

SHARE PURCHASE AGREEMENT

BETWEEN

EACH PERSON IDENTIFIED AS A “SELLER” IN SCHEDULE A

– and –

KRAKEN ROBOTIC SYSTEMS INC.

– and –

KRAKEN ROBOTICS INC.

– and –

PGH CAPITAL INC.

JULY 20, 2021

TABLE OF CONTENTS

Page

ARTICLE 1 INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Certain Rules of Interpretation	16
1.3 Governing Law.....	17
1.4 Entire Agreement.....	17
1.5 Schedules and Exhibits.....	17
ARTICLE 2 PURCHASE AND SALE.....	18
2.1 Agreement of Purchase and Sale	18
2.2 Purchase Price	18
2.3 Allocation of Payments	18
2.4 Payment of Purchase Price.....	18
2.5 Payment of Earn-Out Consideration	19
2.6 Consideration Shares	19
2.7 Payout of ACOA Indebtedness	20
2.8 Guarantee by Parent.....	20
ARTICLE 3 REPRESENTATIONS AND WARRANTIES	20
3.1 Disclosure Letter	20
3.2 Representations Relating to the Sellers	21
3.3 Representations Relating to the Corporation and Subsidiaries	23
3.4 Representations Relating to the Buyer.....	43
ARTICLE 4 COVENANTS.....	44
4.1 Conduct of Business Before Closing.....	44
4.2 Leakage Covenants and Leakage Claims	45
4.3 Access for Investigation	46
4.4 Consents Under Material Contracts	46
4.5 Actions to Satisfy Closing Conditions.....	46
4.6 Notification of Change.....	46
4.7 Exclusivity.....	47
4.8 Personal Information.....	47
4.9 Indemnification and Directors' and Officers' Insurance.....	48
4.10 Delivery of Books and Records	48
4.11 Tax Returns	48
4.12 Restrictive Covenants—ITA 56.4	49
ARTICLE 5 CLOSING CONDITIONS.....	49
5.1 Conditions for the Benefit of the Buyer and the Parent.....	49
5.2 Conditions for the Benefit of the Sellers	50
5.3 Mutual Conditions Precedent.....	51
ARTICLE 6 CLOSING ARRANGEMENTS	52
6.1 Closing.....	52

TABLE OF CONTENTS

(continued)

Page

6.2	Closing Deliveries	52
ARTICLE 7 TERMINATION		52
7.1	Termination Rights.....	52
7.2	Effect of Termination.....	53
ARTICLE 8 INDEMNIFICATION AND SURVIVAL		53
8.1	Indemnification by the Sellers	53
8.2	Indemnification by the Buyer.....	54
8.3	Survival Periods for Claims by Buyer Indemnified Parties	54
8.4	Survival Periods for Claims by Seller Indemnified Parties	55
8.5	Amount Limitations on Indemnification Obligations	55
8.6	Rules Relating to Indemnification Obligations	56
8.7	Notice of Indemnity Claims	57
8.8	Procedure for Direct Claims	58
8.9	Procedure for Third Party Claims	58
8.10	Payment of Claims.....	59
8.11	Indemnity Adjustments to Purchase Price.....	60
8.12	Exclusive Remedy	60
8.13	Third Party Indemnification	60
ARTICLE 9 GENERAL.....		61
9.1	The Sellers' Representative	61
9.2	Conduct of the Business after Closing	61
9.3	Time of Essence	62
9.4	Notices.....	62
9.5	Severability	63
9.6	Submission to Jurisdiction.....	63
9.7	Amendment and Waiver	64
9.8	Further Assurances.....	64
9.9	Assignment and Enurement.....	64
9.10	Creation and Use of Electronic Document	64
9.11	Electronic Signatures and Delivery	64
9.12	Counterparts.....	65
9.13	Costs and Expenses	65
9.14	Payment and Currency	65
9.15	Public Announcements	65
9.16	Equitable Remedies.....	65
9.17	No <i>Contra Proferentem</i>	66
9.18	Independent Legal Advice.....	66
9.19	Third Party Beneficiaries	66

SHARE PURCHASE AGREEMENT

THIS AGREEMENT is dated as of July 20, 2021

B E T W E E N :

Each Person identified as a “Seller” in Schedule A

(each, a “**Seller**” and, collectively, the “**Sellers**”)

- and -

KRAKEN ROBOTIC SYSTEMS INC., a corporation existing under the federal laws of Canada

(the “**Buyer**”)

- and –

KRAKEN ROBOTICS INC., a corporation existing under the federal laws of Canada

(the “**Parent**”)

- and -

PGH CAPITAL INC., a corporation existing under the laws of the Province of Newfoundland and Labrador

(the “**Corporation**”)

CONTEXT:

- A.** The Sellers collectively own all of the issued and outstanding shares in the capital of the Corporation.
- B.** The Sellers want to sell to the Buyer and the Buyer wants to purchase from the Sellers all of the issued and outstanding shares in the capital of the Corporation.

THEREFORE, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- 1.1.1 “**ACOA**” means the Atlantic Canada Opportunities Agency.

- 1.1.2 “**ACOA Indebtedness**” means all indebtedness owing by the Corporation or any Subsidiary to ACOA including, without limitation, pursuant to Contribution Agreements between ACOA and PanGeo Canada in respect of ACOA Project Nos. 195230 and 215523.
- 1.1.3 “**Affiliate**” means an affiliate as that term is defined in the *Corporations Act* (Newfoundland and Labrador).
- 1.1.4 “**Agreement**” means this agreement, including all Schedules and Exhibits, as it may be confirmed, amended, supplemented or restated by written agreement between the Parties.
- 1.1.5 “**AML Laws**” means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and all regulations under that Act.
- 1.1.6 “**Arm’s Length**” means arm’s length as that term is interpreted in connection with its use in the ITA.
- 1.1.7 “**ASPE**” means Canadian generally accepted accounting principles applicable on the date of the relevant preparation or calculation or on the date of the relevant financial statements or records, including the standards applicable to private enterprises under Part II of the CPA Handbook of the Chartered Professional Accountants of Canada.
- 1.1.8 “**Books and Records**” means all books, ledgers, files, lists, reports, plans, logs, deeds, surveys, correspondence, operating records, Tax Returns and other data and information, including all data and information stored on computer-related or other electronic media, of and related to the Corporation, any Subsidiary or the Business of the Corporation or any Subsidiary.
- 1.1.9 “**Business**” means, with respect to the Corporation and the Subsidiaries, the business of providing marine geophysical-geotechnical service in high resolution 3D imaging solutions to identify geohazards in the seabed.
- 1.1.10 “**Business Day**” means any day excluding a Saturday, Sunday or statutory holiday in the Province of Newfoundland and Labrador or the Province of Ontario.
- 1.1.11 “**Buyer**” is defined in the recital of the Parties above.
- 1.1.12 “**Buyer Indemnified Parties**” means the Buyer, the Parent, the Corporation, their respective Affiliates, and their respective directors, officers, shareholders, agents and employees, and the respective Successors of each of them.
- 1.1.13 “**CFPOA**” means the Corruption of Foreign Public Officials Act (Canada).
- 1.1.14 “**Claim**” means any claim, demand, action, cause of action, suit, arbitration, investigation, proceeding, complaint, grievance, charge, prosecution, assessment or reassessment, including any appeal or application for review.
- 1.1.15 “**Claim Amount**” is defined in Section 8.10.1.
- 1.1.16 “**Claim Dispute Period**” is defined in Section 8.8.1.
- 1.1.17 “**Closing**” means the completion of the sale to, and purchase by, the Buyer of the Purchased Shares under this Agreement.

- 1.1.18 “**Closing Date**” means such date as the Parties may agree is the date upon which the Closing will take place.
- 1.1.19 “**Communication**” means any notice, demand, request, consent, approval or other communication that is required or permitted by this Agreement to be given or made by a Party.
- 1.1.20 “**Competition Act**” means the *Competition Act* (Canada).
- 1.1.21 “**Confidentiality Agreement**” means the Mutual Non-Disclosure Agreement dated between the Sellers, the Corporation and the Buyer dated as of April 23, 2019.
- 1.1.22 “**Consideration Shares**” means common shares of the Parent to be issued to the Sellers pursuant to Article 2.
- 1.1.23 “**Constating Documents**” means:
- 1.1.23.1 in respect of the Corporation, the certificate and articles of incorporation of the Corporation dated March 1, 2018, the by-laws of the Corporation dated April 12, 2018, and the unanimous shareholder agreement between the Corporation and its shareholders dated May 28, 2018;
 - 1.1.23.2 in respect of PanGeo Canada, the certificate and articles of amalgamation of PanGeo Canada dated August 16, 2006, certificate of amendment dated September 29, 2006 and articles of amendment dated September 26, 2006, certificate of amendment dated July 29, 2009 and articles of amendment dated July 29, 2009, certificate and articles of amendment dated July 30, 2009, certificate and articles of amendment dated February 28, 2011, certificate of amendment dated October 18, 2012 and articles of amendment dated October 16, 2012, certificate of amendment dated March 28, 2013 and articles of amendment dated March 27, 2013, certificate and articles of amendment dated March 9, 2015 and the by-laws dated August 16, 2006;
 - 1.1.23.3 in respect of PanGeo Scotland, the certificate of incorporation dated December 8, 2009, the memorandum of association dated December 7, 2009 and the articles of association dated August 15, 2011.
- 1.1.24 “**Contract**” means any agreement, understanding, undertaking, commitment, licence or lease, whether written or oral.
- 1.1.25 “**Corporation**” is defined in the recital of the Parties above.
- 1.1.26 “**D&O Insurance**” is defined in Section 4.9.2.
- 1.1.27 “**De Minimis Amount**” means \$25,000.
- 1.1.28 “**Direct Claim**” means an Indemnity Claim that does not arise as the result of a Third Party Claim.
- 1.1.29 “**Disclosure Letter**” means the “disclosure letter” from the Sellers dated the date hereof including all schedules, exhibits and appendices thereto.

- 1.1.30 **“Earn-Out Consideration”** means the First Earn-Out Amount and the Second Earn-Out Amount, in each case to the extent payable pursuant to the terms of this Agreement.
- 1.1.31 **“Employees”** means all personnel and independent contractors employed, engaged or retained by the Corporation or any Subsidiary in connection with its Business, including any that are on medical or long-term disability leave, or other statutory or authorized leave of absence.
- 1.1.32 **“Encumbrance”** means any security interest, mortgage, charge, pledge, hypothec, lien, restriction, option, adverse claim or other encumbrance of any kind other than a Permitted Encumbrance.
- 1.1.33 **“Environment”** means the ambient air, all layers of the atmosphere, all water including surface water and underground water, all land, all living organisms and the interacting natural systems that include components of air, land, water, living organisms and organic and inorganic matter, and includes indoor spaces.
- 1.1.34 **“Environmental Laws”** means any Laws relating to the Environment and protection of the Environment, the regulation of chemical substances or products, health and safety including occupational health and safety, and the transportation of dangerous goods.
- 1.1.35 **“ETA”** means Part IX of the *Excise Tax Act* (Canada).
- 1.1.36 **“Exchange”** means the TSX Venture Exchange or such other recognized stock exchange on which the common shares of the Parent may, at the relevant time, be listed for trading.
- 1.1.37 **“Financial Statements”** means:
- 1.1.37.1 the unaudited consolidated financial statements of the Corporation as at and for the year ended December 31, 2020; and
 - 1.1.37.2 the unaudited consolidated financial statements of the Corporation as at and for the four-month period ended April 30, 2021,
- in each case prepared in accordance with ASPE applied on a consistent basis and together with their associated notes.
- 1.1.38 **“First Earn-Out Amount”** is defined in Section 2.4.2.
- 1.1.39 **“Fundamental Representations and Warranties”** means the representations and warranties in Sections 3.2.1 (*Corporate Existence of Seller*), 3.2.2 (*Capacity and Authority*), 3.2.3 (*Binding Obligation*), 3.2.4 (*Title to Purchased Shares*), 3.2.6 (*Absence of Conflict*), 3.3.1 (*Capacity and Authority*), 3.3.2 (*Binding Obligation*), 3.3.3 (*Restrictive Covenants*), 3.3.4 (*Absence of Conflict*), 3.3.9 (*Corporate Existence of Corporation*), 3.3.11 (*Capacity and Powers of Corporation*), 3.3.13 (*Authorized and Issued Capital*), 3.3.14 (*No Purchase Rights*), 3.3.23 (*Title to Assets*) and 3.3.46 (*Brokerage Fees*).
- 1.1.40 **“Governmental Authority”** means:
- 1.1.40.1 any federal, provincial, state, local, municipal, regional, territorial, aboriginal, or other government, governmental or public department, branch, ministry, or court, domestic or foreign, including any district, agency, commission, board, arbitration panel or authority and any subdivision of any of them exercising or entitled to

exercise any administrative, executive, judicial, ministerial, prerogative, legislative, regulatory, or taxing authority or power of any nature; and

1.1.40.2 any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of them, and any subdivision of any of them.

1.1.41 “**Hazardous Substance**” means any substance, waste, liquid, gaseous or solid matter, fuel, micro-organism, sound, vibration, ray, heat, odour, radiation, energy vector, plasma, organic or inorganic matter that is or is deemed to be, alone or in any combination, hazardous, hazardous waste, solid or liquid waste, toxic, a pollutant, a deleterious substance, a contaminant or a source of pollution or contamination, regulated by any Environmental Laws.

1.1.42 “**IFRS**” means Canadian generally accepted accounting principles applicable on the date of the relevant preparation or calculation or on a date of the relevant financial statements or records, including the standards applicable to publicly accountable enterprises under Part I of the CPA Canada Handbook of the Chartered Professional Accountants of Canada.

1.1.43 “**Indebtedness**” means for the purposes of Section 3.3.22 and Section 4.1.4, with respect to the Corporation and the Subsidiaries, any liability (contingent or otherwise) relating to:

1.1.43.1 indebtedness issued or incurred for borrowed money (whether by loan or the issuance and sale of debt securities or the sale of property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such property from such other Person), whether current, short term or long term, or secured or unsecured;

1.1.43.2 obligations to pay deferred purchase or deferred acquisition price of property or services, other than trade accounts payable arising, and accrued expenses incurred, in the ordinary course of business and consistent with past practices;

1.1.43.3 capital lease obligations (determined in accordance with ASPE), whether short term or long term;

1.1.43.4 liabilities secured by any Encumbrance on any property owned or leased by the Corporation and the Subsidiaries;

1.1.43.5 any indebtedness evidenced by any note, bond, debenture mortgage or other debt instrument or debt security and any liabilities under any letters of credit, performance bonds, bankers acceptances or similar obligations;

1.1.43.6 all interest, prepayment penalties, fees and other expenses owed with respect to indebtedness described in the foregoing clauses 1.1.43.1 through 1.1.43.5; and

1.1.43.7 all indebtedness of the type referred to in the foregoing clauses 1.1.43.1 through 1.1.43.5 which is directly or indirectly guaranteed by the Corporation or its Subsidiaries (including guarantees in the form of an agreement to repurchase or reimburse and intercompany debts and guarantees) whether or not the respective indebtedness so secured has been assumed by the Corporation or the Subsidiaries.

For clarity, the definition of “Indebtedness” shall not include payments due for goods and services provided to the Corporation and the Subsidiaries in the ordinary course, or vehicle leases, property leases, or other leases entered into in the ordinary course.

- 1.1.44 “**Indemnified Party**” means a Buyer Indemnified Party or a Seller Indemnified Party.
- 1.1.45 “**Indemnifying Party**” means the Party providing indemnification under any provision of Article 8.
- 1.1.46 “**Indemnity Claim**” is defined in Section 8.7.
- 1.1.47 “**Indemnity Notice**” is defined in Section 8.7.
- 1.1.48 “**Insurance Policies**” means the insurance policies maintained by each of the Corporation and the Subsidiaries with respect to its Business.
- 1.1.49 “**Intellectual Property**” means:
 - 1.1.49.1 trademarks, design marks, logos, service marks, certification marks, official marks, trade names, business names, corporate names, trade dress, distinguishing guises, slogans, meta tags, keywords, adwords and other characters, brand elements or other distinguishing features used in association with wares or services, whether or not registered or the subject of an application for registration and whether or not registrable, and associated goodwill (“**Trademarks**”);
 - 1.1.49.2 inventions, arts, processes, machines, articles of manufacture, compositions of matter, business methods, formulae, developments and improvements, whether or not patented or the subject of an application for patent and whether or not patentable, methods and processes for making any of them, and related documentation (whether in written or electronic form) and know-how (“**Inventions**”);
 - 1.1.49.3 software in source code or object code form, documentation, literary works, artistic works, pictorial works, graphic works, musical works, dramatic works, audio-visual works, performances, sound recordings and signals, including their content, and any compilations of any of them, whether or not registered or the subject of an application for registration, or capable of being registered (“**Works**”);
 - 1.1.49.4 domain names, whether registered primary domain names or secondary or other higher level domain names (“**Domain Names**”);
 - 1.1.49.5 industrial designs and all variants of industrial designs, whether or not registered or the subject of an application for registration and whether or not registrable (“**Designs**”); and
 - 1.1.49.6 trade secrets, technical expertise, and research data and other confidential information relating to goods and services.
- 1.1.50 “**Intellectual Property Rights**” means:
 - 1.1.50.1 any common law principle or statutory provision that may provide a right in Intellectual Property, including all:

- 1.1.50.1.1 common law rights and registrations, pending applications for registration and rights to file applications for the Trademarks, including all rights of priority;
- 1.1.50.1.2 patents, pending patent applications and rights to file applications for the Inventions, including all rights of priority and rights in continuations, continuations-in-part, divisions, reissues, renewals, re-examinations, exclusions and other derivative applications and patents;
- 1.1.50.1.3 copyrights in Works and all registrations, pending applications for registration and rights to file applications for Works and all moral rights and benefits of waivers of moral rights in Works;
- 1.1.50.1.4 registrations, pending applications for registration and rights to file applications for registration of Domain Names and all other common law and statutory rights in Domain Names; and
- 1.1.50.1.5 industrial design rights, design patents, design registrations, pending patent and design applications and rights to file applications for Designs, including all rights of priority and rights in continuations, continuations-in-part, divisions, re-examinations, reissues and other derivative applications;
- 1.1.50.2 all rights in licences, sub-licences, franchise agreements, waivers and other contractual rights in any of the items listed in Section 1.1.50.1; and
- 1.1.50.3 all rights to enforce the rights and obtain remedies for a violation of any of the rights listed in Sections 1.1.50.1 and 1.1.50.2.
- 1.1.51 “**International Jurisdiction**” is defined in Section 3.2.11.1.
- 1.1.52 “**Inventories**” means all inventories of every kind owned by each of the Corporation and the Subsidiaries and pertaining to its Business.
- 1.1.53 “**Investment Canada Act**” means the *Investment Canada Act* (Canada).
- 1.1.54 “**ITA**” means the *Income Tax Act* (Canada).
- 1.1.55 “**Key Employees**” means [REDACTED].
- 1.1.56 “**Knowledge of the Corporation**” or any other similar knowledge qualification, means (i) the knowledge that [REDACTED] either has, or would have obtained, after having made or caused to be made all reasonable inquiries necessary to obtain informed knowledge, including inquiries of the records of the Corporation and its Subsidiaries and of any Employees who are reasonably likely to have knowledge of the relevant matter; and (ii) the knowledge that [REDACTED] either has, or would have obtained, after having made or caused to be made all reasonable inquiries necessary to obtain informed knowledge in respect of the Corporation, but not its Subsidiaries, including inquiries of the records of the Corporation.
- 1.1.57 “**Law**” or “**Laws**” means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, judicial or arbitral or administrative or ministerial or

departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and the terms and conditions of any grant of approval, permission, authority or licence of any Governmental Authority.

