager or any of their respective affiliates or associates, at law or in equity, before any court, arbitrator or any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that may in any way materially adversely affect the business, operations, assets, liabilities, ownership, management, securities, capital, prospects or condition (financial or otherwise) of the Company or the Manager or that questions the validity of the issuance, sale and delivery of the Offered Shares or any action taken or to be taken by the Company pursuant to or in connection with this Agreement;
- (z) there are no judgements unsatisfied against the Company or the Manager or, to the knowledge of the Company, any consent decrees or injunctions to which the Company or the Manager or their respective assets or properties are subject;
- (aa) none of the Company, the Manager or either of the Specified Parties or, to the knowledge of the Company, any director, officer, agent or employee of the Company or the Manager is aware of or has taken any action, directly or indirectly, that would reasonably be expected to result in a material violation by such persons of the *Corruption of Foreign Public Officials Act* (Canada) (the “CFPOA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any foreign political party or official thereof or any candidate for foreign political office, in contravention of the CFPOA; the Company, the Manager and the Specified Parties have conducted their businesses in material compliance with the CFPOA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith;
- (bb) the operations of the Company, the Manager and the Specified Parties are and have been conducted at all times in material compliance with applicable financial recordkeeping and reporting requirements of the money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any regulatory or governmental

authority (collectively, the “**Money Laundering Laws**”) and no action, suit or proceeding by or before any court, any regulatory or governmental authority or any arbitrator involving the Company, the Manager or either of the Specified Parties with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened;

- (cc) each of the Company, the Manager and the Specified Parties has filed all federal, provincial, local and foreign tax returns that are required to be filed by it or has requested extensions of the deadlines for filing thereof (except in any case in which the failure to so file would not have a material adverse effect on the business, operations, assets, liabilities, ownership, management, securities, capital, prospects or condition (financial or otherwise) of the respective entity) and has paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for which adequate provision has been made in its financial statements for any such assessment, fine or penalty that is currently being contested in good faith;
- (dd) each of the Company and the Manager has established on its books and records reserves that are adequate for the payment of all taxes not yet due and payable and there are no liens for taxes on the assets or properties of any of the foregoing entities, except for taxes not yet due, and, to the knowledge of the Company, there are no audits pending of the tax returns of the Company or the Manager (whether federal, provincial, local or foreign) and there are no claims that have been or may be asserted relating to any such tax returns, which audits and claims, if determined adversely, would result in the assertion by any governmental agency of any deficiency that would have a material adverse effect on the business, operations, assets, liabilities, ownership, management, securities, capital, prospects or condition (financial or otherwise) of the Company or the Manager;
- (ee) neither the Canada Revenue Agency nor any other taxation authority, foreign or domestic, has asserted or threatened to assert any assessment, claim or liability for taxes due or to become due in connection with any review or examination of the tax returns of the Company or the Manager (including, without limitation, any of their respective predecessor companies or entities);
- (ff) neither the Company, nor, to the knowledge of the Company, the Manager or any other party is in default in the observance or performance of any term or obligation to be performed by it under any agreement or instrument which is material to the Company or the Manager and no event has occurred or, to the knowledge of the Company, been threatened that with notice or lapse of time or both would constitute such a default, in any case which default or event would have a material adverse effect on the business, operations, assets, liabilities, ownership, management, securities, capital, prospects or condition (financial or otherwise) of the Company or the Manager;
- (gg) the Company, the Manager and each Specified Party holds all rights, titles and interests to or in all assets that are material to its business free and clear of all liens, mortgages, charges, pledges, security interests and other encumbrances, claims and demands whatsoever, except such liens, mortgages, charges, pledges, security interests and other encumbrances as are granted in the ordinary course of business and provided for in its financial statements;

- (hh) except as disclosed in the Supplemented Prospectus, the Company does not have any liabilities, contingent or otherwise, that materially adversely affect or may materially adversely affect its respective business, operations, assets, liabilities, ownership, management, securities, capital, prospects or condition (financial or otherwise);
- (ii) to the knowledge of the Company, there is no legislation currently in force or proposed to be brought into force, or any other action undertaken or proposed to be undertaken, by any federal, provincial, municipal or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, with which the Company, the Manager or either of the Specified Parties is or will be unable to comply, or that may materially adversely affect the business, operations, assets, liabilities, ownership, management, securities, capital, prospects or condition (financial or otherwise) of the Company, the Manager or either of the Specified Parties;
- (jj) the terms and conditions of the Offering comply in all material respects with the Securities Laws except to the extent that exemptions therefrom have been obtained from applicable securities regulatory authorities in each of the Qualifying Jurisdictions;
- (kk) the Financial Statements are complete and correct and present fairly, in all material respects, the financial position of the Company as of the date of the Financial Statements in accordance with International Financial Reporting Standards;
- (ll) except as disclosed or contemplated in the Supplemented Prospectus or which would not reasonably be expected to result in an adverse material change to the Company, since December 31, 2018:
  - (i) there has not been any change in the financial condition or performance of the Company or the Specified Parties other than changes in the ordinary course of business; and
  - (ii) the Company's business has been carried on in the ordinary course and neither the Company nor any Specified Party has transferred, assigned, sold, distributed, dividended or otherwise disposed of any of the assets shown or reflected in the Financial Statements of the Company or cancelled any material debts or entitlements;
- (mm) except as disclosed in the Supplemented Prospectus or which would not reasonably be expected to result in an adverse material change to the Company, no strike, lock out or other labour action by any trade union, council of trade unions, employee bargaining agent or affiliated bargaining agent currently exists or, to the knowledge of the Company, is contemplated or threatened in respect of the Company or the Specified Parties;
- (nn) the Company maintains, or hires a third-party to maintain, a system of internal accounting controls sufficient to provide reasonable assurance that

- (i) transactions are recorded as necessary to permit the preparation of financial statements in conformity with International Financial Reporting Standards and to maintain accountability for assets; and
- (ii) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences;
- (oo) the Company is a reporting issuer or the equivalent not in default under the Securities Laws, and the Company is not aware of any circumstances that could jeopardize its status as a reporting issuer;
- (pp) the records and minute books of the Company that have been made available to the Agents and their counsel for review are the original minute books and records and contain complete and accurate minutes, in all material respects, of all meetings of the directors and shareholders of the Company and signed copies of all resolutions passed or confirmed by the directors and the shareholders of the Company, other than in respect of meetings or resolutions where the absence of such minutes or signed copies of resolutions would not constitute an adverse material fact concerning the Company or result in an adverse material change to the Company;
- (qq) no material information about the Company, the Offered Shares or the Offering has been given by representatives of the Company or representatives of the Manager to purchasers on the President's List that was not derived from or that is inconsistent with the disclosure set out in the Supplemented Prospectus;
- (rr) except as disclosed in the Supplemented Prospectus, there is no fact known to the Company which, on the whole, materially and adversely affects the condition or value of the Company's portfolio of investments.

