

MTY FOOD GROUP INC.

as Buyer Issuer

- and -

MTY FRANCHISING USA, INC.

as Buyer Parent

- and -

113 ACQUISITION CORP.

as Buyer

- and -

KAHALA BRANDS, LTD.

as Corporation

- and -

USKAL CORPORATION LLC

as Seller

- and -

**MICHAEL SERRUYA, SAM SERRUYA, CLARA SERRUYA, AARON SERRUYA, SIMON SERRUYA,
JACK SERRUYA, DRIH INC. AND KAYLA FOODS INTERNATIONAL (BARBADOS) INC.**

as Selling Stockholders

TRANSACTION AGREEMENT

May 24, 2016

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TRANSACTION AGREEMENT

This TRANSACTION AGREEMENT dated this 24th day of May, 2016 is by and among:

MTY FOOD GROUP INC., a corporation incorporated under the laws of Canada (incorporation number 89984878)

(“**Buyer Issuer**”)

MTY FRANCHISING USA, INC., a corporation incorporated under the laws of the State of Delaware (incorporation number 140907983)

(“**Buyer Parent**”)

- and -

113 ACQUISITION CORP., a corporation incorporated under the laws of the State of Delaware (incorporation number ●)

(the “**Buyer**”)

KAHALA BRANDS, LTD., a corporation incorporated under the laws of the State of Delaware (incorporation number 5265523)

(the “**Corporation**”)

- and -

USKAL CORPORATION LLC, a limited liability company formed under the laws of the State of Delaware (company number 5381079)

(the “**Seller**”)

- and -

MICHAEL SERRUYA, a natural person residing in the Province of Ontario

(“**Michael**”)

- and -

SAM SERRUYA, a natural person residing in the Province of Ontario

(“**Sam**”)

- and -

CLARA SERRUYA, a natural person residing in the Province of Ontario

(“**Clara**”)

- and -

AARON SERRUYA, a natural person residing in the Province of Ontario

(**"Aaron"**)

- and -

SIMON SERRUYA, a natural person residing in the Province of Ontario

(**"Simon"**)

- and -

JACK SERRUYA, a natural person residing in the Province of Ontario

(**"Jack"**)

- and -

DRIH INC., a corporation incorporated under the laws of Ontario

(**"DRIH Inc."**)

- and -

KAYLA FOODS INTERNATIONAL (BARBADOS) INC., a corporation incorporated under the laws of Barbados

(**"Kayla Inc."**)

RECITALS:

- A. As further detailed in this Agreement, the Corporation or the Subsidiaries:
 - (a) owns the Trade Names and Marks;
 - (b) owns all of the Franchised Businesses and is a party to the Franchise Agreements; and
 - (c) is the tenant under the Leases.
- B. The Seller is the legal and beneficial owner of approximately 92% of the issued and outstanding Corporation Shares as of the date hereof.
- C. The Minority Stockholders are the legal and beneficial owners of the remaining approximately 8% of the issued and outstanding Corporation Shares as of the date hereof.
- D. Upon and subject to the terms and conditions contained in this Agreement, at the Effective Time, the Buyer shall be merged with and into the Corporation, and the separate corporate existence of the Buyer shall thereupon cease, and the Corporation shall be the surviving corporation in the Merger (the **"Surviving Corporation"**).

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which each Party hereby acknowledges, the Parties agree as follows:

**PART 1
INTERPRETATION**

1.1 Defined Terms. In this Agreement, the following terms have the following meanings:

- (a) **“2013 Audited Financial Statements”** means the audited consolidated financial statements of the Corporation for the fiscal year ended December 31, 2013, consisting of a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position as at the end of such fiscal year, and including the notes to such financial statements;
- (b) **“2014 Audited Financial Statements”** means the audited consolidated financial statements of the Corporation for the fiscal year ended December 31, 2014, consisting of a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position as at the end of such fiscal year, and including the notes to such financial statements;
- (b.1) **“2015 Audited Financial Statements”** has the meaning given in Section 5.9(a)(i);
- (c) **“2015 Interim Financial Statements”** the unaudited consolidated financial statements of the Corporation ended December 31, 2015, consisting of a balance sheet and statements of earnings and retained earnings and changes in financial position of the Company and all notes thereto;
- (d) **“Aaron”** has the meaning given in the recitals to this Agreement;
- (e) **“Accounts Receivable”** means all accounts receivable, notes receivable and other debts due or accruing due;
- (e.1) **“Accredited Investor”** has the meaning given to such term in Rule 501(a) of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act;
- (f) **“Action”** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, including civil, criminal, administrative, regulatory or otherwise, whether at law or in equity;
- (g) **“Affiliate”** means, in respect of a Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with, such first Person;
- (h) **“Agreement”** means this Transaction Agreement and all schedules, exhibits and appendices hereto, as applicable, whether attached hereto or incorporated by reference herein, in each case as supplemented, amended, restated or replaced from time to time by written instrument signed by all of the Parties;
- (i) **[INTENTIONALLY DELETED];**
- (j) **“Applicable Laws”** means any and all applicable laws including common law, statutes, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, decrees, judgments, writs, awards, directives or requirements, in each case of any Governmental Authority or to the extent that they have the force of law;

- (k) **“Applicable Delivery Date”** means, in respect of a Transaction Document, the date upon which that Transaction Document is to be executed and delivered in accordance with or pursuant to this Agreement;
- (l) **“Appraisal Holdback Funds”** means the amount of \$5,000,000 to be withheld by Buyer Parent on the Closing Date pursuant to Section 2.12(b);
- (m) **“Appraisal Rights Demand”** means a written notice, served by a Minority Stockholder upon the Surviving Corporation pursuant to Section 262(d) of the DGCL, demanding appraisal of such Minority Stockholder’s Corporation Shares pursuant to Section 262 of the DGCL;
- (n) **“Appraisal Rights Demand Action”** means an appraisal proceeding pursuant to Section 262(e) of the DGCL that has been commenced by a Minority Stockholder in relation to such Minority Stockholder’s Corporation Shares through proper service of an Appraisal Rights Demand upon the Corporation on or before the Appraisal Rights Demand Deadline Date;
- (o) **“Appraisal Rights Demand Deadline Date”** means the date by which a Minority Stockholder is required to serve the Surviving Corporation with an Appraisal Rights Demand in order to perfect any appraisal rights to which such Minority Stockholder may be entitled pursuant to Section 262 of the DGCL;
- (p) **“Area Developer”** means a Person, other than the Corporation or any of the Subsidiaries, that has a right to develop any of the Franchised Business within a certain geographic region by appointing sub-franchisees, by managing a Franchise Unit or otherwise, in each case, pursuant to an Area Developer Agreement;
- (q) **“Area Developer Agreement”** means the area development agreements (including any letters of intent with respect to any area master agreements) between Area Developers and the Corporation or any of the Subsidiaries, as disclosed pursuant to Section 1.1(q) of the Seller Disclosure Letter;
- (r) **“Arm’s Length”** has the meaning given in the Tax Act;
- (s) **“Assets”** means all property or assets of any nature, whether real or personal, tangible or intangible, corporeal or incorporeal, and includes any interest in any property or assets, including, in the case of the Corporation and the Subsidiaries, all of the Franchised Businesses;
- (t) **“Associate”** means, in respect of a Person:
 - (i) any other Person of which such Person is an officer, director or partner or is, directly or indirectly, the owner of ten percent (10%) or more of any class of equity securities issued by such other Person;
 - (ii) any trust or other estate in which such Person has a ten percent (10%) or more beneficial interest or as to which such Person serves as trustee or in a similar fiduciary capacity; or
 - (iii) any relative or legal or common law spouse of such Person, or any relative of such spouse who has the same home as such Person;
- (u) **“Auditors”** means with respect to the 2013 Audited Financial Statements, the 2014 Audited Financial Statements and the 2015 Audited Financial Statements, MNP LLP;