1.1.58 **“Leakage”** means each and any of the following:

- 1.1.58.1 any dividend or other distribution (whether in cash or in specie) declared, paid or made by the Corporation or any of the Subsidiaries to any Seller or a Related Person;
- 1.1.58.2 any payment by the Corporation or any of the Subsidiaries to any Seller or a Related Person for the purchase, redemption or repayment of any shares, loan capital or other securities of the Corporation or any of the Subsidiaries, or any other return of capital to any Seller or a Related Person;
- 1.1.58.3 the Corporation or any of the Subsidiaries paying, incurring or otherwise assuming liability for any fees, costs or expenses in connection with the transaction contemplated by this Agreement (including professional advisers’ fees, consultancy fees, transaction bonuses, finders’ fees, brokerage or other commission);
- 1.1.58.4 any payment of any other nature made by the Corporation or any of the Subsidiaries to or for the benefit of any Seller or a Related Person (including royalty payments, management fees, monitoring fees, interest payments, loan payments, service or directors’ fees, bonuses or other compensation of any kind);
- 1.1.58.5 any transfer or surrender of assets, rights or other benefits by the Corporation or any of the Subsidiaries to or for the benefit of any Seller or a Related Person;
- 1.1.58.6 the Corporation or any of the Subsidiaries assuming or incurring any liability or obligation for the benefit of any Seller or a Related Person;
- 1.1.58.7 the provision of any guarantee or indemnity or the creation of any Encumbrance by the Corporation or any of the Subsidiaries in favour, or for the benefit, of any Seller or a Related Person;
- 1.1.58.8 any waiver, discount, deferral, release or discharge by the Corporation or any of the Subsidiaries of:
 - 1.1.58.8.1 any amount, obligation or liability owed to it by any Seller or a Related Person; or
 - 1.1.58.8.2 (ii) any claim (howsoever arising) against any Seller or a Related Person; or
- 1.1.58.9 amount of any customer prepayments as at the Locked-Box Accounts Date in proportion to the degree by which the underlying deliverable has not yet been completed;
- 1.1.58.10 any agreement, arrangement or other commitment by the Corporation or any of the Subsidiaries to do or give effect to any of the matters referred to in paragraphs 1.1.58.1 to 1.1.58.8 (inclusive).

- 1.1.59 **“Leakage Claim”** means a claim for any breach of Section 4.2.
- 1.1.60 **“Leased Premises”** means all of the lands and premises that are leased by the Corporation or any Subsidiary.
- 1.1.61 **“Licence Agreements”** is defined in Section 3.3.27.7.
- 1.1.62 **“Licensed IP”** means the Intellectual Property and Intellectual Property Rights owned by Persons other than the Corporation or any Subsidiary and that the Corporation or any Subsidiary uses or intends to use, including Intellectual Property owned by those Persons relating to the Technology and the Technical Information.
- 1.1.63 **“Locked-Box Accounts”** means the unaudited consolidated balance sheet, the unaudited consolidated statement of retained earnings, the unaudited consolidated income statement and the unaudited consolidated statement of changes in financial position of the Corporation and the Subsidiaries (including any notes thereon) for the period of twelve (12) months ended on the Locked-Box Accounts Date (a copy of which is attached as Section 1.1.63 of the Disclosure Letter).
- 1.1.64 **“Locked-Box Accounts Date”** means December 31, 2020.
- 1.1.65 **“Loss”** means any loss, liability, damage, cost, expense, charge, fine, penalty or assessment, including:
- 1.1.65.1 the costs and expenses of any action, suit, proceeding, demand, assessment, judgment, settlement or compromise;
 - 1.1.65.2 all interest, fines and penalties; and
 - 1.1.65.3 all reasonable professional fees and disbursements.
- 1.1.66 **“Material Adverse Effect”** means any effect, event, change, occurrence or state of facts that, individually or in the aggregate with other effects, events, changes, occurrences or states of facts, is, or could reasonably be expected to be, material and adverse to:
- 1.1.66.1 the business, condition (financial or otherwise), properties, assets (tangible or intangible), liabilities (contingent or otherwise), capitalization, operations or results of operations of the Corporation and the Subsidiaries, taken as a whole; or
 - 1.1.66.2 the ability of the Sellers to consummate the transactions contemplated by this Agreement on a timely basis,

and provided that (A) references in this Agreement to dollar amounts are not intended to be, and will not be deemed to be, illustrative or interpretive for purposes of determining whether a Material Adverse Effect has occurred; and (B) “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Corporation or any of its Subsidiaries operates; (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing

interest rates; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of the Buyer; (vi) any matter of which the Buyer is aware on the date hereof; (vii) any changes in applicable Laws or accounting rules (including ASPE); (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Corporation or its Subsidiaries; (ix) any natural or man-made disaster or acts of God; or (x) any failure by the Corporation and its Subsidiaries to meet any internal or published projections, forecasts or revenue or earnings predictions, provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded, provided that, in each case, such event, change or action does not affect the Corporation or any of its Subsidiaries in a substantially disproportionate manner.

1.1.67 **“Material Contract”** means a Contract to which the Corporation or a Subsidiary is a party or is bound that:

- 1.1.67.1 involves or may result in the payment of money or money’s worth by or to the Corporation or a Subsidiary in an amount in excess of \$50,000;
- 1.1.67.2 is with a Material Customer or Material Supplier;
- 1.1.67.3 has an unexpired term of more than two (2) years (including renewals);
- 1.1.67.4 cannot be terminated by the Corporation or a Subsidiary without penalty upon less than sixty (60) days’ notice; is a lease, sublease or other Contract for the leasing, use or occupancy of real property or other right pursuant to which the Corporation uses or possesses any personal property;
- 1.1.67.5 is with or for the material benefit of, any Related Person, including any Contract providing for the furnishing of services by, rental of real or personal property from or otherwise requiring payments to or for the benefit of any Related Person, but excluding any Contract that terminates or expires in its entirety as of the Closing without liability on the part of the Corporation;
- 1.1.67.6 grants rights to license, market, distribute, sell or deliver any product or service;
- 1.1.67.7 contemplates any exclusive relationship between the Corporation and any other Person;
- 1.1.67.8 engages any Person as a reseller, distributor, sales representative involved in the marketing, sale or solicitation of orders for any product or service;
- 1.1.67.9 relates to any joint venture, strategic alliance, partnership or sharing of profits, revenue or proprietary information or similar arrangement;
- 1.1.67.10 relates to any transaction in which the Corporation acquired any securities or assets of another Person or otherwise acquired the rights to any product or any Owned IP;
- 1.1.67.11 relates to the acquisition, transfer, development or sharing of any Intellectual Property or Intellectual Property Rights (including any joint development agreement, technical collaboration agreement or similar agreement entered into

by the Corporation) other than Contracts for off-the-shelf software, outbound licenses or Contracts pursuant to which Employees have assigned Intellectual Property Rights to the Corporation;

- 1.1.67.12 provides for or otherwise contemplates (i) the sale or other disposition of any of the assets of the Corporation, or (ii) the grant to any Person of any rights to purchase any of the assets of the Corporation, other than in the ordinary course of business,
 - 1.1.67.13 is an outstanding power of attorney executed by or on behalf of the Corporation;
 - 1.1.67.14 provides for indemnification of any current, former or future officer, director, employee or agent of the Corporation;
 - 1.1.67.15 involves any loan, guaranty, pledge, performance or completion bond or indemnity or surety arrangement or otherwise relating to the incurrence, assumption or guarantee of any indebtedness by the Corporation or imposing a Encumbrance on any of the assets of the Corporation;
 - 1.1.67.16 is a Contract with any Governmental Authority;
 - 1.1.67.17 grants most-favored customer pricing, rights of first refusal or similar rights or terms to any Person in respect of any product;
 - 1.1.67.18 imposes any restriction on the Corporation (i) to engage in any line of business (including in any territory), (ii) to develop or distribute any technology (other than Licensed IP), (iii) to make use of any Owned IP, (iv) to compete with any Person in any line of business or territory, (v) to acquire any product or other asset or any services from any other Person, sell any product or other asset to or perform any services for any other Person, or transact business or deal in any other manner with any other Person, including any Contract that contains any exclusive, minimum purchase or sale, "most favored nation" or "most favored customer" or similar provision or terms, or (vi) to solicit or hire any prospective employee, consultant, or contractor; or
 - 1.1.67.19 the termination of which, or under which the loss of rights, would have a material and adverse effect on the business, condition (financial or otherwise), properties, assets (tangible or intangible), liabilities (contingent or otherwise), capitalization, operations, prospects or results of operations of the Corporation and the Subsidiaries, taken as a whole.
- 1.1.68 **"Originating Persons"** means all current and former employees, officers, directors and consultants of the Corporation or any Subsidiary, including, in the case of a consultant that is not an individual, all employees, officers, directors, shareholders and partners of the consultant.
- 1.1.69 **"Outside Date"** means thirty (30) days after the date of this Agreement.
- 1.1.70 **"Owned IP"** means all Intellectual Property that is owned by the Corporation or any Subsidiary, including Intellectual Property relating to the Technology and the Technical Information, and all Intellectual Property Rights that are owned or enforceable by the Corporation or any Subsidiary.

- 1.1.71 **“PanGeo Canada”** means PanGeo Subsea Inc.
- 1.1.72 **“PanGeo Scotland”** means PanGeo Subsea Scotland Limited.
- 1.1.73 **“Parent”** is defined in the recital of the Parties above.
- 1.1.74 **“Parent Financing”** is defined in Section 5.1.5.
- 1.1.75 **“Parties”** means the Sellers, the Corporation, the Buyer and the Parent, collectively, and **“Party”** means any one of them.
- 1.1.76 **“Permits”** means the authorizations, registrations, permits, certificates of approval, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to the Intellectual Property) issued or granted by any Governmental Authority to the Corporation or any Subsidiary.
- 1.1.77 **“Permitted Encumbrance”** means each and any of the following:
 - 1.1.77.1 statutory Encumbrances for current Taxes, special assessments or other governmental charges not yet due and payable or delinquent or, if overdue, are being contested diligently and in good faith by appropriate proceedings and for which appropriate accruals have been established in the Financial Statements in accordance with ASPE applied on a consistent basis;
 - 1.1.77.2 statutory liens and deposits or pledges made in connection with, or to secure payment of, worker’s compensation, employment insurance, Canada Pension Plan programs mandated under Law and for which appropriate accruals have been established in accordance with ASPE applied on a consistent basis;
 - 1.1.77.3 restrictions on the transfer of securities arising under Law or under the Articles;
 - 1.1.77.4 the rights of counterparties under the Contracts;
 - 1.1.77.5 undetermined or inchoate Encumbrances imposed or permitted by Law and incurred in the ordinary course and in the operation of the Business, such as builder’s liens, construction liens, materialmen’s liens and other liens, privileges or other charges of a similar nature that relate to obligations not due or delinquent or, if due and delinquent, are being contested diligently and in good faith by appropriate proceedings;
 - 1.1.77.6 security given in the ordinary course to a public utility or any municipality or governmental or public authority in connection with the operation of the Business;
 - 1.1.77.7 all encroachments, overlaps, overhangs, unrecorded servitudes and easements, variations in area or measurement, rights of parties in possession, lack of access or any other matters not of record that would be disclosed by an accurate survey or physical inspection of the real property leased by the Corporation or its Subsidiaries and that do not materially interfere with or affect the value or operation of the Business as currently carried on at such real property; and
 - 1.1.77.8 Encumbrances listed in Schedule 1.1.77.8 of the Disclosure Letter.

- 1.1.78 **“Permitted Leakage”** means each and any of the following:
- 1.1.78.1 payments described in Schedule 1.1.78 made (or to be made) by the Corporation or any of the Subsidiaries to any Seller or any Related Person of a Seller;
 - 1.1.78.2 any payments made (or to be made) by the Corporation or any of the Subsidiaries that have been specifically accrued or provided for in the Locked-Box Accounts;
 - 1.1.78.3 any payments in respect of salaries, directors’ fees, pension contributions, expenses or bonuses made to, or in respect of services provided by, employees, workers, directors, officers or consultants of the Corporation or any of the Subsidiaries that are made (or to be made) by the Corporation or any of the Subsidiaries in the ordinary course of business and in accordance with the terms of the related employment or consulting contract; and
 - 1.1.78.4 any other payment, accrual, transfer of assets or assumption of liability by the Corporation or any of the Subsidiaries that the Buyer has expressly approved in writing.
- 1.1.79 **“Person”** will be broadly interpreted and includes:
- 1.1.79.1 a natural person, whether acting in their own capacity, or in their capacity as executor, administrator, estate trustee, trustee or personal or legal representative, and the heirs, executors, administrators, estate trustees, trustees or other personal or legal representatives of a natural person;
 - 1.1.79.2 a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind; and
 - 1.1.79.3 a Governmental Authority.
- 1.1.80 **“Personal Information”** means information about an individual who can be identified by the Person who holds that information.
- 1.1.81 **“Plans”** means all employee benefit plans, programs, agreements or arrangements, whether domestic or foreign, formal or informal, written or unwritten, funded or unfunded, registered or unregistered, insured or self-insured, and whether covering one person or more than one person, including all:
- 1.1.81.1 bonus, incentive, profit sharing, pension, retirement compensation, retirement savings, retirement income, deferred compensation and incentive compensation plans, programs, agreements or arrangements;
 - 1.1.81.2 welfare, fringe benefit, vacation, salary continuation, legal, health and other medical, dental, life, accident, disability, supplemental retirement and nonqualified trusts plans, programs, agreements or arrangements;
 - 1.1.81.3 stock purchase, stock option, restricted stock, phantom stock, stock appreciation rights or other equity incentive plans, programs, agreements or arrangements; and

1.1.81.4 termination, severance or other plans, programs, agreements or arrangements, and all other benefit plans, programs, agreements or arrangements that are maintained, contributed to, required to be contributed to, or sponsored by the Corporation or any Subsidiary, or under which the Corporation or any Subsidiary has any liability or contingent liability, for the benefit of, or relating to, any Employee or former Employee or their respective dependants or beneficiaries or that otherwise provide coverage for any current or former Employees or their respective dependants and beneficiaries.

- 1.1.82 **“Privacy Laws”** means any Laws that regulate the collection, use or disclosure of Personal Information.
- 1.1.83 **“Pro Rata Share”** means, with respect to any Seller, the percentage set out in Schedule A opposite that Seller’s name under the heading “Pro Rata Share of Seller”.
- 1.1.84 **“Promissory Note”** is defined in Section 2.4.1.3.
- 1.1.85 **“PUC”** means paid-up capital for the purposes of the ITA.
- 1.1.86 **“Purchase Price”** is defined in Section 2.2.
- 1.1.87 **“Purchased Shares”** means all of the issued and outstanding shares in the capital of the Corporation.
- 1.1.88 **“Qualifying Revenue”** means 100% of the revenues generated by the Corporation and the Subsidiaries and 30% of Revenue Pull-Through, in each case prepared in accordance with IFRS.
- 1.1.89 **“Real Property Leases”** means all of the leases between the Corporation or a Subsidiary, as tenant, and any Person, as landlord, and all amendments to those leases, relating to the leasing by the Corporation or any Subsidiary of the Leased Premises.
- 1.1.90 **“Related Person”** means any Person that is an Affiliate of any Seller, other than the Corporation and the Subsidiaries.
- 1.1.91 **“Reference Date”** means:
- 1.1.91.1 with respect to Consideration Shares, if any, to be issued upon repayment of the Promissory Notes, the Business Day immediately preceding the repayment;
 - 1.1.91.2 with respect to Consideration Shares, if any, to be issued with respect to the First Earn-Out Amount, two (2) Business Days after **either** the filing deadline date or the date of the actual filing on SEDAR, whichever is the earliest, of the Parent’s quarterly financial statements for the quarter that includes first year anniversary of the Closing Date; and
 - 1.1.91.3 with respect to Consideration Shares, if any, to be issued with respect to Second Earn-Out Amount, two (2) Business Days after **either** the filing deadline date or the date of the actual filing on SEDAR, whichever is the earliest, of the Parent’s quarterly financial statements for the quarter that includes second year anniversary of the Closing Date.

- 1.1.92 “**Release**” means to release, spill, leak, pump, pour, emit, empty, discharge, deposit, inject, leach, dispose, dump or permit to escape.
- 1.1.93 “**Remedial Order**” means any remedial order, including any notice of non-compliance, order, other complaint, direction or sanction issued, filed or imposed by any Governmental Authority under Environmental Laws, relating to the existence of Hazardous Substances on, in or under Leased Premises, or neighbouring or adjoining properties, or the Release of any Hazardous Substance from, at or on the Leased Premises, or any failure or neglect to comply with Environmental Laws.
- 1.1.94 “**Representatives**” means the advisors, agents, consultants, directors, officers, management, employees, subcontractors and other representatives, including accountants, auditors, financial advisors, lenders and lawyers of a Person.
- 1.1.95 “**Restrictive Covenant Agreement**” means the restrictive covenant agreement substantially in the form attached as Exhibit 5.1.7.5.
- 1.1.96 “**Revenue Pull-Through**” means revenue generated from sales of the Corporation’s and its Subsidiaries’ products or services as they relate to the Buyer’s existing products and services either by bundling Corporation’s, or its Subsidiaries’, and Buyer’s products or services or by integrating Corporation’s or its Subsidiaries’ products and services with those of the Buyer (or *vice versa*), in each case prepared in accordance with IFRS.
- 1.1.97 “**Second Earn-Out Amount**” is defined in Section 2.4.3.
- 1.1.98 “**Securities**” has the meaning given to that term in the *Securities Act* (Newfoundland and Labrador).
- 1.1.99 “**Seller**” and “**Sellers**” are defined in the recital of the Parties above.
- 1.1.100 “**Seller Indemnified Parties**” means each Seller and, as applicable, its Affiliates, and their respective directors, officers, shareholders, agents and employees, and the respective Successors of each of them.
- 1.1.101 “**Sellers’ Representative**” is defined in Section 9.1.
- 1.1.102 “**Straddle Period**” means any taxation period of the Corporation or a Subsidiary ending after the Closing Date that commenced before the Closing Date and includes a period before the Closing Date.
- 1.1.103 “**Stub Period Returns**” is defined in Section 4.11.
- 1.1.104 “**Subsidiaries**” means PanGeo Canada and PanGeo Scotland, collectively, and “**Subsidiary**” means any one of them.
- 1.1.105 “**Successors**” means, as applicable, the heirs, executors, administrators, estate trustees, trustees, personal or legal representatives, successors and permitted assigns of a Person.
- 1.1.106 “**Tax**” or “**Taxes**” means all taxes, duties, fees, premiums, assessments, imposts, levies, rates, withholdings, dues, government contributions and other charges of any kind imposed by any Governmental Authority, , together with all interest, penalties, fines, additions to tax or other additional amounts imposed in respect thereof, including those levied on, or measured by, or referred to as income, gross income, gross receipts, net proceeds, profits,

capital gains, alternative or add-on, or minimum, capital, transfer, land transfer, sales, retail sales, consumption, use, goods and services, harmonized sales, value-added, ad valorem, turnover, excise, stamp, non-resident withholding, business, franchising, business licences, real and personal property (tangible and intangible), environmental, payroll, employee withholding, employment, health, employer health, social services, development, occupation, education or social security, and all contributions, premiums, surtaxes, all customs duties, countervail, anti-dumping, special import measures and import and export taxes, all licence, franchise and registration fees, all provincial workers' compensation payments, and all employment insurance, health insurance and Canada, Québec and other government pension plan contributions.

1.1.107 **"Tax Law"** means any Law that imposes Taxes or that deals with the administration or enforcement of liabilities for Taxes.

1.1.108 **"Tax Return"** means any return, report, declaration, designation, election, undertaking, waiver, notice, filing, information return, statement, form, certificate or any other document or materials relating to Taxes, including any related or supporting information with respect to any of those documents or materials listed above in this Section 1.1.108, filed or to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of Taxes.

1.1.109 **"Technical Information"** means all technical information owned by or licensed to the Corporation or any Subsidiary relating to its Business or the Technology, including all:

1.1.109.1 information of a scientific or business nature, regardless of its form;

1.1.109.2 documentation with respect to research, development, demonstration or engineering work;

1.1.109.3 information that can be or is used to define a design or process, or to procure, produce, support or operate materials or equipment;

1.1.109.4 information regarding methods of production;

1.1.109.5 drawings, blueprints, patterns, plans, flow charts, equipment parts lists, computer software and procedures, specifications, protocols, data structures, formulae, designs, technical data, descriptions, related instruction manuals, records, passwords, and procedures; and

1.1.109.6 data and databases, whether registered or unregistered.