## 10. **Material Change**

10.1 If, prior to the completion of the distribution to the public of the Offered Shares:

- (a) any change in the Securities Laws of any Qualifying Jurisdiction occurs that, in the opinion of legal counsel in such Qualifying Jurisdiction, requires the filing of any Supplemental Material;
- (b) any material change occurs (whether actual, anticipated, contemplated, proposed or threatened) to the Company;
- (c) any material fact arises or is discovered that would have been required to have been stated in the Supplemented Prospectus or any Supplemental Material had the fact arisen or been discovered on or prior to the date of the Prospectus Supplement or any Supplemental Material; or
- (d) any change in any material fact contained in the Supplemented Prospectus or any Supplemental Material occurs or any event or state of facts occurs after the execution of this Agreement that, in any case, is or may be of such a nature as to render the Supplemented Prospectus or Supplemental Material misleading or

untrue in any material respect or result in a misrepresentation therein, including as a result of the Supplemented Prospectus or any Supplemental Material containing an untrue statement of a material fact or omitting to state a material fact required to be stated therein or necessary to make any statement therein not false or misleading in light of the circumstances in which it was made, or result in the Supplemented Prospectus or Supplemental Material not complying (to the extent that such compliance is required) with the Securities Laws or that would reasonably be expected to have a significant effect on the market price or value of the Offered Shares,

the Company shall promptly give notice to the Lead Agent with full particulars of such change or fact, and the Company shall, to the satisfaction of the Lead Agent, on behalf of the Agents, promptly and, in any event, within all applicable time limitation periods, comply with all applicable filing and other requirements under the Securities Laws that, in the opinion of the Lead Agent, on behalf of the Agents, acting reasonably, may be necessary or advisable as a result of such fact or change including, without limitation, the filing of Supplemental Material, and will otherwise comply with all legal requirements necessary to continue to qualify the Offered Shares for distribution in each of the Qualifying Jurisdictions.

- 10.2 The Company will not file any Supplemental Material pursuant to Subsection 10.1 without first obtaining approval of the form and content thereof from the Lead Agent, on behalf of the Agents, which approval shall not be unreasonably withheld or delayed.
- 10.3 Prior to the completion of the distribution to the public of the Offered Shares (as evidenced by the Company's receipt of the notice referred to in Subsection 8.4), the Company shall in good faith discuss with the Agents as promptly as possible any change, fact, circumstance or event contemplated in Subsection 10.1 that is of such a nature that there may be reasonable doubt as to whether notice should be given to the Lead Agent under Subsection 10.1.

## 11. **Covenants of the Company**

- 11.1 The Company covenants and agrees with the Agents that the Company shall:
- (a) advise the Lead Agent, promptly after receiving notice thereof, of the time when the Prospectus Supplement or any Supplemental Material has been filed with the British Columbia Securities Commission, in its capacity as principal regulator under the Passport System;
  - (b) advise the Lead Agent, promptly after receiving notice or obtaining knowledge of:
    - (i) the issuance by any Securities Commission of any order suspending or preventing the use of any of the Offering Documents;
    - (ii) the suspension of the qualification of the Offered Shares for sale in, or the offering or sale of the Offered Shares in, any of the Qualifying Jurisdictions; or
    - (iii) the institution of any proceeding (including any threatened or contemplated proceeding) for any of the purposes set out in Subclause (i) or (ii) above;

and shall use its reasonable commercial efforts to prevent the issuance of any such order and, if any such order is issued, to obtain the withdrawal thereof as quickly as possible;

- (c) advise the Lead Agent, promptly after receiving notice of or obtaining knowledge of any request made by any Securities Commission for the Company to amend or supplement the Supplemented Prospectus or any Supplemental Material or provide any additional information, and shall use its commercially reasonable efforts to either obtain the withdrawal of such request as quickly as possible or, if such withdrawal is not promptly obtained, to prepare and file the requested amendment, supplement, Supplemental Material or additional information, it being understood and agreed that no such amendment, supplement, Supplemental Material or additional information will be filed with any Securities Commission prior to the review and approval by the Lead Agent, on behalf of the Agents, and their counsel, acting reasonably;
- (d) advise the Lead Agent, promptly after receiving any notice by any judicial or regulatory authority requesting any information, meeting or hearing relating to the Company and its affairs and its affairs or the Offering or any other event or state of affairs that may be relevant to the Agents or the Company's shareholders;
- (e) apply the net proceeds from the sale of the Offered Shares (after the expenses of the Offering) substantially in accordance with the disclosure set out under the heading "Use of Proceeds" in the Prospectus Supplement and invest the net proceeds (after deducting the expenses of the Offering) in accordance with the investment mandate, and subject to the investment restrictions disclosed in the Supplemented Prospectus;
- (f) not, without prior consultation with the Agents, during the period commencing on the date hereof and expiring on the completion of the distribution to the public of the Offered Shares (as evidenced by the Company's receipt of the notice referred to in Subsection 8.4), issue any press release;
- (g) not, without the prior consent of the Lead Agent, on behalf of the Agents, acting reasonably, during the period commencing on the date hereof and ending on the completion of the distribution to the public of the Offered Shares (as evidenced by the receipt of the notice referred to in Subsection 8.4) amend the Management Agreement;
- (h) not, and shall not publicly announce any intention to, directly or indirectly, offer, sell, contract to sell, grant or sell any option to purchase, hypothecate, pledge, transfer, assign, purchase any option or contract to sell, lend, swap or enter into any other agreement to transfer the economic consequences of, or otherwise dispose of or deal with, whether through the facilities of a stock exchange, by private placement or otherwise, any Common Shares or other securities of the Company (or securities convertible into, exchangeable for, or otherwise exercisable to acquire any Common Shares or other securities of the Company) without the prior written consent of the Lead Agent, on behalf of the Agents, for a period of 120 days after the Closing Date, other than pursuant to:

- (i) employee stock options granted to directors, officers, employees and consultants of the Company and Common Shares or other securities of the Company issued upon their exercise pursuant to the Company's stock option or incentive plan or other share compensation arrangements, including the cancellation or redemption of Common Shares or Resulting Issuer Shares issued pursuant to the;
  - (ii) the issue of Common Shares or other securities of the Company upon the conversion, exchange or exercise of convertible or exchangeable securities or options outstanding as at the date hereof or as such convertible or exchangeable securities or options may be re-designated from time to time;
  - (iii) obligations in respect of existing agreements; or
  - (iv) this Agreement;
- (i) on or prior to the Closing Time, cause each of the directors and officers of the Company to execute an undertaking in favour of the Agents (each, a "**Lock-Up Agreement**") not to, and not to publicly announce any intention to, directly or indirectly, offer, sell, contract to sell, grant or sell any option to purchase, hypothecate, pledge, transfer, assign, purchase any option or contract to sell, lend, swap or enter into any other agreement to transfer the economic consequences of, or otherwise dispose of or deal with, whether through the facilities of a stock exchange, by private placement or otherwise, any Common Shares or other securities of the Company (or securities convertible into, exchangeable for or otherwise exercisable to acquire any Common Shares or other securities of the Company) held by it (the "**Locked-Up Securities**") without the prior written consent of the Lead Agent, on behalf of the Agents, for a period of 120 days after the Closing Date (the "**Lock-Up Period**"), other than:
- (i) pursuant to a bona fide take-over bid made to all holders of Common Shares or other securities of the Company or in connection with a merger, business combination, arrangement, consolidation, reorganization, restructuring or similar transaction (a "**reorganization**") involving the Company; provided, however, that in such case it shall be a condition of the sale, transfer or tender of the Locked-Up Securities in connection with such take-over bid that, if the take-over bid or reorganization is not completed during the Lock-Up Period, any Locked-up Securities subject to this Clause 11.1(i) and the Lock-Up Agreements shall remain subject to the restrictions herein and therein; or
  - (ii) the exercise of employee stock options granted to the directors and officers of the Company pursuant to the Company's stock option or incentive plan or arrangement of the Company; provided, however, that any underlying Common Shares or other securities issued by the Company on such exercise remain part of the Locked-Up Securities for purposes of this Clause 11.1(i) and the Lock-Up Agreements; and
- (j) so long as the Company remains a "reporting issuer" under any of the Securities Laws, use its reasonable commercial efforts to comply with all required disclosure

and filing obligations under the Securities Laws in order to maintain its status as a “reporting issuer” in good standing thereunder.

**12. Termination by the Agents**

12.1 All representations, warranties, covenants and other terms in this Agreement shall be and shall be deemed to be conditions, and any breach of or failure by the Company to comply with any of them or any of the conditions set out in Section 14 shall entitle each Agent at any time prior to the Closing Time to terminate its obligations under this Agreement forthwith by written notice to that effect given to the Company, and in the case of any other breach or failure, 24 hours after notice of such breach or failure has been given by any of the Agents to the Company if such breach or failure remains unremedied, provided that in either case the Agents shall give notice of such breach or failure as soon as practicable after the Agents have actual knowledge of such breach or failure.

12.2 If at any time during the period commencing on the date hereof and ending at the Closing Time:

- (a) there should develop, occur or come into effect or existence any event, action, state, condition or major financial occurrence of national or international consequence or any law or regulation that in the reasonable opinion of any of the Agents materially adversely affects, or involves, or will materially adversely affect, or involve, the Canadian, U.S. or international financial markets or the business, operations or affairs of the Company;
- (b) the state of the Canadian, U.S. or international financial markets has deteriorated such that, in the reasonable opinion of any of the Agents, the Offered Shares cannot be marketed profitably;
- (c) there shall occur any adverse material change or change in a material fact or other development as contemplated in Clauses 10.1(b), (c) or (d) (other than a change, fact, event or circumstance relating solely to one or more of the Agents or any Selling Firm or any of their agents) that, in the reasonable opinion of any of the Agents, would be expected to materially adversely affect the value or market price of the Offered Shares or the marketability of the Offered Shares, or result in the Purchasers of a material number of the Offered Shares exercising their rights under applicable Securities Laws to withdraw from or rescind their purchases of Offered Shares or sue for damages in respect thereof; or
- (d) there shall occur any change in any of the Securities Laws, or any enquiry, action, suit, investigation or other proceeding, whether formal or informal, in relation to the Company or the distribution of the Offered Shares should be announced, instituted or threatened (unless based solely upon the activities or alleged activities of the Agents or any Selling Firm or any of their agents), or any order under or pursuant to any laws or regulations of Canada or of any of the Qualifying Jurisdictions or any other regulatory or governmental authority should be made or issued (except for any such order based solely upon the activities or the alleged activities of the Agents or any Selling Firm or any of their agents and not of the Company), that, in the reasonable opinion of any of the Agents, operates to prevent or restrict the trading or the distribution of the Offered Shares or materially adversely affects or

will materially adversely affect the value or market price of the Offered Shares or the marketability of the Offered Shares,

each of the Agents shall be entitled, at its option, to terminate its obligations under this Agreement by giving notice to that effect to the Company at or prior to the Closing Time and in such event such Agent's obligations under this Agreement shall end.

- 12.3 If, prior to Closing Time, there is announced any change or proposed change in the income tax laws of Canada or the U.S., or the interpretation or administration thereof, and such change would, in the sole opinion of any Agent, acting reasonably, be expected to have a significant adverse effect on the market price, value or marketability of the Offered Shares, such Agent shall be entitled, at its sole option, in accordance with Section 12.4, to terminate its obligations under this Agreement by written notice to that effect given to the Company at any time prior to the Closing Time.
- 12.4 The Company agrees that any breach by it of its covenants to use its commercially reasonable efforts to fulfil the conditions in Section 14 or to cause such conditions to be fulfilled at or prior to the Closing Time shall entitle any of the Agents to terminate its obligations under this Agreement by giving notice to that effect to the Company at or prior to the Closing Time and in such event such Agent's obligations under this Agreement shall end.
- 12.5 The rights of termination contained in Subsections 12.1, 12.2, 12.3 and 12.4 may be exercised by any or all of the Agents and are in addition to any other rights or remedies any of the Agents may have in respect of any default, misrepresentation, act or failure to act or non-compliance of the Company in respect of any matters contemplated by this Agreement or otherwise. Any termination by any of the Agents pursuant to the provisions of this Agreement shall be effected by notice delivered to the Company. In the event of any such termination by an Agent, there shall be no further liability on the part of the Agent to the Company or on the part of the Company to that Agent, except for any liability provided for in Sections 13 or 15. A notice of termination given by an Agent under Subsections 12.1, 12.2, 12.3 and 12.4 shall not be binding upon the other Agents.
- 12.6 No act of the Agents in offering the Offered Shares for sale or in assisting in the preparation of, or joining in the execution of, the Offering Documents shall constitute a waiver by or estoppel against the Agents.