- (v) “**Balance Sheet Date**” means the date of the balance sheet contained in the 2015 Interim Financial Statements;
- (w) “**BAR Financial Statements**” has the meaning given in Section 5.9(a);
- (x) “**Basket Amount**” has the meaning given in Section 8.4(d);
- (y) “**Benefit Plan**” has the meaning given in Section 3.2(pp)(i);
- (z) “**Best Estimates Financial Statements**” has the meaning given in Section 2.8(a)(i);
- (aa) “**Best Estimates Working Capital Statement**” has the meaning given in Section 2.8(a)(ii);
- (bb) “**Books and Records**” means all books, records, files and documents of the Corporation and the Subsidiaries relating to the Business, including: minute books; all books of account, ledgers, journals and other accounting or financial records; tax returns, supporting documentation for same and all correspondence with taxation authorities; franchisee information; credit information; Franchise Disclosure Documents; lists of suppliers; cost and pricing information; inventory, sales, purchasing and other business records and reports; licenses, permits and approvals from any Governmental Authority; the Material Contracts; the Leases; and all other relevant documentation in any format or media;
- (cc) “**Business**” means the business of the Corporation and the Subsidiaries as carried on at the date of this Agreement, including the carrying on of the Franchised Businesses;
- (dd) “**Business Day**” means any day of the year which is not a Saturday, Sunday or any day on which chartered banks are closed for business in the City of Toronto, Ontario or in the City of Scottsdale, Arizona;
- (ee) “**Buyer**” has the meaning given in the recitals to this Agreement;
- (ff) “**Buyer Disclosure Letter**” means the disclosure letter, dated as of the date of this Agreement, delivered by the Buyer and Buyer Parent to the Seller Parties with this Agreement;
- (gg) “**Buyer Fundamental Reps**” means the representations of the Buyer and Buyer Parent in Section 4.1(a), Section 4.1(b) and Section 4.1(c);
- (hh) “**Buyer Indemnified Parties**” has the meaning given in Section 8.2;
- (ii) “**Buyer Issuer**” has the meaning given in the recitals to this Agreement;
- (jj) “**Buyer Loss**” (or “**Buyer Losses**”) has the meaning given in Section 8.2;
- (kk) “**Buyer Material Adverse Effect**” means any change, event, occurrence, effect or circumstance that, individually or in the aggregate with other such changes, events, occurrences, effects or circumstances, is or would reasonably be expected to be material and adverse to the business, operations, results of operations, Assets, properties, capitalization, financial condition or liabilities (contingent or otherwise) of the Buyer Parties, taken as a whole, except any such change, event, occurrence, effect or circumstance resulting from or arising in connection with:
 - (i) any change affecting the industries in which the Buyer Parties operate;

- (ii) any change in global, national or regional political conditions (including the outbreak or escalation of war or acts of terrorism) or in general economic, business, regulatory, political or market conditions or in national or global financial or capital markets;
- (iii) any adoption, proposal, implementation or change in Applicable Law or any interpretation of Applicable Law by any Governmental Authority;
- (iv) any change in IFRS;
- (v) any natural disaster;
- (vi) any action taken (or omitted to be taken) by any of the Buyer Parties which is required to be taken (or omitted to be taken) pursuant to this Agreement or that is consented to by the Seller expressly in writing;
- (vii) any matter which has been expressly disclosed by the Buyer and Buyer Parent pursuant to the Buyer Disclosure Letter;
- (viii) the failure of Buyer Parent to meet any internal or published projections, forecasts or estimates of revenues, earnings or cash flows (it being understood that the causes underlying such failure may be taken into account in determining whether a “Buyer Material Adverse Effect” has occurred); or
- (ix) the announcement or performance of this Agreement or consummation of the transactions contemplated hereby;

provided, however, that: (A) with respect to clauses (i) through to and including (v), such matter does not have a materially disproportionate effect on the Buyer Parties, taken as a whole, relative to other comparable companies and entities operating in the industries in which the Buyer Parent and/or its subsidiaries operate; (B) references in certain Sections of this Agreement to dollar amounts are not intended to be, and shall not be deemed to be, illustrative for purposes of determining whether a “Buyer Material Adverse Effect” has occurred; and (C) no change in the share price of the Buyer Issuer shall be, in and of itself, evidence of a Buyer Material Adverse Effect (it being understood that the underlying causes of any such change in the share price of the Buyer Issuer may be taken into account in determining whether a Buyer Material Adverse Effect has occurred);

- (ll) **“Buyer Parent”** has the meaning given in the recitals to this Agreement;
- (mm) **“Buyer Parties”** means, collectively, the Buyer, Buyer Parent and Buyer Issuer, and **“Buyer Party”** means any one of them as the context may require;
- (nn) **“Buyer Required Governmental Consents”** means (i) the filings and submissions required to be made under Applicable Law by any of the Buyer Parties or any of their Affiliates, and (ii) the consents, permits, authorizations, orders and approvals from Governmental Authorities required to be obtained by any of the Buyer Parties or any of their Affiliates, in each case, in connection with the execution and delivery of this Agreement and the performance of their obligations pursuant to this Agreement and the transactions contemplated hereby, as disclosed pursuant to Section 1.1(nn) of the Buyer Disclosure Letter;
- (oo) **“Buyer’s Canadian Solicitors”** means DLA Piper (Canada) LLP, or such other firm as the Buyer may retain;