1.1.110 **"Technology"** means all technology owned by or licensed to the Corporation or any Subsidiary.

1.1.111 **"Third Party Claim"** means a Claim made against an Indemnified Party by a Person who is not a Party.

1.2 Certain Rules of Interpretation

1.2.1 **Gender, etc.** In this Agreement, words signifying the singular number include the plural and vice versa, and words signifying gender include all genders.

- 1.2.2 **Including.** Every use of the words “including” or “includes” in this Agreement is to be construed as meaning “including, without limitation” or “includes, without limitation”, respectively.
- 1.2.3 **Division and Headings.** The division of this Agreement into Articles and Sections, the insertion of headings and the inclusion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of this Agreement.
- 1.2.4 **Articles, Sections, etc.** References in this Agreement to an Article, Section, Schedule or Exhibit are to be construed as references to an Article, Section, Schedule or Exhibit of or to this Agreement unless otherwise specified.
- 1.2.5 **Time Periods.** Unless otherwise specified in this Agreement, time periods within which or following which any calculation or payment is to be made, or action is to be taken, will be calculated by excluding the day on which the period begins and including the day on which the period ends. If the last day of a time period is not a Business Day, the time period will end on the next Business Day.
- 1.2.6 **Statutory Instruments.** Unless otherwise specified, any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute at any time, and is to be construed as a reference to that statute as amended, restated, supplemented, extended, re-enacted, replaced or superseded at any time.

1.3 Governing Law

This Agreement is governed by, and is to be construed and interpreted in accordance with, the Laws of the Province of Newfoundland and Labrador and the Laws of Canada applicable in that Province.

1.4 Entire Agreement

This Agreement, together with any other agreements and documents to be delivered under this Agreement, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, other than the provisions of the Confidentiality Agreement, and there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement or, if applicable, in any other agreements and documents delivered under this Agreement. No Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement or, if applicable, in any other agreements and documents delivered under this Agreement.

1.5 Schedules and Exhibits

The Schedules and Exhibits form an integral part of this Agreement. The following is a list of the Schedules and Exhibits:

Schedule	Subject Matter
A	Sellers

Exhibit	Subject Matter
2.4.1.3	Form of Promissory Note
5.1.7.5	Form of Restrictive Covenant Agreement
5.1.7.8	Form of Release

ARTICLE 2 PURCHASE AND SALE

2.1 Agreement of Purchase and Sale

Subject to the terms and conditions of this Agreement, at the Closing, the Sellers will sell, and the Buyer will purchase, the Purchased Shares.

2.2 Purchase Price

The aggregate purchase price (the "**Purchase Price**") payable by the Buyer to the Sellers for the Purchased Shares will be up to \$23,000,000 subject to Sections 2.4.2 and 2.4.3 and subject to adjustment after the Closing in accordance with Section 8.11 (*Indemnity Adjustments to Purchase Price*).

2.3 Allocation of Payments

The Purchase Price will be allocated to each Seller based on that Seller's Pro Rata Share. Any payments made by or to the Sellers under this Article 2 must be made by or to each Seller in accordance with that Seller's Pro Rata Share.

2.4 Payment of Purchase Price

The Buyer will pay and satisfy the Purchase Price at the Closing, subject to adjustment after the Closing in accordance with Section 8.11 (*Indemnity Adjustments to Purchase Price*), as follows:

2.4.1 on the Closing Date:

- 2.4.1.1 the Buyer will pay to the Sellers, in aggregate, the sum of \$3,000,000 by wire transfer of immediately available funds which shall be paid to the Sellers in accordance with each Seller's Pro Rata Share;
- 2.4.1.2 the Parent will issue to the Sellers that number of Consideration Shares as is calculated based on section 2.6.1.1 having an aggregate value of \$7,000,000 which shall be issued to the Sellers in accordance with each Seller's Pro Rata Share;
- 2.4.1.3 the Buyer will issue to the Sellers, in accordance with each Seller's Pro Rata Share, unsecured promissory notes having an aggregate principal amount of

\$4,000,000 in the form and on terms more specifically set out in Exhibit 2.4.1.3 (the “**Promissory Notes**”).

- 2.4.2 within thirty (30) Business Days following the filing deadline date or the actual filing date on SEDAR, whichever is the earliest, of the Parent’s quarterly financial statements for the quarter that includes first year anniversary of the Closing Date, the Buyer will, subject to Section 2.5, pay to the Sellers, by wire transfer of immediately available funds, an amount equal to 300% of the amount by which Qualifying Revenue in the one-year period immediately following the Closing Date exceeds \$9,500,000, up to a maximum payment of \$4,500,000 (the “**First Earn-Out Amount**”); and
- 2.4.3 within thirty (30) Business Days following the filing deadline date or the actual filing date on SEDAR, whichever is the earliest, of the Parent’s quarterly financial statements for the quarter that includes the second year anniversary of the Closing Date, the Buyer will, subject to Section 2.5, pay to the Sellers, by wire transfer of immediately available funds, an amount equal to 300% of the amount by which Qualifying Revenue in the two-year period immediately following the Closing Date exceeds \$21,500,000, up to a maximum payment of \$9,000,000 less any amount paid under Section 2.4.2 above (the “**Second Earn-Out Amount**”).

2.5 Payment of Earn-Out Consideration

Any payment required to be made by the Buyer in respect of Earn-Out Consideration shall be in cash, provided that the Buyer may determine that 50% of the Earn-Out Consideration then due shall be paid by an issuance of Consideration Shares by the Parent having an aggregate value equal to 50% of the Earn-Out Consideration then due. For greater certainty, the determination of the Buyer to issue the Consideration Shares is subject to the provisions of Section 2.6.2.

2.6 Consideration Shares

2.6.1 All Consideration Shares shall be issued as follows:

- 2.6.1.1 with respect to Consideration Shares to be issued on Closing, the Parent shall issue, in the aggregate, 12,068,965 common shares in the aggregate to the Sellers to be allocated among them in accordance with their respective Pro Rata Share; and
- 2.6.1.2 with respect to all other Consideration Shares, each Consideration Share at a price equal to the closing market price on the relevant Reference Date less a 10% discount;

unless, in all cases, that price represents a discount greater than the maximum allowed discount pursuant to the Exchange rules in which case the Consideration Shares shall be issued at the maximum allowed discount to market price as of the close of markets on the relevant Reference Date, in each case, subject to the approval of and in accordance with the rules of the Exchange. All Consideration Shares issued in connection with the transaction contemplated by this Agreement will be issued in accordance with all applicable securities laws and Exchange rules and will be subject to minimum hold periods of four (4) months after which they shall be freely tradeable subject to applicable securities laws.

2.6.2 In the event and to the extent that Exchange approval cannot be obtained for any Consideration Shares to be issued after Closing pursuant to the terms of this Agreement or

to the extent that the issue of such Consideration Shares by the Parent would violate applicable securities laws and/or Exchange rules, the Buyer may discharge its obligation in respect of the issue of such Consideration Shares by making the applicable payment to the Sellers in the amount of cash equal to the value of the obligation, as set out in this Agreement, for which the Consideration Shares would otherwise have been issued.

2.7 Payout of ACOA Indebtedness

Not less than five (5) Business Days before the Closing Date, the Corporation will deliver to the Buyer a payout letter from ACOA, in form and substance reasonably satisfactory to the Buyer:

- 2.7.1 indicating the amount required to discharge the ACOA Indebtedness at Closing; and
- 2.7.2 if the ACOA Indebtedness is secured by any Encumbrance, including an undertaking to release those Encumbrances upon receipt of the stated payout amount.

2.8 Guarantee by Parent

- 2.8.1 The Parent hereby unconditionally and irrevocably guarantees to the Sellers and covenants and agrees to be jointly and severally liable with the Buyer as principal obligor for, the due and punctual payment and performance of all of Buyer's covenants, duties, and obligations under or relating to this Agreement when and if such covenants, duties, and obligations shall become due and performable according to the terms of this Agreement (the "**Guaranteed Obligations**"). If Buyer fails to perform or pay when due any Guaranteed Obligation as and when provided for in this Agreement, then, without the necessity or the requirement for the Sellers to pursue or exhaust its recourse against the Buyer, the Parent will perform or pay or cause to be performed or paid such Guaranteed Obligation promptly upon demand. Any and all payment or performance by the Parent hereunder shall be made without any set-off, recoupment, or counterclaim, except to the extent of any defence to payment or performance of the Guaranteed Obligations (or any part thereof) which Buyer may have under the terms and conditions of this Agreement.
- 2.8.2 The Parent shall cause the Buyer to comply with all of its obligations under or relating to this Agreement and the transactions contemplated thereby, and shall in such regard ensure that Buyer has sufficient financial and other resources to perform any obligations and pay any amounts arising or accruing under this Agreement and the transactions contemplated hereby.
- 2.8.3 Subject to the limitations and other provisions of this Agreement, this Section 2.8 will survive the Closing and completion of the transactions contemplated by this Agreement, and will continue in full force and effect.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Disclosure Letter

Each exception to the representations and warranties that is set out in the Disclosure Letter is identified by reference to one or more specific individual Sections of this Agreement and is only effective to create an exception to each specific individual Section listed. Any statement in this Agreement that is not

expressly qualified by a reference to an exception in the Disclosure Letter will prevail, despite anything to the contrary that is disclosed in the Disclosure Letter. The exceptions to representations and warranties set out in the Disclosure Letter are intended only to qualify and limit the representations and warranties of the Corporation and the Sellers, and will not be construed to expand in any way the scope or effect of any of those representations and warranties, and will not be construed to constitute a new representation, warranty or covenant of the Corporation or any Seller. The disclosure of any matter in the Disclosure Letter will not be construed as an admission or indication that the matter is material or that the matter is necessarily required to be disclosed in order for any representation or warranty in this Agreement to be true and correct, and will not be construed as an admission of any obligation or liability to any third party. No disclosure in the Disclosure Letter relating to any possible breach or violation of any Contract or Law will be construed as an admission or indication that any breach or violation exists or has actually occurred.

3.2 Representations Relating to the Sellers

Each Seller, on its own behalf, represents and warrants to the Buyer and the Parent as follows, and acknowledges that each of the Buyer and the Parent is relying upon these representations and warranties in connection with the transactions contemplated by this Agreement:

- 3.2.1 **Corporate Existence of Seller.** If the Seller is not an individual, the Seller is a corporation duly incorporated and validly existing under the Laws of the jurisdiction set out in Schedule A opposite that Seller's name under the heading "Jurisdiction".
- 3.2.2 **Capacity and Authority.** If the Seller is not an individual, the Seller has all necessary corporate power, authority and capacity to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Seller. If the Seller is an individual, the Seller is of the full age of majority and has the legal capacity and competence to enter into and perform its obligations under this Agreement.
- 3.2.3 **Binding Obligation.** This Agreement has been duly executed and delivered by the Seller and constitutes a valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and other Laws of general application limiting the enforcement of creditors' rights generally, and to the fact that equitable remedies, including specific performance, are discretionary and may not be ordered in respect of certain defaults.
- 3.2.4 **Title to Purchased Shares.** The Seller is the legal and beneficial owner of the number of Purchased Shares set out in Schedule A opposite that Seller's name under the heading "Number of Purchased Shares Owned by Seller", and has good title to them, free and clear of any Encumbrance except for any restriction on transfer contained in the Constatting Documents. At Closing, the Seller will have the absolute and exclusive right to sell those Purchased Shares to the Buyer as contemplated by this Agreement.
- 3.2.5 **Residence of Seller.** The Seller is resident in the jurisdiction set out in Schedule A opposite that Seller's name under the heading "Jurisdiction", and, except as disclosed in Section 3.2.5 of the Disclosure Letter, the Seller is not a non-resident of Canada for purposes of the ITA.
- 3.2.6 **Absence of Conflict.** None of the execution and delivery of this Agreement by the Seller, the performance of the Seller's obligations under this Agreement, or the completion by the

Seller of the transactions contemplated by this Agreement will (with or without the giving of notice or lapse of time, or both):

- 3.2.6.1 result in or constitute a breach of any term or provision of, or constitute a default under, any Contract to which the Seller is a party or which affects the Purchased Shares owned by the Seller;
- 3.2.6.2 if the Seller is not an individual, result in or constitute a breach of any term or provision of, or constitute a default under, the constating documents of the Seller;
- 3.2.6.3 contravene any applicable Law; or
- 3.2.6.4 contravene any judgment, order, writ, injunction or decree of any Governmental Authority,

subject to obtaining the approvals, and making the filings, set out in Section 3.3.6 (*Regulatory Approvals*).

- 3.2.7 Each Seller is acquiring the Consideration Shares as principal and not for the benefit of any other person.
- 3.2.8 No stock exchange, governmental agency, securities commission or similar regulatory authority has reviewed or passed on or made any finding or determination as to the merits of, or made any recommendation or endorsement with respect to, the Consideration Shares and there are risks associated with the acquisition of the Consideration Shares.
- 3.2.9 None of the Sellers is a “U.S. person” (as defined in Regulation S under the United States Securities Act of 1933 and which includes an individual resident in the United States, an estate or trust of which any executor, administrator or trustee is a U.S. person, and any corporation or partnership incorporated or organized under the laws of the United States) and the Consideration Shares were not offered to the Sellers in the United States.
- 3.2.10 If the Seller is resident in Canada, the Seller is an “accredited investor” as defined in National Instrument 45-106 – *Prospectus Exemptions*.
- 3.2.11 If the Seller is resident in, or its acquisition of the Consideration Shares is otherwise subject to the securities laws of, any jurisdiction outside of Canada, then:
 - 3.2.11.1 the Seller is knowledgeable of, or has been independently advised as to, the securities laws of the relevant jurisdiction outside of Canada (the “**International Jurisdiction**”) which apply;
 - 3.2.11.2 the applicable securities laws of the International Jurisdiction do not require the Parent to make any filings or seek any approvals of any kind from any regulatory authority of any kind in the International Jurisdiction in connection with the issue of the Consideration Shares;
 - 3.2.11.3 the acquisition of the Consideration Shares by any Seller in an International Jurisdiction does not trigger:
 - 3.2.11.3.1 any obligation to prepare or file a prospectus or registration statement or similar document, or any other report with respect to that purchase, in the International Jurisdiction; or

- 3.2.11.3.2 any continuous disclosure reporting obligation of the Parent in the International Jurisdiction; or
- 3.2.11.3.3 any registration or similar obligation of the Parent in the International Jurisdiction; and
- 3.2.11.4 the Seller will, if requested by the Parent, deliver to the Parent a certificate or opinion of local counsel from the International Jurisdiction which will confirm the matters in Sections 3.2.11.3 and 3.2.11.2 to the satisfaction of the Parent, acting reasonably.

3.3 Representations Relating to the Corporation and Subsidiaries

The Corporation represents and warrants to the Buyer and the Parent as follows, and acknowledges that each of the Buyer and the Parent is relying upon these representations and warranties in connection with the transactions contemplated by this Agreement:

- 3.3.1 **Capacity and Authority.** The Corporation has all necessary corporate power, authority and capacity to enter into and perform its obligations under this Agreement. The execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of the Corporation.
- 3.3.2 **Binding Obligation.** This Agreement has been duly executed and delivered by the Corporation and constitutes a valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms, subject to applicable bankruptcy, insolvency and other Laws of general application limiting the enforcement of creditors' rights generally, and to the fact that equitable remedies, including specific performance, are discretionary and may not be ordered in respect of certain defaults.
- 3.3.3 **Restrictive Covenants.** Except as set out in Section 3.3.3 of the Disclosure Letter, neither the Corporation nor any Subsidiary is a party to, or bound or affected by, any Contract containing any covenant expressly limiting its ability to compete in any line of business, or limiting its ability to transfer or move any of its assets or operations, or any covenant that could reasonably be expected to have a Material Adverse Effect.
- 3.3.4 **Absence of Conflict.** None of the execution and delivery of this Agreement by the Corporation, the performance of the Corporation's obligations under this Agreement, or the completion by the Corporation of the transactions contemplated by this Agreement will (with or without the giving of notice or lapse of time, or both):
 - 3.3.4.1 result in or constitute a breach of any term or provision of, or constitute a default under, the Constating Documents;
 - 3.3.4.2 result in or constitute a breach of any term or provision of, or constitute a default under, any Contract to which the Corporation or any Subsidiary is a party or which affects the Purchased Shares, except as disclosed in Section 3.3.4 of the Disclosure Letter;
 - 3.3.4.3 constitute an event that would permit any party to any Contract with the Corporation or any of the Subsidiaries to amend, terminate or sue for damages with respect to that Contract, or to accelerate the maturity of any indebtedness of

the Corporation or any of the Subsidiaries, or other obligation of the Corporation or any of the Subsidiaries, under that Contract, except as disclosed in Section 3.3.4 of the Disclosure Letter;

3.3.4.4 result in the creation or imposition of any Encumbrance on the Purchased Shares;

3.3.4.5 contravene any applicable Law; or

3.3.4.6 contravene any judgment, order, writ, injunction or decree of any Governmental Authority,

subject to obtaining the approvals, and making the filings, set out in Section 3.3.6 (*Regulatory Approvals*).

3.3.5 **Consents.** Except as disclosed in Section 3.3.5 of the Disclosure Letter, there is no requirement to obtain any consent, approval or waiver of a party under any Material Contract in order to complete the transactions contemplated by this Agreement.

3.3.6 **Regulatory Approvals.** No authorization, approval, order or consent of, or filing with, any Governmental Authority is required on the part of the Corporation or any Subsidiary in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement.

3.3.7 **Competition Act.** The Corporation and the Subsidiaries have assets in Canada with an aggregate value of less than \$93 million, and the annual gross revenues from sales in or from Canada generated from those assets is less than \$93 million, in each case as determined in accordance with the Competition Act.

3.3.8 **Subsidiaries and Investments.** The Corporation has no subsidiaries other than the Subsidiaries. Except as disclosed in Section 3.3.8 of the Disclosure Letter, neither the Corporation nor any Subsidiary owns or holds, directly or indirectly, any Securities of, or has any other interest in, any Person and neither the Corporation nor any Subsidiary has entered into any agreement to acquire any such interest.

3.3.9 **Corporate Existence of Corporation and Subsidiaries.** Each of the Corporation and the Subsidiaries has been duly incorporated and organized, and is validly existing and in good standing as a corporation under:

3.3.9.1 in the case of the Corporation, the *Corporations Act* (Newfoundland and Labrador); and

3.3.9.2 in the case of the Subsidiaries, the applicable laws conferring corporate existence on each of them.

No proceedings have been taken or authorized by the Corporation or any of the Subsidiaries in respect of the bankruptcy, insolvency, liquidation, dissolution or winding up of the Corporation or any of the Subsidiaries.

3.3.10 **Constating Documents.** The Constating Documents include all of the charter documents of the Corporation and the Subsidiaries and are in full force and effect. No action has been taken to amend the Constating Documents and no changes to the Constating Documents are planned.