### 13. **Indemnification**

#### 13.1 Indemnification by the Company

- (a) By accepting this offer the Company (the "**Indemnifying Party**") agrees to indemnify and hold harmless the Agents, their respective affiliates and subsidiaries and the directors, officers, employees, partners, agents, advisors and shareholders of each of the Agents and their respective affiliates and subsidiaries (each an "**Indemnified Party**") from and against any and all losses (other than a loss of profits in connection with the sale of the Offered Shares), payments, fees, claims, damages, liabilities, costs or expenses (or claims, actions, suits, proceedings or investigations in respect thereof), including, without limitation, amounts paid in settlement of any claims, actions, suits, proceedings or investigations and the fees and expenses of legal counsel on a solicitor and own

client basis that may be incurred in advising with respect to or defending any claim, action, suit, proceeding or investigation that may be made or threatened against any Indemnified Party (or in enforcing this indemnity) (collectively, the “**Claims**” and individually, a “**Claim**”) to which any Indemnified Party may become subject or otherwise involved with in any capacity, insofar as the Claims relate to, are caused by, result from, arise out of, are based upon, directly or indirectly, or are a consequence of:

- (i) the Agents having acted as agents of the Company in respect of the Offering;
- (ii) any information or statement (except any information or statement relating solely to any or all of the Agents) contained in any of the Offering Documents or in any certificate of the Company delivered pursuant to this Agreement which at the time and in the light of the circumstances under which it was made contains or is alleged to contain a misrepresentation or untrue statement;
- (iii) any omission or alleged omission to state in any of the Offering Documents or in any certificate of the Company delivered pursuant to this Agreement any fact (except facts relating solely to any or all of the Agents) required to be stated in such document or necessary to make any statement in such document not misleading in light of the circumstances under which it was made;
- (iv) any order made or inquiry, investigation or proceeding commenced or threatened by any court, Securities Commission, stock exchange or other competent authority based upon any untrue statement or omission or alleged untrue statement or alleged omission or any misrepresentation or alleged misrepresentation in (except a statement, omission, alleged statement, alleged omission, misrepresentation or alleged misrepresentation relating solely to any or all of the Agents) any of the Offering Documents or filed with the Canadian securities regulatory authorities or based upon any failure to comply with the Securities Laws (other than any failure or alleged failure to comply by any or all of the Agents) preventing or restricting the trading in or the sale or distribution of the Offered Shares or any other securities of the Company in any of the Qualifying Jurisdictions;
- (v) any breach of or default under any representation, warranty, covenant or agreement of the Company in this Agreement or any other document to be delivered pursuant hereto or the failure of the Company to comply with any of its obligations hereunder or thereunder;
- (vi) any failure of the Company to pay any Harmonized Sales Tax or any other tax properly payable by the Company in connection with the distribution of the Offered Shares and the fees the Agents receive in connection therewith;
- (vii) the non-compliance by the Company with any statutory requirement to make any document available for inspection,

and will reimburse the Indemnified Parties for all reasonable costs, charges and expenses, as incurred, which any of them may pay or incur in connection with investigating or disputing any such Claim including the fees and expenses of legal counsel on a solicitor and own client basis. This indemnity will be in addition to any liability which the Company may otherwise have.

- 13.2 The Indemnifying Party waives any rights it may have of first requiring an Indemnified Party to proceed against or enforce any other right, power, remedy or security or to claim payment from any other person before claiming under any indemnity provided for in this Section 13. It is not necessary for an Indemnified Party to incur expense or make payment before enforcing such indemnity.
- 13.3 If any Claim is asserted against any Indemnified Party in respect of which indemnity is sought from the Indemnifying Party, pursuant to the provisions of this Section 13, the Indemnified Party shall promptly notify the Indemnifying Party of the nature of such Claim (provided that the omission to so notify the Indemnifying Party of any Claim shall only relieve the Indemnifying Party from any liability which they may have to an Indemnified Party if such failure materially prejudices the ability of the Indemnifying Party to defend such claim). The Indemnifying Party shall assume the defence of any suit to enforce such Claim on behalf of the Indemnified Party; provided that (a) the defence shall be conducted through legal counsel acceptable to the Indemnified Party, whose acceptance shall not be unreasonably withheld or delayed; (b) no admission of liability or settlement of any such Claim may be made by the Indemnifying Party or an Indemnified Party without, in each case, the prior written consent of the other, acting reasonably; and (c) the Indemnifying Party shall be responsible for the payment of all expenses related to such defence.
- 13.4 In any suit or proceeding to enforce a Claim, any Indemnified Party shall have the right to retain other counsel to act on the Indemnified Party's behalf, provided that the fees and disbursements of such counsel shall be paid by such Indemnified Party, unless:
- (a) the Indemnifying Party fails to assume the defence of the Claim on behalf of the Indemnified Party within a reasonable period of time of receiving notice of such Claim;
  - (b) the Indemnifying Party and the Indemnified Party shall have mutually agreed to the retention of the other counsel; or
  - (c) the named parties to any such suit or proceeding include the Indemnified Party as well as the Indemnifying Party and the Indemnified Party shall have received a written opinion from counsel acceptable to the Indemnifying Party, acting reasonably, that representation of the Indemnified Party by counsel for the Indemnifying Party would be inappropriate due to the actual or potential differing interests between them or that there may be one or more legal defences available to the Indemnified Party which are different from or in addition to those available to the Indemnifying Party and which cannot reasonably be maintained by one law firm that represents both the Indemnified Party and the Indemnifying Party,

in each of which cases, if the Indemnified Party notifies the Indemnifying Party in writing that it elects to retain separate counsel, the Indemnifying Party shall not have the right to assume the defence of such Claim on behalf of the Indemnified Party but shall be liable to pay the reasonable fees and expenses of counsel for the Indemnified Party on a solicitor

and own client basis. In no event shall the Indemnifying Party be required to pay the reasonable fees and expenses of more than one set of counsel in any one jurisdiction for all of the Indemnified Parties in respect of any particular Claim or related set of Claims.