- (pp) “**Cap**” has the meaning given in Section 8.4(d);
- (qq) “**Cash**” means all unrestricted currency, coins, undeposited or uncleared cheques, bank balances and negotiable money orders payable or directed to the Corporation or any of the Subsidiaries, and, for greater certainty, excludes any of the foregoing which cannot be repatriated from a foreign jurisdiction, or which is subject to a security deposit, letter of credit or other similar obligation;
- (rr) “**Cash-Only Stockholder**” has the meaning given in Section 2.5(b);
- (ss) “**Certificate of Merger**” has the meaning given in Section 2.2(a);
- (tt) “**Certificates**” has the meaning given in Section 2.6(b);
- (tt.1) “**Certificated Mixed Consideration Holder**” means an Effective Time Certificated Stockholder who: (i) is an Accredited Investor; (ii) has properly and fully completed and executed a Letter of Transmittal (with a proper Medallion Signature Guarantee, if required) and all documents requested by the Letter of Transmittal (including the “**Accredited Investor Certification**” attached to the Letter of Transmittal); (iii) has delivered all such documentation (including all documents required by the “**Accredited Investor Certification**”) to the Exchange Agent by the LT Return Deadline; and (iv) has properly indicated in its Letter of Transmittal that it desires to receive its pro rata share of the Merger Consideration in the form of both cash and Issued Shares;
- (uu) “**Clara**” has the meaning given in the recitals to this Agreement;
- (vv) “**Closing**” has the meaning given in Section 2.2(b);
- (ww) “**Closing Date**” means: (i) the date that is ten Business Days following the day on which the last of the conditions to Closing set out in Part 6 (other than those conditions that by their nature can only be satisfied as of the Closing Date) has been satisfied or waived by the appropriate Party, but in any event not later than the Outside Date; or (ii) such earlier or later date as the Parties may agree in writing;
- (xx) “**Closing Date Share Value**” has the meaning given in Section 2.5(a)(ii);
- (yy) “**Closing Financial Statements**” has the meaning given in Section 2.8(b)(i);
- (zz) “**Closing Working Capital**” means the Working Capital calculated from the Closing Financial Statements as at the date thereof;
- (aaa) “**Closing Working Capital Statement**” has the meaning given in Section 2.8(b)(ii);
- (bbb) “**Closing Value**” has the meaning given in Section 2.5(a)(ii);
- (ccc) “**Code**” means the *United States Internal Revenue Code of 1986*;
- (ddd) “**Committed Unit**” means, in each case as of the date of this Agreement: (i) any Franchise Unit for which a Franchise Agreement has been signed but that is not yet open; and (ii) any Corporate Unit which the Corporation or a Subsidiary has planned to open but that is not yet open;
- (eee) “**Competition Act**” means the *Competition Act (Canada)*;

- (fff) **“Constating Documents”** means certificates of incorporation/amalgamation/continuance/formation, organizational documents, articles, by-laws, operating agreements, shareholders agreements or any similar documents or agreements in relation to the incorporation, amalgamation or continuance of a Person;
- (ggg) **“Control”** means, with respect to the relationship between two or more Persons, the direct or indirect possession of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise, including:
- (i) the right to exercise a majority of the votes which may be cast at a general meeting of the shareholders of a corporation; and
 - (ii) the right to elect or appoint, directly or indirectly, a majority of the directors of a corporation or other individuals who have the right to manage or supervise the management of the affairs and business of a corporation;
- (hhh) **“Cooperating Stockholder”** means those Minority Stockholder as disclosed pursuant to Section 1.1(hhh) of the Seller Disclosure Letter that has, as of the date of this Agreement, executed and delivered a Voting and Waiver Agreement;
- (iii) **“Corporate Unit”** means any store or unit of a Franchised Business that is not operated by a third party pursuant to a Franchise Agreement, and excludes any Franchise Unit;
- (jjj) **“Corporation”** has the meaning given in the recitals to this Agreement;
- (kkk) **“Corporation Shares”** means shares of common stock, having a par value per share of \$0.001, of the Corporation and, for the avoidance of doubt, includes shares of common stock of the Surviving Corporation, having a par value per share of \$0.001, from and after the Effective Time, as the context requires;
- (III) **“Damages”** means any losses (including, without limitation, tax losses), liabilities, penalties, damages or out-of-pocket expenses (including reasonable legal fees and expenses) whether resulting from an action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Authority, or a cause, matter, thing, act, omission or state of facts not involving a third party; provided, that “Damages” shall not include (i) any losses, liabilities or damages for lost profits or based upon a multiple of earnings, EBITDA, cash flows or other similar metrics or projections, or (ii) any special, indirect (except in the case of a Tax Loss), incidental, consequential, punitive, extraordinary, treble, aggregated or other similar damages;
- (III.1) **“Direct Claim”** means an Action by an Indemnified Party on account of a Buyer Loss or a Seller Loss, as applicable, which does not result from a Third Party Claim;
- (III.2) **“DRIH Inc.”** has the meaning given in the recitals to this Agreement;
- (mmm) **“Dispute Amount”** has the meaning given in Section 2.10(a);
- (nnn) **“Dissenting Share Consideration”** has the meaning given in Section 2.6(b);
- (ooo) **“Dissenting Shares”** has the meaning given in Section 2.6(b);
- (ppp) **“DGCL”** means the General Corporation Law of the State of Delaware;

- (ppp.1) “**DTC**” has the meaning given in Section 2.6(b);
- (qqq) “**EBITDA Deficiency**” means any fact or issue that would or would reasonably be expected to result in Normalized EBITDA of less than \$28,340,000;
- (rrr) “**Effective Time**” has the meaning given in Section 2.2(a);
- (sss.1) “**Effective Time Certificated Stockholder**” means any Effective Time Stockholder who owns Corporation Shares in certificated form. For purposes of clarification, to the extent that an Effective Time Certificated Stockholder shall own both Corporation Shares in certificated form and Uncertificated Corporation Shares, such Effective Time Certificated Stockholder shall be considered an Effective Time Certificated Stockholder with regard to only the Corporation Shares such holder owns in certificated form;
- (sss) “**Effective Time Stockholder**” has the meaning given in Section 2.4(c);
- (ttt.1) “**Effective Time Uncertificated Stockholder**” means any Effective Time Stockholder who beneficially owns Uncertificated Corporation Shares. For purposes of clarification, to the extent that an Effective Time Uncertificated Stockholder shall own both Corporation Shares in certificated form and Uncertificated Corporation Shares, such Effective Time Uncertificated Stockholder shall be considered an Effective Time Uncertificated Stockholder with regard to only the Uncertificated Corporation Shares such holder owns;
- (ttt) “**Employee**” means an employee employed by the Corporation or any of the Subsidiaries;
- (uuu) “**Employee Benefit Plan**” means any retirement, pension, bonus, stock, purchase, profit sharing, stock option, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or other employee compensation or benefit plan, arrangement, policy, program or practice (whether provided on a pre- or post-retirement basis) which is maintained or otherwise contributed to or required to be contributed to, by the Corporation or the Subsidiaries for the benefit of any present or former Employees, officers or directors of the Corporation or the Subsidiaries;
- (vvv) “**Encumbrance**” means any lien, claim, charge, pledge, hypothecation, security interest, mortgage, title retention agreement, declaration of trust, right of set-off, option, right of first refusal, restriction of any kind including on use, voting, transfer, receipt of income or exercise of any other attribute of ownership or possession, or other encumbrance of any kind;
- (www) “**Environmental Laws**” means all Applicable Laws relating to fisheries, health and safety, the protection or preservation of the environment or the manufacture, processing, distribution, use, treatment, storage, disposal, discharge, transport or handling of Hazardous Substances;
- (xxx) “**ERISA**” means the *Employee Retirement Income Security Act of 1974*;
- (yyy) “**ERISA Affiliate**” means all employers (whether or not incorporated) that would be treated together with the Corporation or any of its Affiliates as a “single employer” within the meaning of Section 414 of the Code;