- 3.3.11 **Capacity and Powers of Corporation and Subsidiaries.** Each of the Corporation and the Subsidiaries has all necessary corporate power, authority and capacity to own or lease its assets and to carry on its Business as currently being conducted.
- 3.3.12 **Jurisdictions.** Section 3.3.12 of the Disclosure Letter lists every jurisdiction in which each of the Corporation and the Subsidiaries is qualified to do business. Neither the character nor location of the Leased Premises, nor the nature of the Business conducted by the Corporation or any of the Subsidiaries, requires qualification to do business in any other jurisdiction.
- 3.3.13 **Authorized and Issued Capital.**
- 3.3.13.1 The authorized capital of the Corporation consists of an unlimited number of common shares, of which 5,200,001 shares are issued and outstanding as fully paid shares.
- 3.3.13.2 The authorized capital of PanGeo Canada consists of an unlimited number of common shares, C Preference Shares, D Preference Shares, E Preference Shares and Deferred Shares, of which 597,905,767 common shares, 2,686,644,782 Deferred Shares, 1,600 C Preference Shares and 3,432,962 D Preference Shares are issued and outstanding as fully paid shares and are legally and beneficially owned by the Corporation with good title, free and clear of any Encumbrance.
- 3.3.13.3 The authorized capital of PanGeo Scotland consists of one (1) ordinary share, of which one (1) ordinary share is issued and outstanding as fully paid shares and are legally and beneficially owned by PanGeo Canada with good title, free and clear of any Encumbrance, save and except for a pledge in favour of the Corporation.
- 3.3.14 **No Purchase Rights.** No Person has any written or oral agreement or option or any right or privilege (whether by Law, pre-emptive, contractual or otherwise) capable of becoming an agreement or option, including Securities, warrants or convertible obligations of any kind, for:
- 3.3.14.1 the purchase of any Securities of the Corporation or any of the Subsidiaries; or
- 3.3.14.2 the purchase of any of the assets of the Corporation or any of the Subsidiaries.
- 3.3.15 **Corporate Records.** Except as disclosed in Section 3.3.15 of the Disclosure Letter, the corporate records and minute books of each of the Corporation and the Subsidiaries have been maintained in accordance with all applicable statutory requirements and are complete and accurate in all material respects. All those corporate records and minute books of each of the Corporation and the Subsidiaries have been made available to the Buyer.
- 3.3.16 **Books and Records.** The Books and Records fairly and correctly set out and disclose in accordance with ASPE applied on a consistent basis the financial position of the Corporation and the Subsidiaries, and all financial transactions of the Corporation and the Subsidiaries have been accurately recorded in the Books and Records.
- 3.3.17 **Financial Statements.** Copies of the Financial Statements are included in Section 3.3.17 of the Disclosure Letter. The Financial Statements have been prepared in accordance with ASPE, applied on a consistent basis (except as disclosed in the Financial Statements), and present fairly:

- 3.3.17.1 the assets, liabilities (contingent or otherwise) and financial condition of the Corporation, on a consolidated basis, as at the respective dates of the Financial Statements; and
 - 3.3.17.2 the sales, earnings and results of the operations of the Corporation, on a consolidated basis, during the periods covered by the Financial Statements,
- but the interim financial statements:
- 3.3.17.3 do not contain all notes required under ASPE; and
 - 3.3.17.4 are subject to normal year-end audit adjustments, which individually or in the aggregate would not be material to any buyer contemplating the purchase of the Purchased Shares.

3.3.18 Locked-Box Accounts.

The Locked-Box Accounts have been prepared on a basis consistent with that used in preparing the Financial Statements and fairly represent the assets and liabilities and profit and losses of the Corporation and the Subsidiaries as at and to the date to which they have been prepared.

- 3.3.18.1 The Locked-Box Accounts do not:
 - 3.3.18.1.1 materially misstate the assets or liabilities of the Corporation and the Subsidiaries as at the Locked-Box Accounts Date;
 - 3.3.18.1.2 materially misstate the profits or losses of the Corporation and the Subsidiaries in respect of the period to which they relate; or
 - 3.3.18.1.3 omit any material item.
- 3.3.18.2 As at the Locked-Box Accounts Date, the level of customer payments was not influenced in any material respect by calling customers in advance of the usual customer payment days, and the level of creditors obligations was not influenced in any material respect by paying creditors outside of the ordinary course of business.
- 3.3.18.3 During the period commencing on (and including) the Locked-Box Accounts Date up to (and including) the date of this Agreement, no Leakage has occurred other than Permitted Leakage.

3.3.19 Tax Matters.

- 3.3.19.1 Except as disclosed in Section 3.3.19.1 of the Disclosure Letter:
 - 3.3.19.1.1 all Tax Returns required by applicable Tax Law to be filed on or before the Closing Date by or on behalf of each of the Corporation and the Subsidiaries have been or will be duly filed on a timely basis in compliance with their due dates under applicable Tax Law with the appropriate Governmental Authorities on or before the Closing Date. Each of those Tax Returns is or will be true, correct and complete in all material respects and none of them has been or will be amended.

- 3.3.19.1.2 each of the Corporation and the Subsidiaries has duly, and on a timely basis, paid or remitted all Taxes required to be paid or remitted by it on or before the Closing Date, including all Taxes shown as due and owing on all Tax Returns, all Taxes assessed or reassessed by any Governmental Authority, all Taxes held in trust or deemed to be held in trust for any Governmental Authority, and all instalments on account of Taxes for the current year. Neither the Corporation nor any Subsidiary will have any liability for Taxes for any period ending on or before the Closing Date, or that portion of any Straddle Period up to and including the Closing Date, other than those liabilities for Taxes reflected as reserves on the Financial Statements. The liabilities reflected as reserves for Taxes on the Financial Statements are sufficient for the payment or remittance of all Taxes that may become payable or remittable by each of the Corporation and the Subsidiaries, whether or not disputed, in respect of any period ending on or before the Closing Date;
- 3.3.19.1.3 there are no liens for Taxes (other than for Taxes not yet due and payable) on any of the properties or assets of any of the Corporation or the Subsidiaries, nor are those properties or assets the subject of any trust arising under Tax Law (other than for Taxes not yet due and payable); and
- 3.3.19.1.4 neither the Corporation nor any Subsidiary has requested, executed, received, or entered into any Contract relating to any waiver, that is still outstanding and that provides for any extension of time in respect of: (i) the assessment, reassessment or collection of any Taxes by any Governmental Authority; (ii) the filing of any Tax Returns in respect of any Taxes for which the Corporation or any Subsidiary is or may be liable; or (iii) the payment or remittance of any Taxes or amounts on account of Taxes.
- 3.3.19.2 Except as disclosed in Section 3.3.19.2 of the Disclosure Letter, neither the Corporation nor any Subsidiary has been required, or is currently required, to file any Tax Returns with any Governmental Authority outside Canada or outside the Province of Newfoundland and Labrador. No Claims have ever been made by any Governmental Authority that the Corporation or any Subsidiary is or may be subject to Tax in a jurisdiction where the Corporation and the Subsidiaries do not file Tax Returns. There is no basis for a Claim that any of the Corporation or the Subsidiaries is subject to Tax in a jurisdiction in which it does not file Tax Returns.
- 3.3.19.3 Section 3.3.19.3 of the Disclosure Letter accurately reflects all notices of assessment and reassessment of Taxes that have been received by each of the Corporation and the Subsidiaries from all relevant Governmental Authorities with respect to its Tax liabilities for all taxation years ending prior to the Closing Date.
- 3.3.19.4 Except as disclosed in Section 3.3.19.4 of the Disclosure Letter, there are no Tax deficiencies that have been claimed, proposed or asserted in writing against the Corporation or any Subsidiary that have not been fully paid or finally settled and there are no discussions, audits, assertions or Claims now pending, or to the Knowledge of the Corporation, threatened, in respect of Taxes due from or with respect to the Corporation or any Subsidiary. No Governmental Authority has

challenged, disputed or questioned any Taxes of or any Tax Returns filed by the Corporation or any Subsidiary or indicated that an assessment, reassessment or determination in respect of Taxes is proposed. To the Knowledge of the Corporation, there are no facts, circumstances, acts, omissions, events, transactions or series of events or transactions occurring wholly or partly on or before the Closing, that could, or are likely to, give rise to any discussions, audits, assertions or Claims in respect of Taxes of the Corporation or any Subsidiary.

- 3.3.19.5 Except as disclosed in Section 3.3.19.5 of the Disclosure Letter, all Taxes required to be deducted, withheld or remitted by each of the Corporation and the Subsidiaries under any applicable Tax Law from amounts paid or credited by it to or for the account or benefit of any Person, including Taxes on payments to any of its present or former Employees, officers or directors and Taxes on payments to any Person who is a non-resident of Canada, have been properly deducted, withheld and remitted on a timely basis to the appropriate Governmental Authorities.
- 3.3.19.6 Copies of all Tax rulings pertaining to each of the Corporation and the Subsidiaries have been provided to the Buyer. To the Knowledge of the Corporation, there is no Claim or threatened Claim to revoke any such Tax ruling. Except as disclosed in Section 3.3.19.6 of the Disclosure Letter, there are no Tax rulings or requests for Tax rulings pertaining to the Corporation or any Subsidiary that could affect the liability for Taxes or the amount of the taxable income or loss for any taxation year or period ending after the Closing Date.
- 3.3.19.7 Except as disclosed in Section 3.3.19.7 of the Disclosure Letter, there are no amounts outstanding and unpaid for which the Corporation or any Subsidiary has previously claimed a deduction from income under the ITA or any other applicable Tax Law and that may be included in the Corporation's or the Subsidiary's income for any taxation year ending after the Closing Date.
- 3.3.19.8 Neither the Corporation nor any Subsidiary has, directly or indirectly, transferred property to or acquired property from or provided services to or received services from any Person with whom the Corporation or the Subsidiary was not dealing at Arm's Length, for consideration the fair market value of which was less than the fair market value of the property or service at the time of (in the case of property) the disposition or acquisition of the property or (in the case of services) the provision or receipt of the services, or been a party to any contract or transaction that could result in a liability for Tax under section 160 of the ITA or any substantially similar provisions of other applicable Tax Laws. Each of the Corporation and the Subsidiaries has provided the Buyer with copies of all Contracts, minutes, and any other documents relating to transactions entered into by it before the Closing Date with Persons with whom the Corporation or the Subsidiary, as the case may be, was not dealing at Arm's Length at the time the transaction occurred.
- 3.3.19.9 Except as disclosed in Section 3.3.19.9 of the Disclosure Letter, none of sections 80 through 80.04 of the ITA or any substantially similar provisions of any applicable provincial Tax Laws, has applied or will apply to the Corporation or any Subsidiary at any time up to and including the Closing Date in a manner that would give rise to material incremental Tax liabilities or material reduction in Tax attributes.

- 3.3.19.10 Each of the Corporation and the Subsidiaries is registered for purposes of the ETA and the Corporation's goods and services tax or harmonized sales tax registration number is 744967282. Each of the Corporation and the Subsidiaries has complied on a timely basis with all registration, reporting, collection, remittance and other requirements in respect of all applicable commodity and sales taxes.
- 3.3.19.11 The Purchased Shares and the Shares held by the Corporation in the Subsidiaries have the tax attributes reflected in the applicable Financial Statements.
- 3.3.19.12 The Books and Records fairly and correctly set out and disclose, in all material respects, all financial transactions of each of the Corporation and the Subsidiaries for Tax purposes, and all liabilities and unclaimed input tax credits under the ETA for purposes of the goods and services or harmonized sales tax and any unclaimed credits or refunds under *An Act respecting the Québec sales tax*.
- 3.3.19.13 Each of the Corporation and the Subsidiaries has provided to the Buyer copies of all Tax Returns for all fiscal periods for which the relevant limitation period has not expired and all working papers, calculations, and schedules relating to those Tax Returns, together with all communications relating to those Tax Returns from any Governmental Authority and the response, if any, of the Corporation or the Subsidiary, as the case may be, to those communications.
- 3.3.19.14 For all transactions between the Corporation or any Subsidiary and any non-resident person with whom it was not dealing at Arm's Length, the Corporation or the Subsidiary, as applicable, has made or obtained records or documents that meet the transfer pricing requirements of subsection 247(4) of the ITA.
- 3.3.19.15 Except as disclosed in Section 3.3.19.15 of the Disclosure Letter, neither the Corporation nor any Subsidiary has made any elections or designations for the purposes of the ITA or the ETA or other applicable Tax Law, or for the purposes of any administrative rulings or notices or administrative practices under any Tax Law.
- 3.3.19.16 Neither the Corporation nor any Subsidiary has acquired any property on a Tax-deferred or rollover basis and no election under sections 13, 44, 83 or 85 of the ITA (or any substantially similar provision of any applicable Tax Law) has been made or filed by or on behalf of the Corporation or any Subsidiary with respect to the acquisition or disposition of property.
- 3.3.19.17 Neither the Corporation nor any Subsidiary has made or authorized any payments to its directors, officers, former directors, shareholders or Employees or to any Person not dealing at Arm's Length with any of its directors, officers, former directors, shareholders or Employees, except in the ordinary course of its Business and at the regular rates payable to them of salary, pension, bonuses, rents or other payments of any nature.
- 3.3.19.18 Neither the Corporation nor any Subsidiary has loans or indebtedness outstanding made to any Employee or to any director, former director, officer or shareholder of the Corporation or any Subsidiary or to any Person not dealing at Arm's Length with any of those Persons.

- 3.3.19.19 Neither the Corporation nor any Subsidiary has at any time been involved or been a party to one or more transactions or series of transactions to which either of sections 55 or 245 of the ITA or other comparable Tax Law would apply.
- 3.3.19.20 The Corporation has been since its incorporation a Canadian-controlled private corporation as defined in the ITA. PanGeo Canada is currently a Canadian-controlled private corporation as defined in the ITA.
- 3.3.19.21 Neither the Corporation nor any Subsidiary has been or is now associated, as determined for the purposes of the ITA, with any corporations other than each other, and other than the Sellers and other corporations associated with a Seller.
- 3.3.19.22 Except as set out in Section 3.3.19.22 of the Disclosure Letter, in the three years before the date of this Agreement, neither the Corporation nor any Subsidiary has received or taken advantage of, directly or indirectly, any grants, Tax benefits other than as may be provided for in the ITA, subsidies, loan guarantees, government contracts, or other forms of preferential treatment or assistance from any Governmental Authority.
- 3.3.19.23 For purposes of the ITA, the taxation year end of each of the Corporation and the Subsidiaries is December 31 of each year. The taxation year end of each of the Corporation and the Subsidiaries has not changed since its incorporation.

3.3.20 **Absence of Changes.** Except as disclosed in Section 3.3.20 of the Disclosure Letter, since December 31, 2020, no Material Adverse Effect has occurred.

3.3.21 **Absence of Undisclosed Liabilities.** Except to the extent reflected or reserved in the Financial Statements, or incurred subsequent to December 31, 2020 and:

- 3.3.21.1 disclosed in Section 3.3.21 of the Disclosure Letter; or
- 3.3.21.2 incurred in the ordinary course of the Corporation's or a Subsidiary's Business in each case consistent with past practice,

neither the Corporation nor any Subsidiary has any outstanding indebtedness or any liabilities or obligations (contingent or otherwise, including under any guarantee of any debt) of a nature customarily reflected or reserved against in a balance sheet (including the notes to the financial statements) in accordance with ASPE applied on a consistent basis.

3.3.22 **Absence of Unusual Transactions.** Except as disclosed in Section 3.3.22 of the Disclosure Letter, since December 31, 2020 neither the Corporation nor any Subsidiary has:

- 3.3.22.1 given any guarantee of any debt, liability or obligation of any Person;
- 3.3.22.2 subjected, or permitted to be subjected, any of its assets to any Encumbrance;
- 3.3.22.3 incurred, created, assumed or otherwise become liable for any Indebtedness;
- 3.3.22.4 acquired, sold, leased or otherwise disposed of or transferred any assets, other than in the ordinary course of its Business;
- 3.3.22.5 made or committed to any capital expenditures, other than in the ordinary course of its Business;

- 3.3.22.6 declared or paid any dividend or otherwise made any distribution or other payment of any kind to any of its shareholders or any other Person, or taken any corporate proceedings for that purpose;
 - 3.3.22.7 redeemed, purchased or otherwise retired any of its shares or otherwise reduced its stated capital;
 - 3.3.22.8 entered into or become bound by any Contract, other than in the ordinary course of its Business;
 - 3.3.22.9 amended or terminated any Contract (except for Contracts that expire by the passage of time) resulting, collectively or individually, in Material Adverse Effect;
 - 3.3.22.10 waived or released any rights that it has or had, or any debts owed to it, resulting, collectively or individually, in a Material Adverse Effect;
 - 3.3.22.11 made any change in excess of \$10,000 in any compensation arrangement or agreement with any Employee or officer, director or shareholder of the Corporation or any of the Subsidiaries;
 - 3.3.22.12 changed any method of accounting or auditing practice; or
 - 3.3.22.13 agreed or offered to do any of the things described in this Section 3.3.22.
- 3.3.23 **Title to Assets.** Each of the Corporation and the Subsidiaries owns, possesses and has good and marketable title to all of its undertakings, property and assets, including all the undertakings, property and assets reflected in the most recent consolidated balance sheet included in the Financial Statements, free and clear of all Encumbrances.
- 3.3.24 **Sufficiency and Condition of Assets.** Except as disclosed in Section 3.3.24 of the Disclosure Letter, the undertakings, property and assets of each of the Corporation and the Subsidiaries comprise all of the undertakings, property and assets necessary for each of them to carry on its Business as it is currently operated, and all facilities, machinery, equipment, fixtures, vehicles and other tangible assets owned, leased or used by the Corporation or any of the Subsidiaries are in good operating condition and repair, ordinary wear and tear excepted, and are reasonably fit and usable for the purposes for which they are being used.
- 3.3.25 **Real Property.** Neither the Corporation nor any Subsidiary owns, or has ever owned, any interest in real property (other than a leasehold interest). Section 3.3.25 of the Disclosure Letter lists the particulars of the Leased Premises and Real Property Leases. The buildings and other structures located on or forming part of the Leased Premises, and their operation and maintenance, comply with all applicable Laws, and none of those buildings or structures encroaches upon any land not owned or leased by the Corporation or a Subsidiary. There are no restrictive covenants or Laws that in any way restrict or prohibit any part of the present use of the Leased Premises. There are no expropriation or similar proceedings, actual or threatened, of which the Corporation or any Subsidiary has received notice against any of the Leased Premises. Except as set out in Section 3.3.25 of the Disclosure Letter, all of the Real Property Leases are in full force and effect, unamended, and none of them are, to the Knowledge of the Corporation, under any threat of termination.
- 3.3.26 **Intellectual Property.**

3.3.27 Intellectual Property and Intellectual Property Rights.

- 3.3.27.1 Section 3.3.27 of the Disclosure Letter sets out an accurate and complete list and description of all Owned IP that is registered with any Governmental Authority (including details as to the jurisdictions, numbers, and expiry dates of all registrations), Licensed IP and related Licence Agreements, including sufficient particulars to identify each item of Owned IP, Licensed IP and related Licence Agreements, its owner (if that owner is not the Corporation or a Subsidiary), and the nature and jurisdictions of its use, as well as the jurisdictions and particulars of all registrations of, and applications for registration of, the Owned IP made by the Corporation or any Subsidiary.
- 3.3.27.2 The Corporation and the Subsidiaries are the only Persons to have any right of title and interest, legal or beneficial, in any of the Owned IP, all of which is owned by the Corporation or a Subsidiary, as the case may be, free and clear of any Encumbrances and none of which is registered in the name of any Person other than the Corporation or a Subsidiary. No consent of any Person is necessary to make, construct, use, reproduce, translate, license, sell, modify, update, enhance or otherwise exploit any Owned IP. All Originating Persons have, by irrevocable written assignments, transferred to the Corporation or a Subsidiary all Intellectual Property Rights, and waived all moral rights, that any of them may have enjoyed with respect to any Owned IP to which they contributed.
- 3.3.27.3 Except as disclosed in Section 3.3.27 of the Disclosure Letter or in relation to any Permitted Encumbrances, neither the Corporation nor any Subsidiary has assigned, licensed or otherwise granted any interest in any Owned IP, including any right to receive royalties or other payments, to any Person.
- 3.3.27.4 To the Knowledge of the Corporation, no Person has infringed or misappropriated, or is infringing or misappropriating, any Intellectual Property Right in any Owned IP.
- 3.3.27.5 All Intellectual Property Rights relating to Owned IP are in full force and effect, and all required registration or other fees have been paid to maintain them all in good standing in those jurisdictions where any associated Owned IP is used.
- 3.3.27.6 The Owned IP does not include any registered Trademarks.
- 3.3.27.7 The Corporation and each Subsidiary, as applicable, has entered into valid and enforceable written agreements pursuant to which the Corporation or the Subsidiary has been granted all licenses, rights and permissions to use, reproduce, translate, sub-license, sell, modify, update, enhance or otherwise exploit the Licensed IP to the extent required to conduct all material aspects of its Business as it is currently conducted (including, if required, the right to incorporate the Licensed IP into the Owned IP and to create and own derivatives and modifications of the Licensed IP) (the "**Licence Agreements**"). Except as disclosed in Section 3.3.27 of the Disclosure Letter, to the Knowledge of the Corporation:
- 3.3.27.7.1 all Licence Agreements are in full force and effect and none of the Corporation, any Subsidiary, or any licensor is in default of its obligations under any Licence Agreement;

- 3.3.27.7.2 no licensor of any Licensed IP is involved in an insolvency, bankruptcy or similar proceeding or has had a receiver appointed;
 - 3.3.27.7.3 all License Agreements for Licensed IP material to the Corporation's or any Subsidiary's Business are irrevocable licenses granted in perpetuity and worldwide in nature;
 - 3.3.27.7.4 the rights licensed under each License Agreement will be enforceable by the Corporation or a Subsidiary on and after the Closing to the same extent as before the Closing; and
 - 3.3.27.7.5 to the Knowledge of the Corporation, no Person has infringed or misappropriated, or is infringing or misappropriating, any Intellectual Property Right of any licensor in or to any Licensed IP of which it is the exclusive licensee.
- 3.3.27.8 Each of the Corporation and the Subsidiaries has (i) entered into agreements or arrangements as described in Section 3.3.27.8 of the Disclosure Letter to facilitate its continued use and exploitation of any Licensed IP, the use and exploitation of which might be impaired if the licensor of any of that Licensed IP ceases to carry on business, concludes to support or maintain that Licensed IP, or is involved in an insolvency, bankruptcy or similar proceeding or (ii) has taken that reasonable mitigation action as described in Section 3.3.27.8 of the Disclosure Letter.
- 3.3.27.9 Except as disclosed in Section 3.3.27 of the Disclosure Letter:
- 3.3.27.9.1 the past, current and proposed conduct by the Corporation and each Subsidiary of its Business (including all use or other exploitation of the Owned IP or Licensed IP by the Corporation, any Subsidiary, or any customers, distributors or other licensees of the Corporation or any Subsidiary) has not resulted in, and does not and will not result in, any infringement, violation, misappropriation, or other conflict with any Intellectual Property Right of any Person, and there is no action or proceeding ongoing or threatened that alleges any such violation, misappropriation, or other conflict; and
 - 3.3.27.9.2 there are no outstanding orders, judgments, rulings, decrees, stipulations, covenants not to sue, or agreements (including any funding or facilities agreements or grants from any college, university, or Governmental Authority) relating to any of the Owned IP or Licensed IP that restrict the conduct of the Business of the Corporation or any Subsidiary, the enforcement of any Intellectual Property Rights included in the Owned IP or the Licensed IP, or the use, exercise, practise, or other exploitation of any Owned IP and Licensed IP by the Corporation, any Subsidiary or any of their customers, distributors or other licensees.
- 3.3.27.10 The Technology, Technical Information, Licensed IP and Owned IP together with other assets of the Corporation and its Subsidiaries are sufficient to conduct the Business of the Corporation and each Subsidiary as it is currently conducted.