- 13.5 The Indemnified Party shall provide the Indemnifying Party copies of all documents and information pertaining to the Claim, take all actions necessary to preserve its rights to object to or defend against the Claim, consult and co-operate with the Indemnifying Party in determining whether the Claim and any legal proceeding resulting therefrom should be resisted, compromised or settled and co-operate and assist in any negotiations to compromise or settle or in any defense of a Claim undertaken by the Indemnifying Party. The Indemnifying Party shall not be liable for any settlement of any action or proceeding effected without their written consent.
- 13.6 The Indemnifying Party agrees to reimburse the Agents, on a monthly basis, for the time spent by the Agents' personnel in connection with any Claim at their normal per diem rates, together with such reasonable disbursements and out-of-pocket expenses incurred by such personnel in connection therewith. The Indemnifying Party also agrees that if any Claim is brought against, or an investigation commenced in respect of, the Indemnifying Party, or the Indemnifying Party and the Indemnified Party, and personnel of the Agents will be required to testify, participate or respond in respect of or in connection with this Agreement, the Agents will have the right to employ their own counsel in connection therewith and the Indemnifying Party will reimburse the Agents, on a monthly basis, for the time spent by such personnel in connection therewith at their normal per diem rates, together with such reasonable disbursements and out-of-pocket expenses as may be incurred, including reasonable fees and disbursements of the Agents' counsel.
- 13.7 In order to provide for a just and equitable contribution in circumstances in which the indemnities provided in Subsection 13.1 would otherwise be available in accordance with its terms but is, for any reason, unavailable or unenforceable by the Agents or enforceable otherwise than in accordance with its terms or insufficient to hold any Indemnified Party harmless, in whole or in part, the Indemnifying Party shall contribute to the amount paid or payable (or, if such indemnity is unavailable only in respect of a portion of the amount so paid or payable, such portion of the amount so paid or payable) by such Indemnified Party as a result of such Claim,
- (a) in such proportion as is appropriate to reflect the benefits received by the Indemnifying Party on the one hand and the Indemnified Party on the other hand from the sale of the Offered Shares; or
  - (b) if the allocation provided by Clause 13.7(a) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in Clause 13.7(a) above but also the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other hand in connection with the action, misrepresentation, omission, order, non-compliance, breach, failure or other matter or thing referred to in Clauses 13.1(a)(i) through 13.1(a)(vii) which resulted in such a Claim, as well as any other relevant equitable considerations,

provided that the Indemnified Parties shall not in any event be liable to contribute, in the aggregate, any amount in excess of the Agents' Fees.

- 13.8 For the purpose of Clause 13.7(a) above, the relative benefits received by the Indemnifying Party on the one hand and the Indemnified Party on the other hand shall be deemed to be in the same proportion as the total proceeds from the sale of the Offered Shares (net of the fees payable to the Agents, but before deducting expenses) received by the Company is to the cash fee received by the Agents pursuant to this Agreement. For the purpose of Clause 13.7(b) above, the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other hand shall be determined by reference to, among other things, whether the action, misrepresentation, omission, order, non-compliance, breach, failure or other matter or thing referred to in Clauses 13.1(a)(i) through 13.1(a)(vii) which resulted in such a Claim relates to information supplied by or steps or actions taken or done by or on behalf of the Indemnifying Party or to information supplied by or steps or actions taken or done by or on behalf of the Indemnified Party and the relative intent, knowledge, access to information and opportunity to correct or prevent such misrepresentation, omission, order, non-compliance, breach, failure or other matter or thing referred to in Clauses 13.1(a)(i) through 13.1(a)(vii). The amount paid or payable by an Indemnified Party as a result of the Claims referred to above shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Party in connection with investing or defending any such Claims, whether or not resulting in an action, suit, proceeding or claim. The parties agree that it would not be just and equitable if contribution pursuant to this Section were determined by any method of allocation which does not take into account the equitable considerations referred to in this Section.
- 13.9 The rights to contribution provided in this Section 13 shall be in addition to and not in derogation of any other right to contribution which the Indemnified Parties may have by statute or otherwise at law.
- 13.10 The Indemnifying Party acknowledges that the Agents will hold the rights of an Indemnified Party hereunder, other than the Agents, in trust for such Indemnified Party and that such rights may be enforced directly by such Indemnified Party or by the Agents on the Indemnified Party's behalf.
- 13.11 The rights of indemnity in favour of the Agents, their respective affiliates and subsidiaries and the directors, officers, shareholders, employees, partners and agents of the Agents and their respective affiliates and subsidiaries contained in this Section 13 in respect of a Claim based on a misrepresentation or omission or alleged misrepresentation or omission in the Supplemented Prospectus or Supplemental Material shall not apply if the Indemnifying Party has complied with Sections 3 and 4, and if applicable, Section 10 hereof, and the person asserting that Claim was not provided with a copy of the Supplemented Prospectus or any Supplemental Material (which is required under the applicable Securities Laws to be delivered to that person by the Agents or any Selling Firms or any of their agents) which corrects such misrepresentation or omission or alleged misrepresentation or omission.
- 13.12 The obligations under this Section 13 shall apply whether or not the transactions contemplated by this Agreement are completed and shall survive the completion of the transactions contemplated under this Agreement and the termination of this Agreement.
14. **Conditions**
- 14.1 The Agents' obligations under this Agreement shall be subject to the following conditions being fulfilled at or prior to the Closing Time, and which conditions the Company covenants

to use its commercially reasonable efforts to fulfil or cause to be fulfilled at or prior to the Closing Time and which conditions may be waived in whole or in part by the Lead Agent, on behalf of the Agents:

- (a) the Agents and their counsel shall have received a legal opinion dated as of the Closing Date addressed to the Agents and their counsel from the counsel of the Company and the Manager, substantially in form and content to the reasonable satisfaction of the Agents' counsel with respect to all such matters as the Agents may reasonably request, including, that:
  - (i) the Company is a corporation existing under the laws of the Province of British Columbia;
  - (ii) the Manager is a corporation existing under the laws of the Province of British Columbia;
  - (iii) there are no restrictions on the corporate power and capacity of the Company to own and lease property and assets and to carry on business as described in the Supplemented Prospectus and to carry out its obligations under the Management Agreement, including the obligations to create, offer, sell and deliver the Offered Shares and to own the investments as described in the Supplemented Prospectus. The execution and delivery of this Agreement by the Company and the performance of its obligations thereunder have been duly authorized by all necessary corporate action on the part of the Company;
  - (iv) there are no restrictions on the corporate power and capacity of the Manager to own and lease property and assets and to carry on business as described in the Supplemented Prospectus and to carry out its obligations under the Management Agreement;
  - (v) the Company is authorized to issue an unlimited number of Common Shares;
  - (vi) the Prospectus Supplement and the filing of the Prospectus Supplement with the Securities Commissions have been duly approved and authorized by all necessary action on the part of the Company;
  - (vii) the Offered Shares have been duly authorized and upon receipt of the purchase price therefor the Agency Shares will be and, upon exercise of the Option in accordance with this Agreement, the Option Shares will be, validly issued and outstanding as fully paid and non-assessable;
  - (viii) the provisions of the Offered Shares conform, in all material respects, with the descriptions thereof in the Supplemented Prospectus;
  - (ix) each of this Agreement and the Management Agreement has been duly executed and delivered by the Company and is enforceable against the Company in accordance with its terms;