- (zzz) “**Estimated Prescribed Transaction Costs**” has the meaning given in Section 2.13(a);
- (aaaa) “**Estimated Working Capital**” means the Working Capital calculated from the Best Estimates Financial Statements as at the Closing Date;
- (bbbb) “**Exchange Act**” means the *Securities Exchange Act of 1934*;
- (cccc) “**Exchange Agent**” has the meaning given in Section 2.7(a);
- (dddd) “**Exchange Agent Agreement**” has the meaning given in Section 2.7(a);
- (eeee) “**Exchange Fund**” has the meaning given in Section 2.7(a);
- (eeee.1) “**Final Spreadsheet**” has the meaning given in Section 2.7(c);
- (ffff) “**Financial Statements**” means, collectively, the 2013 Audited Financial Statements, the 2014 Audited Financial Statements, the 2015 Interim Financial Statements and the 2015 Audited Financial Statements;
- (gggg) “**Franchise Agreements**” means a franchise, licensing or other agreement between the Corporation or any of the Subsidiaries and a Franchisee (including any such agreements to which a Master Franchisee or Area Developer is a party in its own right or on behalf of the Corporation or any of the Subsidiaries) with respect to the operation of a Franchise Unit;
- (hhhh) “**Franchise Fee Deposits**” has the meaning given in Section 3.2(bb);
- (iiii) “**Franchise Unit**” means any store or unit that is operated by a third party pursuant to a Franchise Agreement, Master Franchise Agreement or Area Developer Agreement, and excludes any Corporate Unit;
- (jjjj) “**Franchised Businesses**” means those franchised businesses presently carried on under the Trade Names and Marks, all of which are listed by their commonly known names in Section 1.1(jjjj) of the Seller Disclosure Letter;
- (kkkk) “**Franchisee**” means a franchisee or licensee of the Business pursuant to a Franchise Agreement;
- (llll) “**Franchisor Relief**” means royalty, marketing fund contribution or rent relief granted by the Corporation or any of the Subsidiaries, or any Affiliate thereof, to a Franchisee;
- (mmmm) “**Governmental Authority**” means: (i) any Canadian (whether federal, territorial, provincial, municipal, local or other subdivision thereof), American (whether federal, state, local or other subdivision thereof), international or foreign government, governmental authority, quasi-governmental authority, public department, central bank, court, self-regulatory organization, commission, tribunal, board, bureau, arbitrator or organization; (ii) any agent, subdivision, department or branch of any of the foregoing; (iii) any stock exchange (including the TSX); and (iv) any private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.
- (nnnn) “**Governmental Charges**” means: (i) any and all Taxes, excises, premiums, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with

respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers' compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any Person;

- (oooo) **"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority;
- (pppp) **"GST/HST"** has the meaning given in Section 3.2(ss);
- (qqqq) **"Hazardous Substance"** means any chemical, pollutant, contaminant, waste, substance or material regulated under any Environmental Law;
- (rrrr) **"Holdback Funds"** means the amount of \$25,000,000;
- (ssss) **"HSR Act"** means the *Hart-Scott-Rodino Antitrust Improvements Act of 1976*;
- (tttt) **"IFRS"** means International Financial Reporting Standards as issued by the International Accounting Standards Board applied on a consistent basis;
- (uuuu) **"Indebtedness"** means, without duplication, all outstanding principal and interest on Third Party Debt and Related Party Debt as at the Closing Date, plus any applicable penalties, surcharges, additional interest or other fees or charges that become due as a result of pre-paying Indebtedness in accordance with this Agreement. Indebtedness includes the amount due to Theodore E. Callerton, as Trustee of the R.E. and M. Petersen Living Trust in the amount of \$40,000,000, pursuant a Contribution, Redemption and Share Purchase Agreement ("**Trust Agreement**") entered into between the Corporation, the Seller and the Trustee on August 19, 2013; which Trust Agreement resolved Litigation pending between the Corporation and the Trust and reduced the outstanding indebtedness then due from the Corporation to the Trust;
- (vvvv) **"Indemnification Payment"** has the meaning given in Section 8.8(a);
- (wwww) **"Indemnified Party"** means a Buyer Indemnified Party or a Seller Indemnified Party, as the context may require;
- (xxxx) **"Indemnifying Party"** means a Party against which a claim may be made for indemnification under this Agreement, including pursuant to Part 8;
- (yyyy) **"Independent Auditor"** means PricewaterhouseCoopers LLP, or if such firm is unable to act, such independent firm of chartered accountants of recognized national standing in Canada as agreed to by the Buyer and Seller; provided, that the Independent

Auditor may not have been retained by any Party at any time during the five years preceding the date of this Agreement;

- (zzzz) “**Initial Cash Merger Consideration**” means an amount equal to \$240,000,000 less: (i) the Prescribed Transaction Costs; and (ii) all Indebtedness;
- (aaaaa) “**Intellectual Property Rights**” means any patents, trade-marks, service marks, industrial designs, utility models, design patents, petty patents, copyright (including copyright in computer software), database rights, circuit topography rights, mask works, inventions, trade secrets, confidential information, know-how, business or trade names (including internet domain names and e-mail address names) and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world, including the right to apply for, and all applications for, any of the foregoing rights and the right to sue for infringements of any of the foregoing rights;
- (bbbbbb) “**Intercompany Debt**” has the meaning given in Section 3.2(l)(iii);
- (ccccc) “**Interim Period**” means the period from the date of this Agreement to the time that the Closing occurs;
- (dddddd) “**IRS**” means the United States Internal Revenue Service;
- (eeeeee) “**Issued Shares**” means 2,253,930 common shares in the capital of Buyer Issuer to be issued to such registered shareholders of the Corporation in accordance with this Agreement, which shares will be subject to the standard rules and regulations of the TSX;
- (fffff) “**Investment Canada Act**” means the *Investment Canada Act* (Canada);
- (ggggg) “**Jack**” has the meaning given in the recitals to this Agreement;
- (hhhhh) “**Kayla Inc.**” has the meaning given in the recitals to this Agreement;
- (iiiiii) “**Leased Real Properties**” means the real property covered by the Leases;
- (jjjjj) “**Leases**” means the leases for the Franchised Businesses;
- (kkkkk) “**Letter of Transmittal**” has the meaning given in Section 2.7(b);
- (lllll) “**Listing Conditions**” means the customary listing conditions imposed by the TSX as set out in the TSX Conditional Approval Letter;
- (mmmmm) “**LT Return Deadline**” means the date specified in the Letter of Transmittal by which an Effective Time Stockholder must submit a Letter of Transmittal if that Effective Time Stockholder is to qualify as a Mixed Consideration Holder;
- (nnnnn) “**Master Franchisee**” means a Person, other than the Corporation or any of the Subsidiaries, that has a right to develop any of the Franchised Businesses within a certain geographic region by appointing sub-franchisees, by managing a Franchise Unit or otherwise, pursuant to a Master Franchise Agreement;
- (ooooo) “**Master Franchise Agreements**” means all master agreements (including any letters of intent with respect to any area master agreements) between Master Franchisees and the Corporation or any of the Subsidiaries;
- (ppppp) “**Material Contract**” means any of the following:

- (i) any Franchise Agreement to which the Corporation or any of the Subsidiaries is a party;
- (ii) any Master Franchise Agreement or Area Developer Agreement to which the Corporation or any of the Subsidiaries is a party;
- (iii) any agreement or instrument evidencing any Third Party Debt or Related Party Debt, or any security given by the Corporation or any of the Subsidiaries in respect thereof, in excess of \$50,000;
- (iv) any other contract, arrangement or obligation to which the Corporation or any of the Subsidiaries is a party and which:
 - A. involves expenditure by the Corporation or the Subsidiary in excess of \$50,000 per annum;
 - B. provides income to the Corporation or the Subsidiary in excess of \$50,000 per annum; or
 - C. is outside the Ordinary Course;

but for the purposes of this Agreement excludes the Leases;

- (qqqqq) **“Material Customer”** or **“Material Supplier”** means the top 20 largest customers or suppliers, as the case may be, of the Corporation and the Subsidiaries, determined on a consolidated basis, buying or selling goods or services from or to, as applicable, the Corporation and the Subsidiaries, determined on a consolidated basis, based on the consolidated purchasing volumes or expenses, as applicable, of the Corporation and the Subsidiaries for the 2014 financial year;
- (rrrrr) **“Merger”** means, upon and subject to the terms and conditions contained in this Agreement and the Certificate of Merger, a statutory merger under the DGCL pursuant to which:
 - (i) the Buyer will merge with and into the Corporation, and the separate corporate existence of the Buyer shall thereupon cease, and the Corporation shall be the Surviving Corporation; and
 - (ii) Buyer Parent will become the sole stockholder of the Corporation;
- (sssss) **“Merger Consideration”** has the meaning given in Section 2.3(a);
- (ttttt) **“Merger Financing”** means financing to be obtained by the Buyer to fund the Initial Cash Merger Consideration, such financing to be on terms acceptable to the Buyer in its sole discretion;
- (uuuuu) **“Michael”** has the meaning given in the recitals to this Agreement;
- (vvvvv) **“Minority Stockholders”** means those Persons, other than the Seller, holding Corporation Shares prior to the Effective Time, including the Cooperating Stockholders;
- (wwwww) **“Mixed Consideration Holders”** means all Certificated Mixed Consideration Holders and Uncertificated Mixed Consideration Holders;
- (xxxxx) **“Multiemployer Plan”** has the meaning given in Section 3.2(pp)(iii);

- (yyyyy) “**New Commitment**” means any prospective franchise that becomes a Committed Unit during the Interim Period;
- (zzzzz) “**NI 51-102**” means National Instrument 51-102 – *Continuous Disclosure Obligations*;
- (aaaaa) “**NI 52-109**” means National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings*;
- (bbbbb) “**Non-U.S. Benefit Plan**” has the meaning given in Section 3.2(pp)(i);
- (ccccc) “**Normalized EBITDA**” means earnings before interest, income taxes, depreciation and amortization calculated and normalized in accordance with the methodology set out in Appendix A attached to this Agreement;
- (dddddd) “**Notice of Claim**” has the meaning given in Section 8.5(a);
- (eeeeee) “**Objection Notice**” has the meaning given in Section 2.10(a);
- (fffff) “**Ordinary Course**” means, with respect to an action taken by a Person, that such action is taken in the ordinary course of the normal day-to-day operations of the business of such Person consistent with past custom and practice; provided, however, that the term “ordinary course of business” shall also include actions required or specifically permitted by this Agreement to be taken or not to be taken in connection with the transactions contemplated hereby; and provided further that, in the case of the Corporation, “Ordinary Course” shall only refer to, and apply only in respect of, actions taken by the Corporation within the two years immediately preceding the date of this Agreement;
- (ggggg) “**Outside Date**” means the date that is 119 days following the date hereof;
- (hhhhh) “**Owned Real Properties**” has the meaning given in Section 3.2(ee);
- (iiiiii) “**Parties**” means, collectively, Buyer Issuer, Buyer Parent, the Buyer, the Corporation, the Seller and the Selling Stockholders, and any other Person who becomes a party to this Agreement, and “**Party**” means any one of them as the context may require;
- (jjjjj) “**Permitted Encumbrances**” means
- (i) rights reserved or vested in any Governmental Authority to control or regulate the assets of Corporation or the Subsidiaries in any manner;
 - (ii) inchoate or statutory Encumbrances of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carries and others in respect of the construction, maintenance, repair or operation of real or personal property;
 - (iii) easements, servitudes, restrictions, restrictive covenants, party wall agreements, rights of way, licenses, permits and other similar rights in real property;
 - (iv) Encumbrances for Taxes which are not due or delinquent;
 - (v) zoning and building by-laws and ordinances, regulations made by public authorities and other restrictions affecting or controlling the use, marketability or development of real property;
 - (vi) agreements with any municipal, provincial, state or federal governments or authorities and any public utilities or private suppliers of services;

- (vii) such other imperfections or irregularities of title or Encumbrances as do not materially affect the use of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties; and
- (viii) Encumbrances disclosed pursuant to Section 1.1(jjjjjj)(viii) of the Seller Disclosure Letter;
- (kkkkkk) **“Person”** means an individual, legal personal representative, corporation, body corporate, firm, partnership, trust, trustee, syndicate, joint venture, limited liability company, association, unincorporated organization, union, Governmental Authority or other entity or organization;
- (llllll) **“Post-Closing Tax Period”** means any taxable period beginning after the Effective Time and, with respect to any taxable period beginning before and ending after the Effective Time, the portion of such taxable period beginning after the Effective Time;
- (mmmmmm) **“Pre-Closing Tax Period”** means any taxable period ending on or before the Effective Time and, with respect to any taxable period beginning before and ending after the Effective Time, the portion of such taxable period ending on and including the Effective Time;
- (nnnnnn) **“Prescribed Transaction Costs”** means all unpaid costs and expenses that have been or are reasonably expected to be incurred by the Corporation or any of the Subsidiaries in respect of the preparation, execution and delivery of this Agreement, together with the implementation of its terms, including:
 - (i) all unpaid costs and expenses related to effecting the Merger and filing the Certificate of Merger (including, without limitation, any costs and expenses payable to the Exchange Agent and the transfer agent of the Corporation); provided, however, that for purposes of this definition of “Prescribed Transaction Costs”, the fees and costs payable to the Exchange Agent pursuant to section 8 of the Exchange Agent Agreement and the transfer agent of the Corporation will be capped at \$30,000 (for certainty, such cap shall not apply in respect of any indemnification or other obligation of the Corporation contemplated in the Exchange Agent Agreement which shall, as between the Parties, be governed by Section 8.2(f) or Section 8.2(g), as the case may be);
 - (ii) all unpaid costs, expenses and filing fees related to obtaining any Seller Required Private Consent or Seller Required Governmental Consent;
 - (iii) all costs, expenses and filing fees related to any filings required pursuant to applicable securities laws following the Closing; and
 - (iv) any amount related to payments to be made or any unpaid legal fees incurred in relation to, any Minority Stockholders of the Corporation that exercise their appraisal rights under and in accordance with the DGCL and validly commence an appraisal action under the DGCL;
- (oooooo) **“Prime Rate”** means the commercial lending rate of interest which the Royal Bank of Canada quotes in Toronto as the reference rate of interest (commonly known as **“prime”**) for the purpose of determining the rate of interest that it charges to its commercial customers for loans in Canadian funds;
- (pppppp) **“Public Record”** has the meaning given in Section 4.1(j);