3.3.27.11 No Owned IP and no Licensed IP contains any open source code.

3.3.27.12 Each of the Corporation and the Subsidiaries has in place disaster recovery plans, procedures and facilities, and has taken reasonable steps to safeguard all Technology, Technical Information, Licensed IP and Owned IP that is material to its Business, and to restrict unauthorized access to it.

3.3.28 **Accounts Receivable.** All accounts receivable of each of the Corporation and the Subsidiaries reflected in the Financial Statements, or that have come into existence since the date of the most recent Financial Statements, were created in the ordinary course of its Business in bona fide arm's length transactions, and, except to the extent that they have been paid in the ordinary course of its Business since the date of the Financial Statements, are valid and enforceable and payable in full, without any right of set-off or counterclaim or any reduction for any credit or allowance made or given, except:

3.3.28.1 to the extent of the allowance for doubtful accounts reflected in the Financial Statements; and

3.3.28.2 in the case of accounts receivable that have come into existence since the date of the most recent Financial Statements, for a reasonable allowance for doubtful accounts,

which allowances are, and will as of the Closing Date be, adequate and calculated in a manner consistent with the previous accounting practice of each of the Corporation and the Subsidiaries.

3.3.29 **Inventories.** The Inventories have been accumulated by each of the Corporation and the Subsidiaries for use or sale in the ordinary course of its Business, and are in good and marketable condition. The present levels of the Inventories are consistent with the levels of inventories that have been maintained by each of the Corporation and the Subsidiaries before the date of this Agreement in the ordinary course of its Business in light of seasonal adjustments, market fluctuations and the requirements of customers of its Business.

3.3.30 **Material Contracts.** Section 3.3.30 of the Disclosure Letter lists all Material Contracts. Except as disclosed in Section 3.3.30 of the Disclosure Letter, neither the Corporation nor any Subsidiary is in material default or breach of any Material Contract, and there exists no state of facts that, after notice or lapse of time or both, would constitute a material default or breach under any Material Contract. To the Knowledge of the Corporation, no counterparty to any Material Contract is in default of any of its obligations under any Material Contract, each of the Corporation and the Subsidiaries, as applicable, is entitled to all benefits under each Material Contract, and neither the Corporation nor any Subsidiary has received any notice of termination of any Material Contract.

3.3.31 **Accounts and Powers of Attorney.** Section 3.3.31 of the Disclosure Letter lists:

3.3.31.1 the name of each bank or other depository in which each of the Corporation and the Subsidiaries maintains any bank account, trust account or safety deposit box and the names of all individuals authorized to draw on them or who have access to them; and

3.3.31.2 the name of each Person holding a general or special power of attorney from the Corporation or any Subsidiary and a summary of its terms.

- 3.3.32 **Compliance with Laws.** Each of the Corporation and the Subsidiaries is, and at all times since its incorporation has been, conducting its Business in material compliance with all applicable Laws, and the Corporation has not received written notice of any violation by the Corporation or any Subsidiary of any Laws.
- 3.3.33 **Permits.** All material Permits are listed in Section 3.3.33 of the Disclosure Letter. Those Permits are the only authorizations, registrations, permits, approvals, grants, licences, quotas, consents, commitments, rights or privileges (other than those relating to Intellectual Property) required to enable each of the Corporation and the Subsidiaries to carry on its Business as currently conducted and to enable each of them to own, lease and operate its assets. All material Permits are valid, subsisting, in full force and effect and unamended, and neither the Corporation nor any Subsidiary is in default or breach of any material Permit. No proceeding is pending or, to the Knowledge of the Corporation, threatened, to revoke or limit any material Permit, and the completion of the transactions contemplated by this Agreement will not result in the revocation of any material Permit or the breach of any term, provision, condition or limitation affecting the ongoing validity of any material Permit. All material Permits are renewable by their terms or in the ordinary course of the Corporation's or a Subsidiary's Business without the need for the Corporation or any Subsidiary to comply with any special qualifications or procedures or to pay amounts other than routine filing fees.
- 3.3.34 **Environmental Conditions.** Except as disclosed in Section 3.3.34 of the Disclosure Letter:
- 3.3.34.1 the Corporation, the Subsidiaries, the conduct by each of the Corporation and the Subsidiaries of its Business, and the current use and condition of the Leased Premises have been and are in material compliance with all applicable Environmental Laws, and there are no facts that would give rise to non-compliance by the Corporation, or any of the Subsidiaries, with any Environmental Laws, either in the conduct by each of the Corporation and the Subsidiaries of its Business, or in the current use and condition of any of the Leased Premises;
 - 3.3.34.2 each of the Corporation and the Subsidiaries has all Permits required by all Environmental Laws for the conduct by each of the Corporation and the Subsidiaries of its Business, and each of the Corporation and the Subsidiaries is in compliance with all those Permits;
 - 3.3.34.3 each of the Corporation and the Subsidiaries, and any Person for whom the Corporation or any Subsidiary is responsible under all Environmental Laws, have imported, manufactured, processed, distributed, used, treated, stored, disposed of, transported, exported or handled Hazardous Substances in strict compliance with all Environmental Laws;
 - 3.3.34.4 no Hazardous Substances have been disposed of on any of the Leased Premises;
 - 3.3.34.5 there has been no Release of any Hazardous Substance in the course of the Business of the Corporation or any Subsidiary from, at, on or under the Leased Premises or from or on to any other properties, except in compliance with all Environmental Laws;

- 3.3.34.6 neither the Corporation nor any Subsidiary has received any notice of any kind of any Release or possible Release of any Hazardous Substance from, at, on or under any of the Leased Premises, or from or on to any other properties;
- 3.3.34.7 to the Knowledge of the Corporation, there are no Hazardous Substances on any neighbouring or adjoining properties to any of the Leased Premises that may adversely affect the Business of the Corporation or any Subsidiary, or any of the Leased Premises;
- 3.3.34.8 there has been no Remedial Order issued to the Corporation or any Subsidiary in respect of its Business, or with respect to any of the Leased Premises and no Remedial Orders are threatened, and there are no facts that could give rise to any Remedial Orders;
- 3.3.34.9 neither the Corporation nor any Subsidiary has received any notice of Claim, summons, order, direction or other communication relating to non-compliance with any Environmental Laws from any Governmental Authority or other third party; and
- 3.3.34.10 to the Knowledge of the Corporation, there is no pending or threatened matter, act or fact that could cause the Corporation or any Subsidiary, the conduct of the Business of the Corporation or any Subsidiary, or any of the Leased Premises, to be no longer in compliance with all applicable Environmental Laws.

3.3.35 **Suppliers and Customers.**

- 3.3.35.1 Section 3.3.35.1 of the Disclosure Letter lists the twenty (20) suppliers of goods and services from whom the Corporation has purchased goods or services that represent the largest expenditures since January 1, 2020 (the “**Material Suppliers**”) and sets out, in respect of each such supplier, the Corporation’s total expenditures (i) in the fiscal year ended December 31, 2020 and (ii) in the current fiscal year up to May 31, 2021. None of the suppliers listed in Section 3.3.35.1 of the Disclosure Letter has advised the Corporation, either orally or in writing, that it is terminating or considering terminating its relationship with the Corporation, or considering negotiating its relationship with the Corporation on terms different from and less favourable than those which it currently enjoys, whether as a result of the completion of the transactions contemplated by this Agreement or otherwise.
- 3.3.35.2 **Customers.** Section 3.3.35.2 of the Disclosure Letter lists the twenty (20) largest customers of the Corporation based on the revenue generated by the Corporation from each customer since January 1, 2020 (the “**Material Customers**”) and, with respect to each Material Customer, contains gross revenues for the Corporation generated: (i) in the fiscal year ended December 31, 2020 and (ii) the current fiscal year up to May 31, 2021. None of the customers listed in Section 3.3.35.2 of the Disclosure Letter has advised the Corporation, orally or in writing, that it is terminating or considering terminating its relationship with the Corporation, or considering negotiating its relationship with the Corporation on terms different from and less favourable than those which it currently enjoys, whether as a result of the completion of the transactions contemplated by this Agreement or otherwise.

- 3.3.35.3 Except as set forth in Section 3.3.35.3 of the Disclosure Letter (A) no Material Customer or Material Supplier has terminated its relationship with the Corporation or has materially decreased its business with the Corporation or materially decreased the price that any such Material Customer is willing to pay for products or services of the Corporation or materially increased the price that any such Material Supplier will charge for products or services sold to the Corporation or otherwise materially changed the terms of its business with the Corporation or, to the knowledge of the Corporation, filed for bankruptcy or liquidated (and the Corporation has not received any written notice indicating that any Material Customer or Material Supplier intends or threatens to do any of the foregoing) and (B) the Corporation is not involved in any material claim, dispute or controversy with any Material Customer or Material Supplier.
- 3.3.35.4 The Corporation has not received any written claims alleging any (i) material defects in the Corporation's products or services, (ii) defect that, while immaterial in any single case, could reasonably be expected to be applicable to a significant number of customers or could reasonably be expected to require the Corporation to incur significant cost or change in any material respect its method of operations or infrastructure, (iii) failure of the products or services of the Corporation to meet in any material respect applicable specifications, warranties, service levels or contractual commitments or (iv) default under any Contract with any Material Customer of the Corporation.

3.3.36 **Rights to Use Personal Information.**

- 3.3.36.1 To the Knowledge of the Corporation, all Personal Information in the possession of each of the Corporation and the Subsidiaries has been collected, used and disclosed in compliance with all applicable Privacy Laws in those jurisdictions in which each of the Corporation and the Subsidiaries conducts, or is deemed by operation of law in those jurisdictions to conduct, its Business.
- 3.3.36.2 The Corporation has disclosed to the Buyer all Contracts and facts concerning the collection, use, retention, destruction and disclosure by the Corporation or any Subsidiary of Personal Information, and there are no other Contracts or facts that, on completion of the transactions contemplated by this Agreement, would restrict or interfere with the use of any Personal Information by the Corporation or any Subsidiary in the continued operation of its Business as conducted before the Closing.
- 3.3.36.3 Except as disclosed in Section 3.3.36 of the Disclosure Letter, there are no Claims pending or, to the Knowledge of the Corporation, threatened with respect to the Corporation's or any Subsidiary's collection, use or disclosure of Personal Information.

- 3.3.37 **Product Warranties.** Section 3.3.37 of the Disclosure Letter lists all warranties given to buyers of products or services supplied by the Corporation or any Subsidiary. Except as disclosed in Section 3.3.37 of the Disclosure Letter, there are no Claims against the Corporation or any Subsidiary under warranties or with respect to the production or sale of products or the provision of services, and to the Knowledge of the Corporation, there is no basis for any possible prospective Claim against, or Loss on the part of, the Corporation or any Subsidiary arising from, relating to, or in connection with the production or sale of products or the provision of services.

3.3.38 Employees and Employment Contracts.

- 3.3.38.1 Section 3.3.38 of the Disclosure Letter lists the names, titles and status (active or non-active, and if not active, the reason why and period of time not active) of all Employees, together with particulars of the material terms and conditions of their employment or engagement, including current rates of remuneration, perquisites, commissions, bonus or other incentive compensation (monetary or otherwise), most recent hire date, cumulative years of service, start and end dates of all previous periods of service, benefits, vacation or personal time off entitlements, current positions held and, if available, projected rates of remuneration.
- 3.3.38.2 To the Knowledge of the Corporation, no Employee, and no consultant with whom the Corporation or any Subsidiary has contracted, is in violation of any term of any employment contract, contract of engagement, services agreement, proprietary information agreement or any other agreement relating to the right of that individual to be employed, engaged or retained by the Corporation or any Subsidiary, and, to the Knowledge of the Corporation, the continued employment or engagement by the Corporation or any Subsidiary of its current Employees will not result in any violation of those contracts or agreements. Neither the Corporation nor any Subsidiary has received any notice alleging that any violation of those contracts or agreements has occurred.
- 3.3.38.3 Except as disclosed in Section 3.3.38 of the Disclosure Letter, all of the Employees are employed, engaged or retained for an indefinite term and none are subject to written employment agreements, contracts of engagement or services agreements. True and complete copies of any employment agreements, contracts of engagement or services agreements listed in Section 3.3.38 of the Disclosure Letter have been provided to the Buyer. No officer or Key Employee has given notice, oral or written, of an intention to cease being employed by the Corporation or any of the Subsidiaries, and neither the Corporation nor any Subsidiary intends to terminate the employment of any officer or Key Employee.
- 3.3.38.4 Except as disclosed in Section 3.3.38 of the Disclosure Letter, there are no change of control or similar agreements or arrangements with any Employees, and neither the execution and delivery of this Agreement nor the completion of the transactions contemplated by this Agreement will result in any cash or other compensation or benefits becoming payable to any Employees.
- 3.3.38.5 Except as disclosed in Section 3.3.38 of the Disclosure Letter, there are no employment Law-related Claims pending, commenced or, to the Knowledge of the Corporation, threatened, and there are no outstanding employment Law-related orders, awards or rulings, in each case against the Corporation or any Subsidiary that have or might reasonably be expected to have a Material Adverse Effect.

3.3.39 Employee Confidentiality Agreements. Each of the Corporation and the Subsidiaries has entered into, and provided the Buyer with true and complete copies of, confidentiality agreements with all relevant Employees that protect confidential information relating to, and the intellectual property of, the Corporation, the Subsidiaries and third party licensors.

3.3.40 Unions. There are no apparent or, to the Knowledge of the Corporation, threatened union organizing activities involving Employees, and there have not been any union organizing

activities since the Corporation's or any Subsidiary's incorporation. Neither the Corporation nor any Subsidiary has any labour issues that might have a Material Adverse Effect, or lead to any interruption of operations at any location. Neither the Corporation nor any Subsidiary has engaged in any lay-off or other activities since its incorporation in respect of its Business that would violate or in any way subject the Corporation or any Subsidiary to the group termination or lay-off requirements of the Laws of any jurisdictions where the Corporation or any Subsidiary operates or has operated since its incorporation. Except as disclosed in Section 3.3.40 of the Disclosure Letter, neither the Corporation nor any Subsidiary is bound by or a party to, either directly or by operation of law, any collective bargaining agreement with any trade union or association that might qualify as a trade union, and no trade union, association, council of trade unions, employee bargaining agency or affiliated bargaining agent:

- 3.3.40.1 holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, designation or successor rights;
- 3.3.40.2 has applied to be certified or requested to be voluntarily recognized as the bargaining agent of any of the Employees;
- 3.3.40.3 has applied to have the Buyer declared a related or successor employer under applicable provincial labour or employment Law; or
- 3.3.40.4 has filed a complaint or charge relating to the Corporation or any Subsidiary under applicable provincial labour or employment Law.

3.3.41 Pension and Benefit Plans.

- 3.3.41.1 Section 3.3.41 of the Disclosure Letter lists and describes each Plan. True and complete copies of each written Plan, as amended to the date of this Agreement, have been made available to the Buyer. In the case of each unwritten Plan, a written description that accurately describes all of its material provisions, as amended to the date of this Agreement, has been made available to the Buyer. There have been no promised improvements, increases or changes to the benefits provided under any Plan, whether legally binding or not. True and complete copies of the three most recent financial statements and actuarial reports prepared with respect to each Plan and, where applicable, the three most recent actuarial reports in respect of any Plan filed with any Governmental Authority have been made available to the Buyer. Each of those financial statements and reports is accurate and complete and was prepared in accordance with ASPE applied on a consistent basis.
- 3.3.41.2 All Plans have been established, registered (where desirable or required), administered, communicated, funded and invested in accordance with their terms and any applicable collective bargaining agreement, and in compliance with all applicable Laws. To the Knowledge of the Corporation, no fact or circumstance exists that could adversely affect the tax exempt, tax preferred or registered status of any Plan. None of the Corporation, any Subsidiary or any of their respective agents or delegates has breached any fiduciary obligation with respect to the administration or investment of any Plan. None of the Corporation, any Subsidiary or any of their respective agents has received, in the last five years, any notice from any Person questioning or challenging that compliance (other

than in respect of any claim for benefit payments in the ordinary course related solely to any individual) and none of the Corporation or any Subsidiary has any Knowledge of any notice from any Person questioning or challenging that compliance beyond the last five years.

- 3.3.41.3 Neither the Corporation nor any Subsidiary has ever (i) sponsored or participated in a defined benefit pension plan, or (ii) participated in a multi-employer pension plan as that term is defined under the *Pension Benefits Act* (Ontario) or the *Pension Benefits Standards Act, 1985* (Canada), or in any similar type of plan for purposes of any other applicable pension benefits standards legislation. No Plan that is a pension plan has undergone a conversion of benefits from defined benefit to defined contribution benefit, or vice versa.
- 3.3.41.4 Each Plan that is a capital accumulation plan, as defined in the Capital Accumulation Plan Guidelines published by the Joint Forum of Financial Market Regulators, is, and has been since January 1, 2006, operated in accordance with the Capital Accumulation Plan Guidelines.
- 3.3.41.5 No event has occurred respecting any Plan that is a pension plan that would entitle any Governmental Authority or any other person to order or otherwise cause the wind up or termination of that Plan in whole or in part. No Plan that is a pension plan has been partially wound up or terminated in the past.
- 3.3.41.6 Each of the Corporation and the Subsidiaries has made all contributions and paid all premiums in respect of each Plan in a timely fashion in accordance with the terms of each Plan, the terms of any applicable collective bargaining agreement and applicable Laws. Each of the Corporation and the Subsidiaries has paid in full all contributions and premiums due for the period up to the date hereof even though not otherwise required to be paid until a later date, or has made full and adequate disclosure of and provision for those contributions and premiums in the Books and Records. No Taxes, penalties or fees are owing or exigible under or in respect of any Plan.
- 3.3.41.7 To the Knowledge of the Corporation, other than routine claims for benefits, no Plan is subject to any pending action, investigation, examination, claim (including claims for Taxes) or other proceeding initiated by any Person, and there exists no state of facts that could reasonably be expected to give rise to any such action, investigation, examination, claim or other proceeding.
- 3.3.41.8 None of the Plans (other than pension plans) promises or provides for post-employment or retiree health, medical, death or other benefits in respect of employees, former employees, independent contractors or former independent contractors or to the beneficiaries or dependants of any of those persons (other than benefits required by applicable Law) and neither the Corporation nor any Subsidiary has ever sponsored or participated in such a plan. The Corporation or relevant Subsidiary, as applicable, has full power and authority to revoke each such Plan and the benefits provided under it.
- 3.3.41.9 No Plan or any other agreement affecting any Plan requires or permits a retroactive increase in, or acceleration of payment or vesting of, contributions, premiums, benefits or other payments due under that Plan or agreement.