- (x) the Management Agreement has been duly executed and delivered by the Manager and is enforceable against the Manager in accordance with its terms;
- (xi) none of the execution and delivery by the Company of this Agreement, the Management Agreement, and the performance of the obligations of the Company hereunder or thereunder, or the issue, sale and delivery of the Offered Shares, conflicts with or will conflict with or results or will result in a breach of or default under:
  - A. any of the terms, conditions or provisions of the articles or by-laws of the Company or the resolutions of their shareholders or directors in respect of the Offering;
  - B. any law of the Province of British Columbia or the federal laws of Canada applicable therein;
- (xii) all documents have been filed, all proceedings have been taken and all legal requirements have been fulfilled by the Company under the Securities Laws to qualify the Offered Shares for distribution and sale to the public in each of the Qualifying Jurisdictions by or through investment dealers or brokers registered in such categories or persons pursuant to an exemption from the dealer registration requirements under the Securities Laws of such Qualifying Jurisdictions and who have complied with the relevant provisions of such Securities Laws;
- (xiii) no consents, approvals, authorizations or orders under the laws of any of the provinces or territories of Canada or the federal laws of Canada or of any court, governmental agency or body or any stock exchange of such jurisdictions (except for those that have been obtained) are required for the issue and sale of the Offered Shares as contemplated in the Supplemented Prospectus or this Agreement, and the terms of the offering comply with Securities Laws as at the date hereof except to the extent that exemptions or waivers therefrom have been obtained from applicable Securities Commissions in each of the Qualifying Jurisdictions;
- (xiv) the Offered Shares will be qualified investments under the Tax Act at the time of acquisition by a trust governed by a registered retirement savings plan, a registered retirement income fund, a deferred profit sharing plan, a registered education savings plan, a registered disability savings plan or a tax free savings account, each as defined in the Tax Act (collectively, "**Plans**"), provided that, at the time of acquisition by the Plan, the Offered Shares are listed on a "designated stock exchange" as defined in the Tax Act (which currently includes Tiers 1 and 2 of the TSXV) or the Company is a "public corporation" as defined in the Tax Act;
- (xv) the Registrar and Transfer Agent has been duly appointed as the registrar and transfer agent of the Common Shares; and

- (xvi) the listing of the Offered Shares on the TSXV has been approved by the TSXV, subject only to the filing of the documents referred to the TSXV's conditional approval letter dated May 6, 2019;
- (b) the Agents and their counsel shall have received a legal opinion dated as of the Closing Date addressed to the Agents and their counsel from the counsel of One45, substantially in form and content to the reasonable satisfaction of the Agents' counsel with respect to all such matters as the Agents may reasonably request, including with respect to:
  - (i) that One45 is a corporation existing under the laws of the Province of British Columbia;
  - (ii) the registered ownership of the issued and outstanding shares of One45; and
  - (iii) that there are no restrictions on the corporate power and capacity of One45 to own and lease property and assets and to carry on business as described in the annual information form for the year ended December 31, 2018 of the Company, dated March 19, 2019, incorporated by reference into the Supplemented Prospectus;
- (c) the Agents shall have received a legal opinion, dated as of the Closing Date and addressed to the Agents, from counsel to the Agents in form and content to the reasonable satisfaction of the Lead Agent, on behalf of the Agents, with respect to such matters as the Agents may reasonably request.

For purposes of the delivery to the Agents of the items set out in Clauses 14.1(a), 14.1(b) and 14.1(c) above:

- (i) the respective counsels may rely, as to matters of fact, to the extent appropriate in the circumstances, on certificates of the Company, on certificates of the Manager and on certificates of One45 executed on their behalf by a senior officer of the Company, the Manager or One45, as the case may be, acceptable to the Agents, acting reasonably;
  - (ii) the respective counsels may rely on the opinions of local counsel acceptable to the Agents' counsel, acting reasonably, as to the qualification of the Offered Shares for sale to the public and as to other relevant matters in the Qualifying Jurisdictions, other than the Provinces of Ontario and Alberta, and all other relevant jurisdictions; and
  - (iii) the Agents' counsel may rely on the opinion of the Company's counsel as to matters which relate specifically to the Company and the Manager;
- (d) the Agents shall have received certificates dated the Closing Date signed by such senior officer of each of the Company, the Manager and One45, as may be acceptable to the Agents, acting reasonably, in form and content satisfactory to the Lead Agent, on behalf of the Agents, acting reasonably, with respect to the following:

- (i) the constating documents of the Company, the Manager and One45, as applicable;
  - (ii) the resolutions of the directors of the Company relevant to the allotment, issue and sale of the Offered Shares and the Company relevant to the authorization of the transactions contemplated by this Agreement; and
  - (iii) the incumbency signatures of signing officers of the Company;
- (e) the Agents shall have received a certificate addressed to them and to the Agents' counsel dated as of the Closing Date and signed by the Chief Executive Officer and the Chief Financial Officer of the Company, or such other officers of the Company as the Lead Agent, on behalf of the Agents, may approve, certifying for and on behalf of the Company and not in their personal capacities, after having made due enquiry and having carefully examined the Offering Documents that:
- (i) since the earlier of the date of the Prospectus Supplement and any Supplemental Material, there has been no material change (actual, anticipated, contemplated or threatened) to the Company or the Specified Parties and none of the Company or either of the Specified Parties has entered into any transaction out of the ordinary course of business which is material to the Company other than as disclosed in the Supplemented Prospectus, any document incorporated by reference therein or any Supplemental Material;
  - (ii) except as contemplated by the Supplemented Prospectus or any document incorporated by reference therein, the Company has no contingent liabilities that are material to it;
  - (iii) there are no actions, suits, proceedings or inquiries pending or threatened against or affecting the Company at law or in equity or before or by any federal, provincial, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that may in any way materially adversely affect it;
  - (iv) no order, ruling or determination having the effect of ceasing or suspending trading in the Offered Shares or any other securities of the Company or prohibiting the sale of the Offered Shares has been issued and, to the best of the knowledge, information and belief of the persons signing the certificate, no proceedings for such purpose are pending or threatened;
  - (v) the Company has complied with all covenants and satisfied all terms and conditions of this Agreement on its part to be complied with or satisfied up to the Closing Time; and
  - (vi) the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Time with the same force and effect as if made at and as of the Closing Time after giving effect to the transactions contemplated by this Agreement;