- (qqqqqq) “**Qualified Benefit Plan**” has the meaning given in Section 3.2(pp)(iii);
- (rrrrrr) “**Registration Rights Agreement**” means a registration rights agreement in the form agreed to by the Parties during the Interim Period;
- (ssssss) “**Related Party Debt**” has the meaning given in Section 3.2(l)(ii);
- (tttttt) “**Representative**”, when used with respect to a Party, means each director, officer, employee, agent consultant, adviser and other representative of that Party who is involved in the transactions contemplated by this Agreement;
- (ttttt.1) “**Required Deliveries**” has the meaning given in Section 2.7(c);
- (uuuuuu) “**Required Governmental Consents**” means, collectively, the Buyer Required Governmental Consents and the Seller Required Governmental Consents;
- (vvvvvv) “**Requisite Stockholder Approval**” means the approval of the Stockholders of the Merger and the transactions contemplated by this Agreement required under the DGCL;
- (wwwwww) “**Sam**” has the meaning given in the recitals to this Agreement;
- (xxxxxx) “**Securities Act**” means the *Securities Act of 1933*;
- (yyyyyy) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval maintained by the Canadian Securities Administrators;
- (zzzzzz) “**Seller**” has the meaning given in the recitals to this Agreement;
- (aaaaaaa) “**Seller Disclosure Letter**” means the disclosure letter, dated as of the date of this Agreement, delivered by the Seller Parties to the Buyer Parties with this Agreement;
- (bbbbbbb) “**Seller Fundamental Reps**” means, collectively, the representations of the Selling Stockholders in Section 3.1(a) and the representations of the Seller in Section 3.2(a), Section 3.2(b) and Section 3.2(c);
- (cccccc) “**Seller Losses**” has the meaning given in Section 8.3;
- (dddddd) “**Seller Indemnified Parties**” has the meaning given in Section 8.3;
- (eeeeeee) “**Seller Material Adverse Effect**” means any change, event, occurrence, effect or circumstance that, individually or in the aggregate with other such changes, events, occurrences, effects or circumstances, is or would reasonably be expected to be material and adverse to the business, operations, results of operations, Assets, properties, capitalization, financial condition or liabilities (contingent or otherwise) of the Corporation and its Subsidiaries, taken as a whole, except any such change, event, occurrence, effect or circumstance resulting from or arising in connection with:
- (i) any change affecting the industries in which the Corporation and the Subsidiaries operate;
 - (ii) any change in global, national or regional political conditions (including the outbreak or escalation of war or acts of terrorism) or in general economic,

business, regulatory, political or market conditions or in national or global financial or capital markets;

- (iii) any adoption, proposal, implementation or change in Applicable Law or any interpretation of Applicable Law by any Governmental Authority;
- (iv) any change in IFRS;
- (v) any natural disaster;
- (vi) any action taken (or omitted to be taken) by the Corporation or any of the Subsidiaries which is required to be taken (or omitted to be taken) pursuant to this Agreement or that is consented to by the Buyer expressly in writing;
- (vii) any matter which has been expressly disclosed by the Corporation in the Seller Disclosure Letter;
- (viii) the failure of the Corporation to meet any internal or published projections, forecasts or estimates of revenues, earnings or cash flows (it being understood that the causes underlying such failure may be taken into account in determining whether a "Seller Material Adverse Effect" has occurred); or
- (ix) the announcement or performance of this Agreement or consummation of the transactions contemplated hereby;

provided, however, that (A) with respect to clauses (i) through to and including (v), such matter does not have a materially disproportionate effect on the Corporation and the Subsidiaries, taken as a whole, relative to other comparable companies and entities operating in the industries in which the Corporation and/or the Subsidiaries operate, and (B) references in certain Sections of this Agreement to dollar amounts are not intended to be, and shall not be deemed to be, illustrative for purposes of determining whether a "Seller Material Adverse Effect" has occurred;

- (ffffff) "**Seller Parties**" means, collectively, the Seller and the Selling Stockholders, and "**Seller Party**" means any one of them as the context may require;
- (ggggggg) "**Seller Representative**" has the meaning given in Section 12.1;
- (hhhhhhh) "**Seller Required Consents**" means, collectively, the Seller Required Governmental Consents and the Seller Required Private Consents;
- (iiiiiii) "**Seller Required Governmental Consents**" means (i) the filings and submissions required to be made under Applicable Law by any Seller Party, the Corporation or any of the Subsidiaries, and (ii) the consents, permits, authorizations, orders and approvals from Governmental Authorities required to be obtained by any Seller Party, the Corporation or any of the Subsidiaries, in each case, in connection with the execution and delivery of this Agreement and the performance of their obligations pursuant to this Agreement and the transactions contemplated hereby as disclosed pursuant to Section 3.2(e)(i) of the Seller Disclosure Letter;
- (jjjjjjj) "**Seller Required Private Consents**" has the meaning given in Section 5.5;
- (kkkkkkk) "**Seller's Acceptance Notice**" has the meaning given in Section 2.10(a);
- (lllllll) "**Seller's Canadian Solicitors**" means Stikeman Elliott LLP, or such other firm as the Seller may retain;

(mmmmmmm) “**Selling Stockholders**” means, collectively, Michael, Sam, Clara, Aaron, Simon, Jack, DRIH Inc. and Kayla Inc.;

(nnnnnnn) “**Simon**” has the meaning given in the recitals to this Agreement;

(ooooooo) “**Specific Financial Targets**” means any of the following:

- (i) the Normalized EBITDA of the Corporation and the Subsidiaries (on a consolidated basis, but exclusive of, and without taking into account, the acquisitions by the Corporation of the franchise systems and/or brands known as Planet Smoothie and Tasti-D-Lite (acquired by the Corporation in a transaction that closed on June 2, 2015), Maui Wowi (acquired by the Corporation in a transaction that closed on November 2, 2015) and Pinkberry (acquired by the Corporation in a transaction that closed on December 11, 2015)), for the 12 month period ending on the applicable determination date is not less than \$28,665,000.
- (ii) the system sales of the Franchise Units and Corporate Units for the 12 month period ending on the applicable determination date is not less than \$800,000,000;
- (iii) the revenue of the Corporation and the Subsidiaries on a consolidated basis, calculated in accordance with IFRS, for the 12 month period ending on the applicable determination date is not less than \$125,000,000;
- (iv) the aggregate number of Franchise Units and Corporate Units as of the applicable determination date is not less than 2,908,

provided, that each of the “Specific Financial Targets” shall be deemed to have been achieved if (A) the actual dollar value for each Specific Financial Target set out in subsections (i), (ii) and (iii) above is not more than 2% below the applicable target dollar value as set out in subsections (i), (ii) and (iii) above on the applicable determination date, respectively, or (B) the aggregate number of Corporate Units and Franchise Units set out in subsection (iv) above is not less 2,850 on the applicable determination date;

(ppppppp.1) “**Spreadsheet**” has the meaning given in Section 2.4(c);

(ppppppp) “**SSA**” has the meaning given in Section 3.2(oo)(vi);

(qqqqqqq) “**Stockholder**” means a holder of Corporation Shares and includes the Seller, any Minority Stockholder, Cash-Only Stockholder, Cooperating Stockholder, Effective Time Stockholder and/or Selling Stockholder, as the context may require;

(rrrrrrr) “**Subsidiaries**” has the meaning given in Section 3.2(b)(xi);

(sssssss) “**Surviving Corporation**” has the meaning given in the recitals to this Agreement;

(ttttttt) “**Systems**” means all computer hardware, software in source code and object code form (including documentation, interfaces and development tools), websites for the Corporation or the Subsidiaries, databases, telecommunications equipment and facilities and other information technology systems owned or used by the Corporation or any of the Subsidiaries;

(uuuuuuu) “**Takeover Statute**” has the meaning given in Section 5.12;

(vvvvvvv) “**Target Working Capital**” means the amount of \$0;

- (wwwwwww) **"Tax Act"** means the *Income Tax Act*, R.S.C. 1985, c.1 (5th supp.);
- (yyyyyy.1) **"Tax Loss"** has the meaning given in Section 8.2(c);
- (xxxxxxx) **"Tax Return"** means any return, declaration, report, claim for refund, election, notice or information return or statement or other document (including any related or supporting information, attachments, schedules or exhibits) and including any amendment that, in each case, relates to any Taxes;
- (yyyyyy) **"Tax Sharing Agreement"** means any Tax indemnity, Tax sharing, Tax allocation or similar agreement;
- (zzzzzz) **"Taxes"** means all taxes, surtaxes, duties, levies, imposts, fees, assessments, withholdings, dues and other charges of any nature, including interest and penalties associated therewith, imposed or collected by any Governmental Authority, whether disputed or not, including federal, provincial, territorial, municipal and local, foreign and other income, franchise, capital, real property, personal property, withholding, payroll, health, transfer, goods and services, harmonized sales, value added, sales, use, consumption, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, education, business, school, local improvement, development and occupation taxes, duties, levies, imposts, fees, assessments and withholdings, dues and other charges of any nature and any required pension plan contributions, employment insurance premiums and all other taxes and similar Governmental Charges of any kind for which the Corporation or the Subsidiaries may have any liability imposed by any Governmental Authority;
- (aaaaaaa) **"Termination Notice"** has the meaning given in Section 13.2(a);
- (bbbbbbb) **"Third Party Claim"** means any action, suit, proceeding, arbitration, claim or demand that is instituted or asserted by a third party, including a Governmental Authority, against an Indemnified Party which entitles the Indemnified Party to make a claim for indemnification under this Agreement;
- (ccccccc) **"Third Party Debt"** has the meaning given in Section 3.2(l)(i);
- (ddddddd) **"Threshold Amount"** has the meaning given in Section 8.4(d);
- (eeeeeee) **"Trade Names and Marks"** means the trade names and trademarks disclosed pursuant to Section 1.1(eeeeeee) of the Seller Disclosure Letter;
- (ffffff) **"Transaction Documents"** means, collectively, all of the agreements, instruments and other documents to be executed and delivered by any Party or otherwise in connection with the transactions contemplated hereunder, other than this Agreement;
- (ggggggg) **"TSX"** means the Toronto Stock Exchange;
- (hhhhhhh) **"TSX Conditional Approval Letter"** means the letter of the TSX granting conditional listing approval of the Issued Shares on the TSX, subject only to the fulfillment of the Listing Conditions;
- (hhhhhhh.1) **"Uncertificated Corporation Shares"** means any book-entry uncertificated Corporation Shares;

(hhhhhhh.2) “**Uncertificated Intermediary Holder**” has the meaning given in the definition of Uncertificated Mixed Consideration Holder.

(hhhhhhh.3) “**Uncertificated Mixed Consideration Holder**” means an Effective Time Uncertificated Stockholder: (i) who is an Accredited Investor; (ii) who has delivered its properly and fully completed and executed “Accredited Investor Certification” (which is attached to a Letter of Transmittal) and all documents required by the “Accredited Investor Certification” to the Exchange Agent by the LT Return Deadline; (iii) whose applicable bank, brokerage firm or other nominee is a DTC Participant and is acting as the nominee of such Effective Time Uncertificated Stockholder (each an “**Uncertificated Intermediary Holder**”) has properly and fully completed and executed a Letter of Transmittal (with a proper Medallion Signature Guarantee) and all documents requested by the Letter of Transmittal; (iv) whose Uncertificated Intermediary Holder has deposited the Effective Time Uncertificated Stockholder’s Uncertificated Corporation Shares to the DTC system via DEL Contra CUSIP; (v) whose Uncertificated Intermediary Holder has delivered such documentation to the Exchange Agent by the LT Return Deadline; and (vi) whose Uncertificated Intermediary Holder has properly indicated in its Letter of Transmittal that it desires to receive its pro rata share of the Merger Consideration in the form of both cash and Issued Shares;

(iiiiiii) “**Undisputed Amount**” has the meaning given in Section 2.10(a);

(jjjjjjj) “**Union**” has the meaning given in Section 3.2(oo)(v);

(kkkkkkkk) “**US Governmental Authority**” means any Governmental Authority in the United States;

(lllllll) “**Voting and Waiver Agreements**” means the voting and waiver agreements by and among: (i) the Buyer Parties, the Corporation and the Seller, and (ii) the Buyer Parties, the Corporation and each Cooperating Stockholder, in each case, in relation to the Merger, dated as of the date of this Agreement;

(mmmmmmm) “**WARN Act**” has the meaning given in Section 3.2(oo)(vii);

(nnnnnnn) “**Working Capital**” means the working capital of the Corporation as determined from time to time in accordance with Appendix B attached to this Agreement; and

(oooooooo) “**Working Capital Adjustment Date**” has the meaning given in Section 2.10(d).