- 3.3.41.10 No provision of any Plan or of any agreement, and no act or omission of the Corporation or any Subsidiary, in any way limits, impairs, modifies or otherwise affects the rights of the Corporation or relevant Subsidiary, as applicable, to unilaterally amend or terminate any Plan.
- 3.3.41.11 All liabilities of the Corporation and each Subsidiary, contingent or otherwise, related to all Plans have been fully disclosed in accordance with ASPE applied on a consistent basis in the Financial Statements.
- 3.3.41.12 There have been no withdrawals or transfers of assets from any Plan or the trusts or other funding media relating to any Plan except in accordance with the terms of that Plan, all applicable Laws and all applicable agreements, and no applications with respect to those withdrawals or transfers are pending. All employer contribution holidays have been permitted by the terms of any Plan that is a registered pension plan and have been in accordance with applicable Law.
- 3.3.41.13 There are no merger or asset transfer applications pending with any Governmental Authority with respect to any Plan that is a pension plan. No Plan that is a pension plan has received a transfer of assets in bulk from, or has transferred assets in bulk to, any other registered pension plan. No Plan exists as a result of the merger or other combination of two or more registered pension plans the assets of which at the time of the merger, or previously, were held in trust.
- 3.3.41.14 The execution of this Agreement and the completion of the transactions contemplated by this Agreement will not (either alone or together with any additional or subsequent events) constitute an event under any Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of indebtedness, vesting, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Employee.
- 3.3.41.15 All data necessary to administer each Plan in accordance with its terms, the terms of any applicable collective bargaining agreement and all applicable Laws has been provided to the Buyer by the Corporation and that data is complete, correct, and in a form that is sufficient for the proper administration of each Plan.
- 3.3.41.16 No amendments have been made to any Plan and no improvements to any Plan have been promised.

3.3.42 **Insurance Policies.** Section 3.3.42 of the Disclosure Letter lists all Insurance Policies, and also specifies the insurer, the amount of the coverage, the type of insurance, the policy number and any pending Claims with respect to each Insurance Policy listed. The Insurance Policies insure all the property and assets of each of the Corporation and the Subsidiaries against loss or damage by all insurable hazards of risk on a replacement cost basis, and provide each of the Corporation and the Subsidiaries with product liability, professional liability, and errors and omissions coverage in amounts that are customary, and that would reasonably be considered adequate and prudent, for a company carrying on a business similar to its Business. All Insurance Policies are in full force and effect and neither the Corporation nor any Subsidiary:

- 3.3.42.1 is in default, in the payment of premiums or otherwise, under any material term or condition of any of the Insurance Policies; or
- 3.3.42.2 has failed to give notice or present any Claim under any of the Insurance Policies in a due and timely fashion and in accordance with the terms of the Insurance Policies.

3.3.43 **Litigation.**

- 3.3.43.1 Except as disclosed in Section 3.3.43 of the Disclosure Letter, there are no Claims, whether or not purportedly on behalf of or against the Corporation or any Subsidiary, pending, commenced, or, to the Knowledge of the Corporation, threatened, that might reasonably be expected to have a Material Adverse Effect or that might result in an Encumbrance against the undertakings, property or assets of the Corporation or any Subsidiary.
- 3.3.43.2 There is no outstanding judgment, decree, order, ruling or injunction in favour of, against or otherwise involving the Corporation or any Subsidiary or relating in any way to the transactions contemplated by this Agreement.

- 3.3.44 **No Expropriation.** No property or asset of the Corporation or any Subsidiary has been taken or expropriated by any Governmental Authority, no notice or proceeding in respect of any expropriation relating to the Corporation or any Subsidiary has been given or commenced and, to the Knowledge of the Corporation, there is no intent or proposal to give any notice or commence any proceeding in respect of any expropriation relating to the Corporation or any Subsidiary.

3.3.45 **Anti-Corruption and Anti-Money Laundering Compliance.**

- 3.3.45.1 Neither the Corporation, nor any Subsidiary, nor any of their respective current or former shareholders, directors, officers, Representatives or Employees on behalf of the Corporation or any Subsidiary or in connection with the Business and the activities of the Corporation or any Subsidiary, has:
 - 3.3.45.1.1 directly or indirectly given, offered, agreed to give or offer, or authorized the payment of, any money, offer, gift, loan, reward, advantage, or benefit of any kind to a foreign public official, or to any Person for the benefit of a foreign public official, for the purpose of influencing that official's acts or decisions or in consideration of an act or omission by that official in connection with the performance of the official's duties or functions; or
 - 3.3.45.1.2 been involved in any legal proceeding regarding unlawful conduct under any Laws prohibiting bribery or corruption, including the CFPOA and any similar legislation in any jurisdiction.
- 3.3.45.2 The Corporation has never conducted any internal investigation of any current or former shareholder, director, officer, Representative or Employee relating to unlawful conduct under any Laws prohibiting bribery or corruption, including the CFPOA and any similar legislation in any jurisdiction.

- 3.3.45.3 No portion of the Purchase Price will be used to make payments which would be in violation of any Laws prohibiting bribery or corruption, including the CFPOA and any similar legislation in any jurisdiction.
- 3.3.45.4 The Corporation is in compliance with all applicable anti-money laundering legislation in Canada, including the AML Laws.
- 3.3.45.5 The Corporation has not engaged in any transactions with, or provided any property or any financial or other related service, directly or indirectly, to, any persons on the lists created under applicable Laws (including the *Criminal Code*, the *United Nations Al Qaida and Taliban Regulations* and the *United Nations Regulations on the Suppression of Terrorism*) or to any blocked persons or foreign countries and territories subject to sanctions that are meant to prevent the Corporation from doing so under any applicable Laws.

3.3.46 **Brokerage Fees.** Except as set out in Section 3.3.46 of the Disclosure Letter, neither the Corporation nor any Subsidiary has retained any financial advisor, broker, agent or finder, or entered into any agreement entitling any Person to any broker's commission, finder's fee or similar payment, relating to this Agreement or the transactions contemplated by this Agreement.

3.4 Representations Relating to the Buyer

The Buyer and the Parent jointly represent and warrant to the Sellers as follows, and acknowledges that the Sellers are relying upon these representations and warranties in connection with the transactions contemplated by this Agreement:

- 3.4.1 **Corporate Existence of Buyer.** Each of the Buyer and the Parent is a corporation duly incorporated and validly existing under the federal laws of Canada.
- 3.4.2 **Capacity and Authority.** Each of the Buyer and the Parent has all necessary corporate power, authority and capacity to enter into and perform its obligations under this Agreement. The execution and delivery of this Agreement and the completion of the transactions contemplated by this Agreement have been duly authorized by all necessary corporate action on the part of each of the Buyer and the Parent.
- 3.4.3 **Binding Obligation.** This Agreement has been duly executed and delivered by each of the Buyer and the Parent and constitutes a valid and binding obligation of each of the Buyer and the Parent, enforceable against each of the Buyer and the Parent in accordance with its terms, subject to applicable bankruptcy, insolvency and other Laws of general application limiting the enforcement of creditors' rights generally, and to the fact that equitable remedies, including specific performance, are discretionary and may not be ordered in respect of certain defaults.
- 3.4.4 **Absence of Conflict.** None of the execution and delivery of this Agreement by either the Buyer or the Parent, the performance of the obligations of either the Buyer or the Parent under this Agreement, or the completion by each of the Buyer and the Parent of the transactions contemplated by this Agreement, will result in or constitute a breach of any term or provision of, or constitute a default under, the articles or by-laws of the Buyer or the Parent or any agreement or other commitment to which the Buyer or the Parent is a party.

- 3.4.5 **Investment Canada Act.** The Buyer is a Canadian within the meaning of the Investment Canada Act.
- 3.4.6 **Regulatory Approvals.** Other than the approval of the Exchange, no authorization, approval, order or consent of, or filing with, any Governmental Authority is required on the part of the Buyer in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement.
- 3.4.7 **Consideration Shares.** The Parent's common shares are listed on the Exchange. The authorized capital of the Parent consists of an unlimited number of common shares without par value, and an unlimited number of preferred shares without par value issuable in series. The Consideration Shares will be, when issued, duly authorized, validly issued and fully paid.
- 3.4.8 **Litigation.** There are no actions, suits, investigations or other legal proceedings pending or, to the Buyer's or the Parent's knowledge, threatened against or by the Buyer or the Parent that challenge or seek to prevent, enjoin, or otherwise delay the transactions contemplated by this Agreement.

ARTICLE 4 COVENANTS

4.1 Conduct of Business Before Closing

From the date of this Agreement until the Closing, and except as expressly permitted or contemplated by this Agreement, the Corporation will, and will cause each Subsidiary to:

- 4.1.1 carry on its Business only in the ordinary course, consistent with past practice;
- 4.1.2 make all commercially reasonable efforts to preserve the goodwill of the Corporation and the Subsidiaries and their relationships with customers, suppliers and others having business dealings with the Corporation or any Subsidiary;
- 4.1.3 refrain from doing, or agreeing or offering to do, any of the things described in Section 3.3.22 (*Absence of Unusual Transactions*);
- 4.1.4 other than in respect of the ACOA Indebtedness, refrain from incurring, creating, assuming or otherwise becoming liable for any Indebtedness;
- 4.1.5 refrain from permitting, causing or allowing to occur any Leakage other than a Permitted Leakage;
- 4.1.6 except as required by applicable Law, or with the prior written consent of the Buyer, refrain from:
- 4.1.6.1 hiring, engaging or retaining any new employees or independent contractors to be employed, engaged or retained in connection with its Business;
 - 4.1.6.2 terminating any Employees or transferring any Employees to any other positions;
 - 4.1.6.3 increasing remuneration of Employees before the Closing Date;

- 4.1.6.4 taking any action to materially increase the aggregate benefits payable to Employees (including granting or modifying any bonus, change of control or termination arrangements, whether monetary or otherwise; or
- 4.1.6.5 taking any action to materially amend any Contract with any Employee;
- 4.1.7 continue in full force the Insurance Policies;
- 4.1.8 comply in all material respects with all Laws applicable to its Business;
- 4.1.9 apply for, maintain in good standing and renew all Permits; and
- 4.1.10 refrain from authorizing any of, or committing or agreeing to take any of, the foregoing actions.

4.2 Leakage Covenants and Leakage Claims.

- 4.2.1 Each Seller covenants and agrees with the Buyer:
 - 4.2.1.1 that during the period commencing on the Locked-Box Accounts Date (and including) the Closing Date, no Leakage will occur other than Permitted Leakage;
 - 4.2.1.2 to promptly notify the Buyer in writing if it becomes aware of any matter or circumstance that could give rise to a Leakage Claim, including reasonable details (in so far as they are known to such Seller) of the Leakage concerned and, as far as is reasonably practicable, an estimate of the amount of such Leakage; and
 - 4.2.1.3 to indemnify the Buyer against any Leakage in breach of the covenants set forth in this Section 4.2 and to pay to the Buyer on demand:
 - 4.2.1.3.1 a sum equal to the amount necessary to put the Corporation and the Subsidiaries into the position they would have been in if such Leakage had not occurred;
 - 4.2.1.3.2 a sum equal to all Losses incurred by the Buyer in connection with such Leakage; and
 - 4.2.1.3.3 such sum as is necessary to ensure that, after the deduction of any tax due on any amount payable under this 4.2 (whether by way of direct assessment or withholding at its source), the Buyer is left with the same amount it would have had if the payment was not subject to tax.
- 4.2.2 Notwithstanding anything to the contrary elsewhere in this Section 4.2, the Sellers shall have no liability to the Buyer in respect of any Leakage Claim unless the transaction contemplated by this Agreement is completed.
- 4.2.3 Sellers shall have no liability for a Leakage Claim unless it has received written notice of such Leakage Claim from Buyer including reasonable details (in so far as they are known to Buyer) of the matter or event giving rise to the Leakage Claim and, as far as is reasonably

practicable, the amount payable by Sellers in respect of the Leakage Claim on or before twenty-four (24) months after the Closing Date.

4.2.4 The Buyer's sole remedy in respect of any Leakage Claim is a claim under the indemnity in Section 4.2.1.3.

4.2.5 The Purchase Price shall be deemed to have been adjusted by the amount of any payments made to the Buyer under this Article 4.

4.3 Access for Investigation

The Corporation will, and will cause each Subsidiary to, permit the Buyer through its authorized Representatives, until the Closing Date, to have reasonable access during normal business hours to the Leased Premises and to all the Books and Records and to the properties and assets of each of the Corporation and the Subsidiaries. The Corporation will also provide the Buyer with any financial and operating data and other information with respect to the Corporation or any Subsidiary, or the Business of the Corporation or any Subsidiary, as the Buyer reasonably requests to enable the Buyer to confirm the accuracy of the matters represented and warranted by the Corporation or the Sellers in Article 3.

4.4 Consents Under Material Contracts

The Corporation will make all commercially reasonable efforts to obtain and maintain, before the Closing, the consents, approvals and waivers disclosed in Section 3.3.5 of the Disclosure Letter, provided that the Corporation will be under no obligation to pay any money, incur any obligations, commence any legal proceedings, or offer or grant any accommodation (financial or otherwise) to any third party in order to obtain those consents, approvals and waivers. The Buyer will make all commercially reasonable efforts to cooperate with and assist the Corporation in obtaining and maintaining those consents, approvals and waivers, including by providing any information relating to the Buyer that is reasonably requested by a third party to grant its consent.

4.5 Actions to Satisfy Closing Conditions

Subject to Section 4.4 (which sets out the only obligations of any Party relating to the consents, approvals and waivers set out in that Section), each Party will take or cause to be taken all actions that are within its power to control, and will make all commercially reasonable efforts to cause actions to be taken that are not within its power to control, to satisfy the conditions in Article 5 that are for the benefit of any other Party.

4.6 Notification of Change

From the date of this Agreement until the Closing, the Corporation will promptly notify the Buyer in writing of:

4.6.1 any event or state of facts that occur or fail to occur which would, or would be reasonably likely to:

4.6.1.1 cause any of the Corporation's representations or warranties in this Agreement to be inaccurate at any time from the date of this Agreement until the Closing;

4.6.1.2 result in the Corporation's failure to comply with any covenant in this Agreement to be complied with at or before the Closing; or

- 4.6.1.3 result in the failure of any of the conditions in Section 5.1 (*Conditions for the Benefit of the Buyer*) or 5.3 (*Mutual Conditions Precedent*) to be satisfied;
- 4.6.2 the occurrence, after the date of this Agreement, of a Material Adverse Effect;
- 4.6.3 any notice or other communication from any Person alleging that the consent (or waiver, permit, exemption, order, approval, agreement or confirmation) of that Person (or another Person) is or may be required in connection with this Agreement or the transactions contemplated by this Agreement; or
- 4.6.4 any Claims commenced or, to the Knowledge of the Corporation, threatened, that relate to or involve the Corporation, this Agreement or the transactions contemplated by this Agreement.

Notification provided under this Section 4.6 will not affect the representations, warranties or covenants of the Parties (or related remedies) or the conditions to the obligations of the Parties in this Agreement.

4.7 Exclusivity

From the date of this Agreement until the Closing, none of the Sellers or the Corporation will:

- 4.7.1 solicit, initiate, knowingly facilitate or encourage, or accept; or
- 4.7.2 participate in any discussions, conversations, negotiations or other communications regarding,

any offer or proposal relating to any transaction (other than the purchase and sale transaction contemplated by this Agreement) involving the sale of any shares or other securities of the Corporation, the sale of the Business of the Corporation or any Subsidiary, or any other business combination involving the Corporation or any Subsidiary. If an offer or proposal relating to a transaction contemplated in this Section 4.7 is made to the Corporation or any Seller, the recipient will provide prompt notice of the offer or proposal to the Buyer.

4.8 Personal Information

- 4.8.1 The collection, use and disclosure of Personal Information by any of the Parties before the Closing is restricted to those purposes that relate to the transactions contemplated by this Agreement.
- 4.8.2 Following the Closing, the Buyer will cause each of the Corporation and the Subsidiaries to:
 - 4.8.2.1 use and disclose the Personal Information under its control at the time of the Closing solely for the purposes for which that Personal Information was collected or permitted to be used or disclosed before the transactions contemplated by this Agreement were completed; and
 - 4.8.2.2 neither use nor disclose any of that Personal Information for any purpose for which its use and disclosure was not permitted before the Closing; and
 - 4.8.2.3 protect that Personal Information by security safeguards appropriate to the sensitivity of the information; and

- 4.8.2.4 give effect to any withdrawal of consent made in accordance with clause 4.3.8 of Schedule 1 to the *Personal Information Protection and Electronic Documents Act* (Canada).

4.9 Indemnification and Directors' and Officers' Insurance

- 4.9.1 From and after the Closing Date, the Buyer will cause each of the Corporation and the Subsidiaries (and its successors) to fulfill and honour in all respects the respective obligations of each of the Corporation and the Subsidiaries under any written indemnification agreements between the Corporation or any Subsidiary and its past and present directors and officers that remain in effect on the date of this Agreement, and any indemnification provisions under the by-laws of the Corporation or any Subsidiary as in effect on the date of this Agreement.
- 4.9.2 Before Closing, the Corporation will purchase extended reporting coverage insurance under its existing directors' and officers' liability insurance policies, or from another insurer that provides that coverage, for a period of six (6) years after the Closing Date, for the directors and officers of the Corporation and the Subsidiaries for Claims arising from facts or events that occurred at, or before, the Closing (including acts or omissions relating to the approval of this Agreement and consummation of the transactions contemplated by this Agreement) (the "**D&O Insurance**").
- 4.9.3 The provisions of this Section 4.9 are intended for the benefit of, and will be enforceable by, each insured or indemnified person referred to in this Section 4.9 and that person's Successors, and, for that purpose, the Sellers confirm that they are acting as agents and trustees on their behalf.

4.10 Delivery of Books and Records

At the Closing, the Sellers will cause to be delivered to the Buyer all of the Books and Records, including copies of all of the Insurance Policies.

4.11 Tax Returns

The Buyer will cause to be prepared and filed on a timely basis all Tax Returns for the Corporation and each Subsidiary for any period that ends on or before the Closing Date and for which Tax Returns have not been filed as of the Closing Date. The Buyer will also cause to be prepared and filed on a timely basis all Tax Returns for the Corporation and each Subsidiary for all Straddle Periods (all these Tax Returns together with the Tax Returns referred to in the first sentence of this Section 4.11 being referred to as "**Stub Period Returns**"). The Sellers and the Buyer will cooperate fully with each other and make available to each other in a timely fashion all data and other information as may reasonably be required for the preparation of all Stub Period Returns and will preserve that data and other information until the expiration of any applicable limitation period for maintaining books and records under any applicable Tax Law with respect to the Stub Period Returns. The Buyer will provide to the Sellers for their review, at least ten (10) Business Days before the relevant filing deadline, a copy of the Stub Period Returns and, before filing the Stub Period Returns, will take into account, acting reasonably, any comments of the Sellers on the Stub Period Returns. The Sellers will pay the costs (including a reasonable allocation of internal costs) of the preparation and filing of the Stub Period Returns (with those costs to be divided between the Sellers in accordance with their Pro Rata Shares).