- (f) the Agents shall have received at the Closing Time a comfort letter dated as of the Closing Date addressed to the Agents from the Company's auditors substantially in the form requested by the Lead Agent, on behalf of the Agents, acting reasonably, updating to a date within three business days of the Closing Date the comfort letter or letters to be delivered to the Agents pursuant to Section 7;
- (g) all actions required to be taken by the Company including all requisite filings with governmental authorities, Securities Commissions or courts will have occurred at or prior to the Closing Time so as to validly authorize the execution and filing of the Offering Documents and to create, issue and deliver the Offered Shares having the attributes contemplated by the Supplemented Prospectus;
- (h) the Offered Shares will have been approved for listing and posting for trading on the TSXV on the Closing Date, subject only to the Standard Listing Conditions; and
- (i) the Agents will have received such other certificates, agreements, materials or documents, in form and substance satisfactory to the Lead Agent, on behalf of the Agents, as the Lead Agent may reasonably request.

## 15. **Expenses**

- 15.1 Whether or not the transactions contemplated in this Agreement are completed, all costs and expenses of and incidental to the sale and issuance of the Offered Shares and incidental to all other matters in connection with the Offering shall be borne by the Company including, without limitation, the cost of preparation and printing of the Offering Documents and the Agents' reasonable requirements of commercial copies thereof, all reasonable costs and expenses in connection with the Agents' due diligence, including the Agents' reasonable travel expenses, all costs and expenses in connection with the preparation of agreements and documents required to complete the issuance and sale of the Offered Shares, the qualification of the Offered Shares for distribution to the public in all Qualifying Jurisdictions, all marketing expenses, including the Agents' reasonable travel expenses, the cost of meetings with proposed investors, brokers and dealers and the cost of all marketing consultants and materials authorized by the Company. The Company agrees to fully reimburse the Agents from time to time for all of their out-of-pocket expenses and the reasonable fees and disbursements of the Agents' legal counsel within 5 days of the receipt of one or more invoices. Notwithstanding the foregoing, the fees of the Agents' legal counsel (excluding disbursements and applicable taxes) to be reimbursed by the Company shall not exceed \$75,000; provided that if the Lead Agent, on behalf of the Agents, acting reasonably, determines that the Agents' counsel are required to complete additional due diligence outside the scope expected for an offering of this nature, any additional legal fees of the Agents' legal counsel for such additional due diligence review shall be borne by the Company in an amount to be negotiated in good faith by the Company and the Lead Agent.

## 16. **Closing**

- 16.1 The purchase and sale of the Agency Shares shall be completed at the offices of Blake, Cassels & Graydon LLP, Commerce Court West, Toronto, Ontario at the Closing Time on the Closing Date, or at such other place to which the Company and the Lead Agent, on behalf of the Agents, may agree.

- 16.2 At the Closing Time, the Company shall deliver to the Agents:
- (a) confirmation that the Agency Shares sold pursuant to the Offering at the Closing are registered in the name of CDS or its nominee in the Book-Entry Only System;
  - (b) the requisite legal opinions, certificates, comfort letters and other documents contemplated in Section 14;
  - (c) the Company's receipt for payment by the Agents of the aggregate purchase price for the Agency Shares sold pursuant to the Offering at the Closing; and
  - (d) such further documentation as may be contemplated herein or as counsel to the Agents or the applicable regulatory authorities may reasonably require,

against payment by the Agents to the Company of the aggregate purchase price for the Agency Shares sold pursuant to the Offering at the Closing Time, subject to Subsection 16.3.

- 16.3 At the same place and at the Closing Time, the Company shall pay to PI Financial, on behalf of the Agents, the Agents' Fee owing in respect of the Agency Shares purchased at the Closing and reimburse PI Financial, on behalf of the Agents, for any of their expenses as contemplated in Section 15 (other than legal expenses) for which invoices have been delivered by the Agents to the Company at least two days prior to the Closing Time, subject to any adjustment when such actual expenses are finally determined in accordance with Section 15 hereof, provided, however, that the payment of the Agents' Fee and expenses of the Agents pursuant to this Subsection 16.3 may, at the sole option of the Agents, be made by way of set-off against the payment to be made by the Agents to the Company of the aggregate purchase price for the Agency Shares sold pursuant to the Offering pursuant to Subsection 16.2.
- 16.4 All payments provided for in this Agreement shall be paid by wire transfer of immediately available funds to an account designated by the relevant recipient.
- 16.5 In order to facilitate an efficient and timely closing at the Closing Time and the Option Closing Time, the Agents may choose to initiate a wire transfer of funds to the Company prior to the Closing Time or the Option Closing Time, as the case may be. If the Agents do so, the Company agrees that such transfer of funds to the Company prior to the Closing Time or the Option Closing Time does not constitute a waiver by the Agents of any of the conditions of the Closing or the Option Closing set out in this Agreement. Furthermore, the Company agrees that any such funds received from the Agents prior to the Closing Time or the Option Closing Time, as the case may be, will be held by the Company in trust solely for the benefit of the Agents until the Closing Time or the Option Closing Time, as the case may be, and, if the Closing or the Option Closing, as the case may be, does not occur at the scheduled Closing Time or the Option Closing Time, as the case may be, such funds shall be immediately returned by wire transfer to PI Financial, on behalf of the Agents, without interest. Upon the satisfaction of the conditions of the Closing or the Option Closing, as the case may be, and the delivery to the Agents of the items set out in Clause 16.2(a) through (d) of this Agreement, the funds held by the Company in trust for the Agents shall be deemed to be delivered by the Agents to the Company in satisfaction of the obligation of the Agents under Subsection 16.2 of this Agreement and upon such

delivery the trust constituted by this Subsection 16.5 shall be terminated without further formality.

17. **Agents' Obligations**

17.1 The Company acknowledges and agrees that the Agents shall act as agents of the Company to procure Purchasers for the Agency Shares only and at no time shall the Agents have any obligation whatsoever to purchase any Agency Shares.

18. **Agents' Option**

18.1 In consideration of and subject to the purchase of the Agency Shares by the Purchasers, the Company hereby grants the Option to the Agents. The Option shall be exercisable, in whole or in part at any one time, on or before 5:00 p.m. (Toronto time) on the 30<sup>th</sup> day following the Closing Date or, if such day is not a Business Day, on the Business Day immediately preceding such day (the "**Option Expiry Date**"), by the Lead Agent, on behalf of the Agents, giving notice (the "**Option Notice**") to the Company in accordance with Section 21. If, and to the extent that, the Agents exercise the Option, subject to the terms and conditions of this Agreement, the Agents severally and not jointly and severally shall purchase from the Company and the Company shall sell to the Agents, at 8:00 a.m. (Toronto time) or any other time to which the Company and the Lead Agent, on behalf of the Agents, may agree (the "**Option Closing Time**") on the date of the closing of the sale of any Option Shares determined by the Lead Agent pursuant to Subsection 18.3 (the "**Option Closing Date**") the number of Option Shares indicated in the Option Notice at the Offering Price.

18.2 The Option may be exercised, in whole or in part at any one time up to and including the Option Expiry Date, by delivery by the Lead Agent, on behalf of the Agents, of written notice to the Company confirming the number of Option Shares in respect of which the Option is being exercised. In the event the Company shall subdivide, consolidate or otherwise change its Common Shares during the period during which the Option is exercisable, the number of Option Shares into which the Option is convertible shall be similarly subdivided, consolidated or changed such that the Agents would be entitled to receive the same number and type of securities that they would have otherwise been entitled to receive had they fully exercised such Option prior to such subdivision, consolidation or change. The subscription price shall be adjusted accordingly and notice shall be given to the Agents of such adjustment. In the event that the Agents shall disagree with the foregoing adjustment, such adjustment shall be determined conclusively by the Company's auditors at the Company's expense.

18.3 The Option Closing Date shall be determined by the Lead Agent, but shall not be earlier than two Business Days or later than five Business Days after the exercise of the Option and, in any event, shall not be earlier than the Closing Date and shall not be later than five Business Days following the Option Expiry Date.

18.4 Notwithstanding the foregoing, in all other respects, the applicable terms, conditions and provisions of this Agreement shall apply *mutatis mutandis* to the Option Closing Date and the Option Shares.

19. **Representative of Agents**

- 19.1 The Lead Agent is hereby authorized by the Agents to act on their behalf and the Company shall be entitled to and shall act on any notice given in accordance with Section 21 or any agreement entered into by or on behalf of the Agents by the Lead Agent, which represents and warrants that they have irrevocable authority to bind the Agents, except in respect of any consent to a settlement pursuant to Section 13 which consent shall be given by the Indemnified Party, a notice of termination pursuant to Section 12 which notice may be given by any of the Agents, or any waiver of Subsection 12.5, which waiver must be signed by all of the Agents. The Lead Agent shall consult with the other Agents concerning any matter in respect of which it acts as representative of the Agents.

20. **Agents' Disclosure**

- 20.1 GMP Securities L.P., or an affiliate thereof, owns or controls an equity interest in TMX Group Limited ("**TMX Group**") and/or has a nominee director serving on the TMX Group's board of directors. As such, such investment dealer may be considered to have an economic interest in the listing of securities on any exchange owned or operated by TMX Group, including the Toronto Stock Exchange, the TSXV and the Alpha Exchange. No person or company is required to obtain products or services from TMX Group or its affiliates as a condition of any such dealer supplying or continuing to supply a product or service. The Company confirms and acknowledges that the decision to list the Offered Shares on the TSXV was made by the Company. GMP Securities L.P. did and does not require the Company to list the Offered Shares on the TSXV as a condition of GMP Securities L.P.'s supplying or continuing to supply underwriting and/or any other services.

21. **Notices**

- 21.1 Any notice to be given hereunder shall be in writing and shall be given by personal delivery or electronic delivery as follows,

- (a) To the Company:

Pender Growth Fund Inc.  
1066 West Hastings Street, Suite 1640  
Vancouver, British Columbia V6E 3X1

Attention: David Barr  
Email: [dbarr@penderfund.com](mailto:dbarr@penderfund.com)

With a copy to:

Bennett Jones LLP  
1066 West Hastings Street, Suite 2600  
Vancouver, British Columbia V6E 3X1

Attention: Lisa Stewart  
Email: [stewartl@bennettjones.com](mailto:stewartl@bennettjones.com)

- (b) To the Agents or the Lead Agent:

PI Financial Corp.  
40 King Street West, Suite 3401  
Toronto, Ontario M5H 3Y2

Attention: Timothy Johnston  
Email: [tjohnston@pifinancial.com](mailto:tjohnston@pifinancial.com)

With a copy to:

Blake, Cassels & Graydon LLP  
Commerce Court West  
199 Bay Street, Suite 4000  
Toronto, Ontario M5L 1A9

Attention: Stacy McLean  
Email: [stacy.mclean@blakes.com](mailto:stacy.mclean@blakes.com)

21.2 The Company and the Agents may change their respective addresses for notices by notice given in the manner aforesaid.

22. **Time of Essence**

22.1 Time is of the essence in this Agreement.

23. **Representations, Warranties and Agreements Survive Closing**

23.1 The representations, warranties, obligations and agreements herein contained and in any certificate delivered pursuant to this Agreement shall survive the purchase by Purchasers or by the Agents of the Offered Shares and shall continue in full force and effect unaffected by any subsequent disposition of the Offered Shares or the termination of the Agents' obligations and shall not be limited or prejudiced by any investigation made by or on behalf of the Agents in connection with the preparation of any Offering Document or the distribution of the Offered Shares.

24. **Miscellaneous**

24.1 This Agreement may be executed in any number of counterparts, each of which when delivered shall be deemed to be an original and all of which together shall constitute one and the same document. This Agreement and any counterparts thereof may be delivered electronically by email and when so delivered shall be deemed to be an original.

If the foregoing is in accordance with your understanding, will you please confirm your acceptance by signing the enclosed copies in the place indicated and by returning the same to us, whereupon this letter as so accepted will constitute a binding agreement among the parties.

The foregoing is in accordance with our understanding and is agreed to this 6th day of May, 2019.

**PI FINANCIAL CORP.**

By: "Timothy Johnston"  
Name: Timothy Johnston  
Title: Managing Director, Equity Capital  
Markets

**CANACCORD GENUITY CORP.**

By: "Michael Shuh"  
Name: Michael Shuh  
Title: Managing Director, Investment Banking

**GMP SECURITIES L.P.**

By: "Paul Bissett"  
Name: Paul Bissett  
Title: Director, Investment Banking

**RAYMOND JAMES LTD.**

By: "J. Graham Fell"  
Name: J. Graham Fell  
Title: Senior Managing Director

The foregoing is in accordance with our understanding and is agreed to this 6th day of May, 2019.

**PENDER GROWTH FUND INC.**

By: "David Barr"  
Name: David Barr  
Title: Chief Executive Officer