4.12 Restrictive Covenants—ITA 56.4

The Sellers and the Buyer agree that no portion of the Purchase Price shall be allocated to the “restrictive covenants” (as such term is defined in the ITA) set out in the Restrictive Covenant Agreements. The Sellers and the Buyer further agree that any such restrictive covenants can reasonably be regarded to have been granted to maintain or preserve the fair market value of the Corporation’s assets and the Business and are integral to the consummation of the transactions contemplated by this Agreement. At the request of any of the Sellers and to the extent permitted by the ITA, the Buyer agrees to make, and such Seller shall file, in respect of the covenants granted in the Restrictive Covenant Agreements, any available elections or amended elections in prescribed form (or such other form as is reasonably requested) and within the prescribed time limits pursuant to section 56.4 of the ITA and any analogous provision of any provincial or territorial Tax statute.

ARTICLE 5 CLOSING CONDITIONS

5.1 Conditions for the Benefit of the Buyer and the Parent

The obligation of each of the Buyer and the Parent to complete the purchase of the Purchased Shares is subject to the satisfaction, or waiver by the Buyer and the Parent, at or before the Closing, of the following conditions, which are for the sole benefit of the Buyer and the Parent and which may be waived, in whole or in part, by the Buyer and Parent at any time without prejudice to the right of the Buyer or the Parent to rely on any other condition precedent.

- 5.1.1 **Representations and Warranties.** The representations and warranties of each of the Sellers and the Corporation made in this Agreement that are qualified by materiality or Material Adverse Effect will be true and accurate at the Closing as if made as of the time of the Closing, and each of the other representations and warranties of each of the Sellers and the Corporation made in this Agreement will be true and accurate in all material respects at the Closing as if made as of the time of the Closing (except, in each case, for any representations and warranties made as at a specified date, the accuracy of which will be determined as of that specified date instead of the Closing Date).
- 5.1.2 **Covenants.** Each of the Sellers and the Corporation will have performed in all material respects each of its obligations required to be performed at or before the Closing under this Agreement.
- 5.1.3 **No Material Adverse Effect.** Since the date of this Agreement, no Material Adverse Effect will have occurred.
- 5.1.4 **Consents.** All filings with, notifications to and consents or approvals from Governmental Authorities and third parties, including, without limitation, the Exchange, the parties to the Material Contracts and the lessors of the Leased Premises, will have been made, given or obtained on terms acceptable to the Buyer, acting reasonably, including, without limitation, so that the transactions contemplated by this Agreement may be completed without resulting in the breach of, or any default, termination, amendment or acceleration of any obligation under, any Material Contract, Permit or Real Property Lease, or any licence of, or affecting the Business or affairs of, the Corporation, the Parent or any Subsidiary.
- 5.1.5 **Financing.** The Parent shall have completed a financing with gross proceeds of not less than \$10,000,000 (the “**Parent Financing**”).

- 5.1.6 **Disclosure Letter.** The Sellers shall have delivered the Disclosure Letter at the time of delivering the executed version of this Agreement.
- 5.1.7 **Deliveries.** The Sellers will have delivered, or caused to be delivered, to the Buyer the following in form and substance satisfactory to the Buyer:
- 5.1.7.1 a certificate of the Corporation, signed on its behalf by a senior officer of the Corporation, confirming the matters set out in Sections 5.1.1 (*Representations and Warranties*) and 5.1.2 (*Covenants*) that are applicable to the Corporation, dated as of the Closing Date;
 - 5.1.7.2 a certificate of each Seller, signed on its behalf by a senior officer of that Seller if the Seller is not an individual, confirming the matters set out in Sections 5.1.1 (*Representations and Warranties*) and 5.1.2 (*Covenants*) that are applicable to that Seller, dated as of the Closing Date;
 - 5.1.7.3 original share certificates representing the Purchased Shares, duly endorsed by an effective endorsement for transfer to the Buyer;
 - 5.1.7.4 certified copies of resolutions of the directors of the Corporation authorizing the transfer of the Purchased Shares to the Buyer;
 - 5.1.7.5 Restrictive Covenant Agreement executed by Cahill Innovation Inc. and Moya Cahill, substantially in the form attached as Exhibit 5.1.7.5;
 - 5.1.7.6 employment agreement executed by Moya Cahill in such form and having such content as is reasonably agreeable to the parties thereto;
 - 5.1.7.7 executed resignations effective as at the Closing of each director or officer of the Corporation or any Subsidiary, as specified by the Buyer by notice in writing at least two Business Days before the Closing Date;
 - 5.1.7.8 releases from each Seller and each of the individuals specified in Section 5.1.7.7 of all Claims they may have against the Corporation or any of the Subsidiaries, substantially in the form attached as Exhibit 5.1.7.8;
 - 5.1.7.9 the consents referred to in Section 5.1.4 (*Consents*);
 - 5.1.7.10 all Books and Records, including copies of all of the Insurance Policies; and
 - 5.1.7.11 all other documentation and evidence reasonably requested by the Buyer to establish the due authorization and completion by each of the Sellers and the Corporation of the transactions contemplated by this Agreement, including the taking of all corporate proceedings by the directors and shareholders of each non-individual Seller and the Corporation required to effectively carry out their respective obligations under this Agreement.

5.2 Conditions for the Benefit of the Sellers

The obligation of the Sellers to complete the sale of the Purchased Shares is subject to the satisfaction, or waiver by the Sellers, at or before the Closing, of the following conditions, which are for the sole

benefit of each Seller and which may be waived, in whole or in part, by the Sellers at any time without prejudice to any Seller's right to rely on any other condition precedent.

- 5.2.1 **Representations and Warranties.** The representations and warranties of each of the Buyer and the Parent made in this Agreement that are qualified by materiality will be true and accurate at the Closing as if made as of the time of Closing, and each of the other representations and warranties of each of the Buyer and the Parent made in this Agreement will be true and accurate in all material respects at the Closing as if made as of the Closing (except, in each case, for any representations and warranties made as at a specified date, the accuracy of which will be determined as of that specified date instead of the time of the Closing).
- 5.2.2 **Covenants.** Each of the Buyer and the Parent will have performed in all material respects each of its obligations required to be performed at or before the Closing under this Agreement.
- 5.2.3 **Parent Financing.** The Parent Financing will have be completed within 30 days of the date of this Agreement.
- 5.2.4 **Deliveries.** The Buyer will have delivered to the Sellers the following in form and substance satisfactory to the Sellers:
 - 5.2.4.1 a certificate of the Buyer, signed on its behalf by a senior officer of the Buyer, confirming the matters set out in Sections 5.2.1 (*Representations and Warranties*) and 5.2.2 (*Covenants*), dated as of the Closing Date;
 - 5.2.4.2 a certificate of the Parent, signed on its behalf by a senior officer of the Parent, confirming the matters set out in Sections 5.2.1 (*Representations and Warranties*) and 5.2.2 (*Covenants*), dated as of the Closing Date; and
 - 5.2.4.3 all documentation and other evidence reasonably requested by any Seller to establish the due authorization and completion by the Buyer of the transactions contemplated by this Agreement, including the taking of all corporate proceedings by the directors of the Buyer required to effectively carry out the obligations of the Buyer under this Agreement.

5.3 Mutual Conditions Precedent

The purchase and sale of the Purchased Shares is subject to the satisfaction, or waiver by the Buyer and the Sellers, at or before the Closing, of each of the following conditions, which are for the mutual benefit of the Buyer and the Sellers and which may be waived, in whole or in part, by consent of the Buyer and the Sellers at any time without prejudice to any right of the Buyer or the Sellers to rely on any other condition precedent.

- 5.3.1 **No Action to Restrain.** No order of any Governmental Authority will be in force, and no action or proceeding will be pending or threatened by any Person:
 - 5.3.1.1 to restrain or prohibit the completion of the transactions contemplated by this Agreement, including the sale and purchase of the Purchased Shares;
 - 5.3.1.2 to restrain or prohibit the Corporation or any Subsidiary from carrying on its Business; or

5.3.1.3 that would have a Material Adverse Effect.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing

The Closing will take place at such time on the Closing Date as may be agreed by the Parties. All required documents may be delivered as originals or may be delivered by electronic transmission, except that the share certificates representing the Purchased Shares must be delivered in original form.

6.2 Closing Deliveries

At the Closing:

- 6.2.1 the Buyer will make the payments set out in Section 2.4 (*Payment of Purchase Price*) of funds and issue the Promissory Notes;
- 6.2.2 the Parent will issue the Consideration Shares contemplated by Section 2.4.1.2;
- 6.2.3 the Sellers will deliver or cause to be delivered to the Buyer the documents set out in Section 5.1.7 (*Deliveries*), including the original share certificates representing the Purchased Shares in fully transferable form; and
- 6.2.4 the Buyer will deliver or cause to be delivered to the Sellers the documents set out in Section 5.2.4 (*Deliveries*).

ARTICLE 7 TERMINATION

7.1 Termination Rights

This Agreement may be terminated at any time before the Closing:

- 7.1.1 by mutual written consent of the Buyer and the Sellers;
- 7.1.2 by the Buyer, upon written notice to the other Parties (specifying in reasonable detail the circumstances giving rise to the Buyer's right to terminate):
 - 7.1.2.1 if any condition set out in Section 5.1 (*Conditions for the Benefit of the Buyer*) or 5.3 (*Mutual Conditions Precedent*) that has not been waived by the Buyer is not satisfied at or before the Closing; or
 - 7.1.2.2 if any condition set out in Section 5.1 (*Conditions for the Benefit of the Buyer*) or 5.3 (*Mutual Conditions Precedent*) that has not been waived by the Buyer is not capable of being satisfied by the Outside Date,

in each case provided that the failure to satisfy that condition is not the result, directly or indirectly, of the Buyer's breach of this Agreement;

- 7.1.3 by any of the Sellers, upon written notice to the other Parties (specifying in reasonable detail the circumstances giving rise to that Seller's right to terminate):
- 7.1.3.1 if any condition set out in Section 5.2 (*Conditions for the Benefit of the Sellers*) or 5.3 (*Mutual Conditions Precedent*) that has not been waived by that Seller is not satisfied at or before the Closing; or
 - 7.1.3.2 if any condition set out in Section 5.2 (*Conditions for the Benefit of the Sellers*) or 5.3 (*Mutual Conditions Precedent*) that has not been waived by that Seller is not capable of being satisfied by the Outside Date,
- in each case provided that the failure to satisfy that condition is not the result, directly or indirectly, of the breach of this Agreement by any Seller or the Corporation; or
- 7.1.4 by the Buyer or any Seller, upon written notice to the other Parties, if the Closing does not occur by 11:59 p.m. on the Outside Date, provided that the Buyer may not terminate this Agreement under this Section 7.1.4 if the failure of the Closing to occur is the result, directly or indirectly, of the Buyer's breach of this Agreement, and a Seller may not terminate this Agreement under this Section 7.1.4 if the failure of the Closing to occur is the result, directly or indirectly, of the breach of this Agreement by any Seller or the Corporation.

7.2 Effect of Termination

If this Agreement is terminated in accordance with Section 7.1, the Parties will be released from all of their obligations under this Agreement, except that:

- 7.2.1 this Section 7.2, the indemnification rights under Section 9.1 (*The Sellers' Representative*), Section 9.13 (*Costs and Expenses*) and Section 9.15 (*Public Announcements*) will survive the termination of this Agreement and continue in full force and effect; and
- 7.2.2 the termination of this Agreement at any time before the Closing will not relieve any Party from any liability arising before that termination.

ARTICLE 8 INDEMNIFICATION AND SURVIVAL

8.1 Indemnification by the Sellers

Subject to the other provisions of this Article 8, each Seller will, if the Closing occurs:

- 8.1.1 severally, and proportionately to that Seller's Pro Rata Share of the relevant Loss, indemnify and hold harmless each Buyer Indemnified Party from and against any Loss that a Buyer Indemnified Party may suffer as a result of:
 - 8.1.1.1 any breach of any representation or warranty made by the Corporation in this Agreement or any other documents and agreements to be delivered under this Agreement;
 - 8.1.1.2 any non-performance of any covenant or agreement of the Corporation contained in this Agreement;

- 8.1.1.3 any Third Party Claims arising out of a breach or alleged breach by the Corporation or any Subsidiary of Environmental Laws, but only to the extent that Loss arises out of or originates from events occurring, or due to conditions existing, at or any time before the Closing Date, whether or not known to the Parties at or before that time, even if that Third Party Claim is ultimately found not to be meritorious, or is settled with no verdict on its merits being reached;
 - 8.1.1.4 any assessment or reassessment for Taxes relating to the Corporation or any Subsidiary for any taxation year ending on or before the Closing Date or related to the portion of any Straddle Period up to and including the Closing Date, to the extent that the amount of Taxes payable as a result of that assessment or reassessment exceeds the amount accrued as a liability for those Taxes on the Financial Statements; and
 - 8.1.1.5 any amount that may become due to the Buyer pursuant to Section 4.2.1.3; and
- 8.1.2 severally, not limited by that Seller's Pro Rata Share of the relevant Loss, indemnify and hold harmless each Buyer Indemnified Party from and against any Loss that a Buyer Indemnified Party may suffer as a result of:
- 8.1.2.1 any breach of any representation or warranty made by that Seller in Section 3.2 (*Representations Relating to the Sellers*) or this Agreement or any other documents and agreements to be delivered under this Agreement; and
 - 8.1.2.2 any non-performance of any covenant or agreement of that Seller contained in this Agreement or any other documents and agreements to be delivered under this Agreement.

8.2 Indemnification by the Buyer

Subject to the other provisions of this Article 8, the Buyer will, if the Closing occurs, indemnify and hold harmless each Seller Indemnified Party from and against any Loss that a Seller Indemnified Party may suffer as a result of:

- 8.2.1 any breach of any representation or warranty made by the Buyer in this Agreement or any other documents and agreements to be delivered under this Agreement; and
- 8.2.2 any non-performance of any covenant or agreement of the Buyer contained in this Agreement or any other documents and agreements to be delivered under this Agreement.

8.3 Survival Periods for Claims by Buyer Indemnified Parties

- 8.3.1 Subject to the limitations and other provisions of this Agreement, the covenants, representations and warranties made by the Corporation and the Sellers in this Agreement or any other documents and agreements to be delivered under this Agreement will survive the Closing and completion of the transactions contemplated by this Agreement.
- 8.3.2 Subject to Section 8.3.3, a Buyer Indemnified Party may make an Indemnity Claim relating to or based on the following matters only if an Indemnity Notice of that Indemnity Claim is delivered to the relevant Indemnifying Party within the following periods or before the following deadlines:

- 8.3.2.1 if the Indemnity Claim relates to any breach of any representation or warranty made by the Corporation or any Seller in this Agreement or any other documents and agreements to be delivered under this Agreement, other than a breach specified in the remainder of this Section 8.3.2, within eighteen (18) months after the Closing Date;
- 8.3.2.2 if the Indemnity Claim relates to any breach of the Fundamental Representations and Warranties, within twenty four (24) months after the Closing Date;
- 8.3.2.3 if the Indemnity Claim relates to any breach of the representations and warranties made in Section 3.3.34 (*Environmental Conditions*), or if the Indemnity Claim is made under Section 8.1.1.3, within twenty-four (24) months after the Closing Date; and
- 8.3.2.4 if the Indemnity Claim relates to any breach of the representations and warranties made in Section 3.3.18 (*Tax Matters*), or if the Indemnity Claim is made under Section 8.1.1.4, on or before 90 days after the last day upon which any of the relevant Governmental Authorities is entitled to assess or reassess the Corporation or any Subsidiary (or to raise Claims against the Buyer, the Corporation or any Subsidiary relating to that assessment or reassessment) with respect to any Tax for any taxation year ending on or before the Closing Date or related to the portion of any Straddle Period up to and including the Closing Date.

8.3.3 The notice periods set out in Section 8.3.2 will not apply to an Indemnity Claim based on intentional misrepresentation or fraud by the Corporation or the Sellers, or any of them, relating to this Agreement or any other documents and agreements to be delivered under this Agreement.

8.4 Survival Periods for Claims by Seller Indemnified Parties

8.4.1 Subject to the limitations and other provisions of this Agreement, the covenants, representations and warranties made by the Buyer and the Parent in this Agreement or any other documents and agreements to be delivered under this Agreement will survive the Closing and completion of the transactions contemplated by this Agreement, and will continue in full force and effect.

8.4.2 Subject to Section 8.4.3, a Seller Indemnified Party may make an Indemnity Claim under Section 8.2.1 only if an Indemnity Notice of that Indemnity Claim is delivered to the Buyer as Indemnifying Party within eighteen (18) months after the Closing Date, provided however that if an Indemnity Claim relates to any breach of the representations and warranties made in Section 3.4.7 (*Consideration Shares*), then within twenty-four (24) months after the date on which such portion of the Purchase Price was due to be paid under this Agreement.

8.4.3 The notice period set out in Section 8.4.2 will not apply to an Indemnity Claim based on intentional misrepresentation or fraud by the Buyer relating to this Agreement or any other documents and agreements to be delivered under this Agreement.

8.5 Amount Limitations on Indemnification Obligations

8.5.1 The Sellers will have no liability under Section 8.1 (other than with respect to Losses arising out of any breach or inaccuracy of any of the Fundamental Representations and Warranties or intentional misrepresentation or fraud) with respect to any Claim (or series of related

Claims), unless the aggregate amount of Losses that would be payable with respect to such Claim (or series of related Claims) exceeds an amount equal to the De Minimis Amount.

8.5.2 Subject to Section 8.5.3:

8.5.2.1 the indemnification obligations of the Sellers under this Article 8 (other than with respect to Losses arising out of any breach or inaccuracy of any of the Fundamental Representations and Warranties, Section 3.3.18 (*Tax Matters*) or intentional misrepresentation or fraud) are limited in the aggregate to Ten Million Dollars (\$10,000,000.00); and

8.5.2.2 the Sellers will not be required to indemnify any Buyer Indemnified Party under this Article 8 unless the aggregate of all Losses under the Indemnity Claims made by the Buyer Indemnified Parties exceeds \$250,000, in which case each Seller will be obligated to pay the full amount owing by it as an Indemnifying Party pursuant to this Article 8 (both below and above that threshold).

8.5.3 If any Indemnity Claims are made by a Buyer Indemnified Party against the Sellers or any of them:

8.5.3.1 relating to the non-performance of any covenant or obligation of the Corporation or a Seller under this Agreement;

8.5.3.2 relating to any breach of the Fundamental Representations and Warranties;

8.5.3.3 under Section 8.1.1.4, or relating to any breach of the representations and warranties in Section 3.3.18 (*Tax Matters*); or

8.5.3.4 based on intentional misrepresentation or fraud,

then:

8.5.3.5 despite Section 8.5.2, the indemnification obligations of the Sellers with respect to those Indemnity Claims will be unlimited; and

8.5.3.6 the limitations in Section 8.5.2.2 will not apply to those Indemnity Claims, but the Losses under those Indemnity Claims will be taken into account in determining whether the threshold in Section 8.5.2.2 has been met.

8.5.4 The Buyer will have no liability under Section 8.2 (other than with respect to Losses arising out of intentional misrepresentation or fraud) with respect to any Claim (or series of related Claims), unless the aggregate amount of Losses that would be payable with respect to such Claim (or series of related Claims) exceeds an amount equal to the De Minimis Amount.

8.5.5 The indemnification obligations of the Buyer under this Article 8 are limited in the aggregate to the such portion of the Purchase Price (inclusive of any Earn-Out Consideration), as adjusted pursuant to Section 8.11 as, at the relevant time, that is, at any time and from time to time, due to be paid and remains unpaid.

8.6 Rules Relating to Indemnification Obligations

The following will apply to the indemnification obligations under this Article 8.

- 8.6.1 **Insurance Recoveries.** Before an Indemnifying Party is required to indemnify an Indemnified Party for any Loss under an Indemnity Claim, the Indemnified Party must first make all commercially reasonable efforts to seek recovery for that Loss under any applicable insurance policies held by the Indemnified Party, the Corporation or the Subsidiaries. The amount of any Loss under an Indemnity Claim will be net of any amounts actually recovered by the Indemnified Party, the Corporation or a Subsidiary under insurance policies with respect to that Loss.
- 8.6.2 **Tax Adjustments.** The amount of any Loss for which indemnification is provided under this Article 8 will be (i) increased to take account of any net Tax cost incurred by the Indemnified Party arising from the receipt of indemnity payments under this Agreement, and (ii) reduced to take account of any net Tax benefit realized by the Indemnified Party arising from the incurrence or payment of that Loss, to the extent necessary to ensure that the Indemnified Party receives a net amount that, taking into account any net Tax cost or net Tax benefit, is sufficient to fully compensate for the Loss, but results in no net gain to the Indemnified Party. In computing the amount of any net Tax cost or net Tax benefit, the Indemnified Party will be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any item arising from the receipt of any indemnity payment under this Agreement or the incurrence or payment of any indemnified Loss.
- 8.6.3 **No Double Recovery.** No Indemnified Party is entitled to double recovery for any Indemnity Claim even though the Indemnity Claim may have resulted from the breach or inaccuracy of more than one of the representations, warranties, covenants and obligations of the Indemnifying Party under this Agreement or any other documents and agreements to be delivered under this Agreement.
- 8.6.4 **Materiality.** If a representation or warranty is qualified by materiality or Material Adverse Effect, that qualification will be disregarded for purposes of determining the amount of the Loss resulting from that breach.
- 8.6.5 **Mitigation.** Each Indemnified Party shall take all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.
- 8.6.6 **Punitive, Incidental, Indirect and Other Special Damages.** In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, exemplary, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.

8.7 Notice of Indemnity Claims

If an Indemnified Party becomes aware of a Loss or potential Loss in respect of which an Indemnifying Party has agreed to indemnify it under this Article 8, the Indemnified Party will promptly give written notice (an “**Indemnity Notice**”) of its Claim or potential Claim for indemnification (an “**Indemnity Claim**”) to the Indemnifying Party. An Indemnity Notice must specify whether the Indemnity Claim arises as the result of a Third Party Claim or whether the Indemnity Claim is a Direct Claim, and must also specify with reasonable particularity (to the extent that the information is available):

- 8.7.1 the factual basis for the Indemnity Claim; and

8.7.2 the amount of the Indemnity Claim, if known.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive an Indemnity Notice of an Indemnity Claim in time to effectively contest the determination of any liability capable of being contested, the Indemnifying Party will be entitled to set-off against the amount claimed by the Indemnified Party the amount of any Loss incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give an Indemnity Notice on a timely basis.

8.8 Procedure for Direct Claims

8.8.1 Following receipt of an Indemnity Notice from the Indemnified Party of a Direct Claim, the Indemnifying Party will have five (5) Business Days, or any other period of time agreed to by the Indemnifying Party and the Indemnified Party, (in either case, the "**Claim Dispute Period**") to make any investigations it considers necessary or desirable. For the purpose of those investigations, the Indemnified Party will make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Direct Claim, together with all other information that the Indemnifying Party may reasonably request.

8.8.2 If the Indemnifying Party disputes the validity or amount of the Direct Claim, the Indemnifying Party may provide written notice of the dispute to the Indemnified Party within the Claim Dispute Period. That dispute notice must describe in reasonable detail the nature of the Indemnifying Party's dispute. Upon receipt of a dispute notice, the Indemnified Party may pursue all rights and remedies available to it, subject to this Agreement.

8.8.3 If the Indemnifying Party does not provide written notice of a dispute with respect to the Direct Claim within the Claim Dispute Period, the Indemnifying Party will be deemed to have agreed to the validity and amount of the Direct Claim.

8.9 Procedure for Third Party Claims

8.9.1 The Indemnified Party will promptly deliver to the Indemnifying Party copies of all correspondence, notices, assessments or other written communication received by the Indemnified Party in respect of any Third Party Claim that is or might become the basis of an Indemnity Claim.

8.9.2 The Indemnified Party will not negotiate, settle, compromise or pay any Third Party Claim that is or might become the basis of an Indemnity Claim without the prior written consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned or delayed.

8.9.3 The Indemnified Party will not cause or permit the termination of any right to defend or right of appeal in respect of any Third Party Claim that is or might become the basis of an Indemnity Claim without giving the Indemnifying Party written notice of the contemplated or potential termination in time to grant the Indemnifying Party an opportunity to contest the Third Party Claim.

8.9.4 Each of the Indemnified Party and the Indemnifying Party will make all commercially reasonable efforts to make available to the Party (or other Indemnified Party) who has assumed carriage and control of a Third Party Claim that is or might become the basis of an Indemnity Claim all employees and other Persons under its control whose assistance or evidence is necessary to assist that Party (or other Indemnified Party) in evaluating and defending that Third Party Claim and all documents, records and other materials in its

possession or control required for use in the negotiation, defence or settlement of that Third Party Claim.

8.9.5 The Indemnifying Party will have the right, by written notice delivered to the Indemnified Party within five (5) Business Days of receipt by the Indemnifying Party of the Indemnity Notice, and subject to the right of any insurer or other Person to elect to assume carriage and control of the Third Party Claim, to assume carriage and control (including the negotiation, defence or settlement) of the Third Party Claim and the conduct of any related legal or administrative proceedings at the expense of the Indemnifying Party and by its own counsel.

8.9.6 If the Indemnifying Party elects to assume carriage and control, the Indemnified Party will have the right to participate at its own expense (which will not be indemnified under this Article 8) in the negotiation, defence or settlement of the Third Party Claim assisted by its own counsel; and

8.9.6.1 despite Section 8.9.5, the Indemnifying Party will not, except with the Indemnified Party's prior written consent (which consent will not be unreasonably withheld, conditioned or delayed), settle the Third Party Claim or conduct any related legal or administrative proceeding in a manner that would, in the opinion of the Indemnified Party, acting reasonably, have a material adverse effect on the Indemnified Party.

8.9.7 Despite Section 8.9.2, if the Indemnified Party is, before the completion of related settlement negotiations or legal proceedings, required by applicable Law to make a payment into court, into escrow, or to any third party, with respect to a Third Party Claim that is the basis of an Indemnity Claim, the Indemnified Party may make the required payment and the Indemnifying Party will, promptly after demand by the Indemnified Party, reimburse the Indemnified Party for the required payment made, subject to the limits in this Article 8. If the Indemnifying Party makes that reimbursement, and if the amount of the Indemnity Claim relating to the Third Party Claim in respect of which the required payment was made, as finally determined, is less than the amount that was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party will promptly pay that surplus amount to the Indemnifying Party. A reimbursement made by the Indemnifying Party under this Section 8.9.7 will reduce the related Claim Amount, if any, payable by the Indemnifying Party under Section 8.10 (*Payment of Claims*).

8.9.8 The Indemnifying Party will not be required to indemnify for any Loss relating to a Third Party Claim that is settled or contested in violation of the terms of this Section 8.9 except where such terms are violated by the Indemnifying Party.

8.10 Payment of Claims

8.10.1 Once the validity and amount of an Indemnity Claim has been finally determined (the "**Claim Amount**"), by agreement between the Indemnifying Party and the Indemnified Party, by binding, final and non-appealable determination, or by settlement, then the Indemnifying Party will, within five (5) Business Days of such determination, pay the Claim Amount to the Indemnified Party by bank draft, certified cheque or wire transfer of immediately available funds to the Indemnified Party.

8.11 Indemnity Adjustments to Purchase Price

Any payment made to a Buyer Indemnified Party under this Article 8 will constitute a decrease to the Purchase Price, and any payment made to a Seller Indemnified Party under this Article 8 will constitute an increase to the Purchase Price. Despite Section 2.3 (*Allocation of Payments*), any decrease in the Purchase Price under this Article 8 will be allocated to the Seller making the payment, and any increase in the Purchase Price under this Article 8 will be allocated to the Seller receiving the payment (or to the Seller whose related Seller Indemnified Party is receiving the payment).

8.12 Exclusive Remedy

8.12.1 Subject to Section 8.12.2, if the Closing occurs the rights of indemnity in this Article 8 will be the sole and exclusive remedy of any Indemnified Party or any third party beneficiary under Section 4.9 (*Indemnification and Directors' and Officers' Insurance*) for any and all claims for any breach of a representation or warranty, or non-performance of any covenant or agreement contained in this Agreement or any other documents and agreements to be delivered under this Agreement or otherwise relating to the subject matter of this Agreement, and each such Person waives any other claim, cause of action, rights, recourse or remedy it may have arising under or based upon any Law, including in contract, tort or otherwise.

8.12.2 Nothing in this Section 8.12 will limit or restrict an Indemnified Party from seeking:

8.12.2.1 remedies in respect of any Leakage Claim under Section 4.2 (*Leakage Covenants and Leakage Claims*);

8.12.2.2 remedies under Section 9.16 (*Equitable Remedies*);

8.12.2.3 any indemnification under Section 9.1.2; or

8.12.2.4 any remedies that may be available to an Indemnified Party in the case of intentional misrepresentation or fraud.

8.13 Third Party Indemnification

To ensure that the indemnities provided by each of the Sellers and the Buyer to any Indemnified Parties that are not parties to this Agreement are enforceable, it is agreed by the Parties that each of the Sellers is acting as agent for its Seller Indemnified Parties (that are not Parties), and the Buyer is acting as agent for its Buyer Indemnified Parties (that are not Parties), with respect to the indemnities intended to be given to those Persons under this Article 8. Each of the Sellers and the Buyer agrees that it will hold any right to indemnification that any relevant Indemnified Party is intended to have under this Article 8 in trust for that Person, and that funds received by the Sellers or the Buyer in respect of any Claims under this Article 8 by the relevant Indemnified Party will be held in trust for that Person.

ARTICLE 9 GENERAL

9.1 The Sellers' Representative

9.1.1 Each Seller appoints Frederick J. Cahill as its representative (the "**Sellers' Representative**") and its true and lawful attorney in fact, with full power and authority in its name and on its behalf:

9.1.1.1 to act in the absolute discretion of the Sellers' Representative with respect to all matters relating to this Agreement, including execution and delivery of any amendment of, or supplement to, this Agreement, any waiver of any condition under, or right arising out of, this Agreement, and any termination of this Agreement; and

9.1.1.2 in general, to do all things and to perform all acts, including negotiating, executing and delivering all agreements, certificates, receipts, instructions, and other instruments, contemplated by, or deemed advisable to complete the transactions contemplated by, this Agreement.

This appointment and grant of power and authority is coupled with an interest and is irrevocable, and will not be terminated by the death or incapacity of any Seller.

9.1.2 The Sellers' Representative and the Sellers agree as between themselves, but without prejudice to any rights the Buyer may have, that the Sellers' Representative will have no obligation or liability to any Person for any action taken or not taken by the Sellers' Representative (in its capacity as Sellers' Representative) under this Section 9.1 in good faith, and the Sellers will jointly and severally indemnify and hold harmless the Sellers' Representative from any Loss that the Sellers' Representative may suffer as a result of any such action or omission by the Sellers' Representative under this Agreement.

9.1.3 The Buyer will be entitled to rely upon any document or other instrument delivered by the Sellers' Representative, in that capacity, as being authorized by all of the Sellers, and the Buyer will not be liable to any Seller for any action taken or not taken by the Buyer based on that reliance. In the case of an Indemnity Claim pursuant to Article 8 in respect of which more than one Seller is, or is alleged to be, an Indemnifying Party or an Indemnified Party, all documents or other instruments to be delivered, or actions to be taken, such Sellers as Indemnifying Parties or Indemnified Parties, as applicable, shall be delivered or taken by the Sellers' Representative on behalf of all such Sellers and the Buyer shall not rely upon any document, other instrument or action delivered or taken by any Person other than the Sellers' Representative.

9.2 Conduct of the Business after Closing

Subject to the terms of this Agreement, subsequent to the Closing, Buyer shall have sole discretion with regard to all matters relating to the operation of the Corporation and its Subsidiaries; provided that Buyer shall not, directly or indirectly, take any actions in bad faith that would have the purpose of avoiding or reducing any of the Earn-Out Consideration hereunder. Notwithstanding the foregoing, the Buyer has no obligation to operate the Business so as to enable the Sellers to achieve or maximize any Earn-Out Consideration.

9.3 Time of Essence

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

9.4 Notices

Any Communication must be in writing and either:

9.4.1 delivered personally or by courier; or

9.4.2 transmitted by e-mail or functionally equivalent electronic means of transmission, charges (if any) prepaid.

Any Communication must be sent to the intended recipient at its address as follows:

to any of the Sellers or, prior to the Closing, the Corporation, to the Sellers' Representative at:

[REDACTED]

with a copy (which shall not constitute notice) to:

Stewart McKelvey
Suite 1100, Cabot Place
100 New Gower St.
St. John's, N.L.
A1C 6K3

Attention: Maureen E. Ryan

E-mail: mryan@stewartmckelvey.com

to the Buyer, the Parent or, following the Closing, the Corporation at:

189 Glencoe Drive
Mount Pearl, Newfoundland and Labrador
A1N 4P6

Attention: Greg Reid, Chief Operating Officer
Tel. No.: (709) 757-5757 ext. 270
E-mail: greid@krakenrobotics.com

with a copy to:

Gowling WLG (Canada) LLP
1st Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario
M5X 1G5

Attention: Ian Mitchell
Tel. No.: (416) 862-4675
E-mail: ian.mitchell@gowlingwlg.com

or at any other address as any Party may at any time advise the others by Communication given or made in accordance with this Section 9.4. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day that is not a Business Day or after 5:00 p.m. (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day. Sending a copy of a Communication to a Party's legal counsel is for information purposes only and does not constitute delivery of that Communication to that Party. The failure to send a copy of a Communication to a Party's legal counsel does not invalidate delivery of that Communication to the Party.

9.5 Severability

Each provision of this Agreement is distinct and severable. If any provision of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that provision, in whole or in part, will not affect:

- 9.5.1 the legality, validity or enforceability of the remaining provisions of this Agreement, in whole or in part; or
- 9.5.2 the legality, validity or enforceability of that provision, in whole or in part, in any other jurisdiction.

9.6 Submission to Jurisdiction

Without prejudice to the ability of any Party to enforce this Agreement in any other proper jurisdiction, each of the Parties irrevocably and unconditionally submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador to determine all issues, whether at law or in equity, arising from this Agreement. To the extent permitted by applicable Law, each of the Parties:

- 9.6.1 irrevocably waives any objection, including any claim of inconvenient forum, that it may now or in the future have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of that Province, or that the subject matter of this Agreement may not be enforced in those courts;

9.6.2 irrevocably agrees not to seek, and waives any right to, judicial review by any court that may be called upon to enforce the judgment of the courts referred to in this Section 9.6, of the substantive merits of any suit, action or proceeding; and

9.6.3 to the extent that Party has or may acquire any immunity from the jurisdiction of any court or from any legal process, whether through service or notice, attachment before judgment, attachment in aid of execution, execution or otherwise, with respect to itself or its property, irrevocably waives that immunity in respect of its obligations under this Agreement.

9.7 Amendment and Waiver

No amendment, discharge, restatement, supplement, termination or waiver of this Agreement or any provision of this Agreement is binding unless it is in writing and executed by the Party to be bound. No waiver of, failure to exercise or delay in exercising, any provision of this Agreement constitutes a waiver of any other provision (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

9.8 Further Assurances

Each Party will, at the requesting Party's expense, execute and deliver any further agreements and documents and provide any further assurances, undertakings and information as may be reasonably required by the requesting Party to give effect to this Agreement.

9.9 Assignment and Enurement

Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party without the prior written consent of the other Parties. This Agreement enures to the benefit of and is binding upon the Parties and their respective Successors.

9.10 Creation and Use of Electronic Document

This Agreement and any counterpart of it may be created, provided, received, retained and otherwise used, and will be accepted, in any digital, electronic or other intangible form.

9.11 Electronic Signatures and Delivery

This Agreement and any counterpart of it may be:

9.11.1 signed by manual, digital or other electronic signatures; and

9.11.2 delivered or transmitted by any digital, electronic or other intangible means, including by e-mail or other functionally equivalent electronic means of transmission,

and that execution, delivery and transmission will be valid and legally effective to create a valid and binding agreement between the Parties.

9.12 Counterparts

This Agreement may be signed and delivered by the Parties in counterparts, with the same effect as if each of the Parties had signed and delivered the same document, and that execution and delivery will be valid and legally effective.

9.13 Costs and Expenses

Except as otherwise specified in this Agreement, and without limiting the indemnification provisions in Article 8 (*Indemnification and Survival*), all costs and expenses (including the fees and disbursements of accountants, financial advisors, legal counsel and other professional advisors) incurred in connection with the negotiation and settlement of this Agreement, and the completion of the transactions contemplated by this Agreement, are to be paid by the Party incurring those costs and expenses.

9.14 Payment and Currency

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

9.15 Public Announcements

- 9.15.1 All public announcements, press releases and publicity concerning this Agreement, or the transactions contemplated by this Agreement, must be jointly planned and co-ordinated by the Sellers, the Corporation, the Buyer and the Parent and no Party will act unilaterally in this regard without the prior consent of the other Parties.
- 9.15.2 Notwithstanding the forgoing, if, having made reasonable efforts in the circumstances to obtain the prior consent of all other Parties, the Parent concludes that obtaining such consent is not practically possible in sufficient time to meet its disclosure obligations under applicable securities Laws or the rules of the Exchange, then the Parent may make the necessary public announcement or press release required to maintain compliance with applicable securities Laws or the rules of the Exchange and promptly provide a copy to the other Parties.
- 9.15.3 The Parties acknowledge and agree that this Agreement will be filed publicly as a “Material Contract” on SEDAR by Parent and no further consent or consultation is required with any Party with respect to or in connection with that filing.
- 9.15.4 Nothing in this Section 9.15 will limit the ability of a Party to make any announcements to employees, clients or other Persons having business relations with a Party to the extent the Party, after consultation with the other Parties, reasonably determines in good faith that the announcement is necessary or advisable.

9.16 Equitable Remedies

The Parties acknowledge that the failure to comply with a covenant or obligation contained in this Agreement may give rise to irreparable injury to a Party, inadequately compensable in damages. Accordingly, a Party may seek to enforce the performance of this Agreement by injunction or specific

performance upon application to a court of competent jurisdiction without proof of actual damage (and without the requirement of posting bond or other security).

9.17 No Contra Proferentem

This Agreement has been reviewed by each Party's professional advisors, and revised during the course of negotiations between the Parties. Each Party acknowledges that this Agreement is the product of their joint efforts, that it expresses their agreement, and that, if there is any ambiguity in any of its provisions, no rule of interpretation favouring one Party over another based on authorship will apply.

9.18 Independent Legal Advice

Each of the Parties acknowledges that it has read and understands the terms and conditions of this Agreement and acknowledges and agrees that it has had the opportunity to seek, and was not prevented or discouraged by any other Party from seeking, any independent legal advice which it considered necessary before the execution and delivery of this Agreement and that, if it did not avail itself of that opportunity before signing this Agreement, it did so voluntarily without any undue pressure, and agrees that its failure to obtain independent legal advice will not be used by it as a defence to the enforcement of its obligations under this Agreement.

9.19 Third Party Beneficiaries

This Agreement is not intended to, and does not, confer any rights or remedies on any Person other than the Parties (and their respective Successors) and the Indemnified Parties, except as set out in Sections 4.9 (*Indemnification and Directors' and Officers' Insurance*). The Parties reserve their right to vary or rescind, at any time and in any way, the rights, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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

KRAKEN ROBOTIC SYSTEMS INC.

Per: "Joe MacKay"
Name: Joe MacKay
Title: Chief Financial Officer

KRAKEN ROBOTICS INC.

Per: "Joe MacKay"
Name: Joe MacKay
Title: Chief Financial Officer

[REDACTED]

Per: _____
Name: [REDACTED]
Title: [REDACTED]

PGH CAPITAL INC.

Per: _____
Name: [REDACTED]
Title: [REDACTED]

**SCHEDULE A
TO SHARE PURCHASE AGREEMENT**

SELLERS

Seller	Jurisdiction	Number and Class of Purchased Shares Owned by Seller	Pro Rata Share of Seller
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total Number of Purchased Shares:		5,200,001 Common Shares	100%