1.2 Currency. Unless otherwise specifically stated, all dollar (\$) amounts referred to in this Agreement are in the lawful currency of the United States of America.

1.3 Accounting Principles. All calculations made or referred to in this Agreement shall be made in accordance with IFRS. All accounting terms used in this Agreement which are not defined in this Agreement shall have the meaning assigned to them in accordance with IFRS.

1.4 Interpretation. In this Agreement, except as otherwise expressly provided:

(a) the provision of a table of contents, and the headings to the parts, Sections and paragraphs attached to this Agreement (including the Seller Disclosure Letter and the Buyer Disclosure Letter), are inserted for convenience only and shall not affect the interpretation of this Agreement;

(b) unless otherwise noted, any reference to a Section followed by a number is to a Section of this Agreement;

- (c) the words “including”, “includes” and “include” mean “including (or includes or include) without limitation”;
- (d) the phrase “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”;
- (e) words of one gender include all genders, and words in the singular include the plural and *vice versa*;
- (f) any reference to a statute includes and is a reference to such statute, and to the rules and regulations made pursuant thereto or promulgated thereunder, as amended and in force from time to time, and to any statute, rules or regulations that may be passed which have the effect of supplementing or superseding such statute, rules or regulations;
- (g) any reference in this Agreement to a Person includes its heirs, administrators, executors, legal representatives, successors and permitted assigns;
- (h) whenever payments are to be made or an action is to be taken on a day which is not a Business Day, such payment shall be made or such action shall be taken on or not later than the next succeeding Business Day; and
- (i) the term “Agreement” and any reference to this Agreement or any other agreement or document includes, and is a reference to, this Agreement or such other agreement or document as it may have been, or may from time to time be amended, restated, replaced, supplemented or novated, and includes all schedules, exhibits and appendices to it, as applicable.

1.5 Knowledge of the Seller. Where any representation or warranty contained in this Agreement is expressly qualified by reference to the Knowledge of the Seller, it shall be deemed to refer to the actual knowledge of Michael Serruya and Michael Reagan after due and diligent enquiry of such Persons (including the appropriate officers and directors of the Corporation) as they consider necessary as to the matters that are the subject of the representations and warranties contained herein.

1.6 Knowledge of the Buyer and Buyer Parent. Where any representation or warranty contained in this Agreement is expressly qualified by reference to the Knowledge of the Buyer Parties (or any one or combination of them, as the case may be), it shall be deemed to refer to the actual knowledge of Stanley Ma, Claude St-Pierre and Eric Lefebvre after due and diligent enquiry of such Persons (including the appropriate officers and directors of the Buyer or Buyer Parent) as they consider necessary as to the matters that are the subject of the representations and warranties contained herein.

1.7 Appendices and Disclosure Letters. The appendices attached to this Agreement, and the Seller Disclosure Letter and the Buyer Disclosure Letter are incorporated into this Agreement by reference, and each of them forms and integral part of this Agreement for all purposes of it.

PART 2 SALE AND PURCHASE

2.1 Merger and Effect of Merger.

- (a) The constituent entities of the Merger are Buyer and the Corporation.
- (b) Upon the terms and subject to the conditions hereof, and in accordance with the DGCL, at the Effective Time, Buyer shall be merged into the Corporation and the separate existence of Buyer thereupon shall cease. The Corporation shall be the Surviving Corporation in the Merger, and the separate existence of the Corporation, with all its

rights, privileges, powers and franchises, shall continue unaffected and unimpaired by the Merger.

- (c) At and after the Effective Time, the Surviving Corporation shall possess all the rights, privileges, powers and franchises and be subject to all the restrictions, disabilities and duties of both the Buyer and the Corporation, as provided more particularly in the DGCL.

2.2 Method of Effecting Merger; Closing.

- (a) The Merger shall be effected as follows: The Corporation shall execute a Certificate of Merger in substantially the form set forth in Appendix C attached to this Agreement (the “**Certificate of Merger**”), and the Corporation shall cause the Certificate of Merger to be filed and recorded on the Closing Date with the Secretary of State of the State of Delaware in accordance with the applicable provisions of the DGCL. The Merger shall thereupon become effective and be consummated immediately upon the later of such filing or at such later time as may be mutually agreed by Buyer Parent, the Corporation and the Buyer and specified in the Certificate of Merger in accordance with the DGCL (the “**Effective Time**”).
- (b) Subject to the satisfaction or waiver of all applicable conditions to Closing, the closing of the Merger (the “**Closing**”) shall take place at the Toronto offices of the Buyer’s Canadian Solicitors, at 10:00 a.m. local time on the Closing Date.

2.3 Merger Consideration.

- (a) **Merger Consideration.** The aggregate consideration payable to the Effective Time Stockholders in connection with the Merger (the “**Merger Consideration**”) shall be an amount equal to the following:
 - (i) the Initial Cash Merger Consideration, subject to any Working Capital adjustment in accordance with Section 2.9; plus
 - (ii) the Issued Shares.
- (b) **Disbursement of Certain Adjustments.**
 - (i) On the Closing Date and prior to the Effective Time, Buyer Parent will (or will cause Buyer to, as the case may be), in its sole discretion, either: (A) deposit with the Corporation an amount equal to the Estimated Prescribed Transaction Costs, which the Corporation or the Surviving Corporation, as the case may be, will pay contemporaneously with or promptly following the Closing; or (B) pay the Estimated Prescribed Transaction Costs.
 - (ii) Promptly following the Closing, Buyer Parent will pay or discharge (or will cause the Surviving Corporation to pay or discharge) the Surviving Corporation’s Indebtedness to the extent not already discharged by the Corporation, Buyer Parent or the Buyer, as the case may be, in accordance with Subsection 2.3(a) above.

2.4 Effect on Shares.

- (a) **Buyer Parent Shares.** At the Effective Time, each common share in the capital of Buyer Parent that is issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding at the Effective Time and shall be unchanged by the Merger.

- (b) **Conversion of Buyer Capital Stock.** At the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, each issued and outstanding share in the capital stock of the Buyer shall be converted into one share of validly issued, fully paid and non-assessable share of common stock in the capital of the Surviving Corporation and, upon surrender of the certificate or certificates representing such shares of common stock in the capital of the Buyer, the Surviving Corporation shall promptly issue to Buyer Parent a certificate representing the common shares in the capital of the Surviving Corporation into which it has been converted. After the Effective Time such shares of common stock shall be the only issued and outstanding equity interest of the Surviving Corporation and shall be owned by Buyer Parent.
- (c) **Issued and Outstanding Corporation Shares.** Subject to Sections 2.5(a), 2.5(b), 2.5(d) and 2.5(e), and any applicable backup or other withholding requirements, at the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, each of the issued and outstanding Corporation Shares immediately prior to the Effective Time shall be converted into and become the right to receive an amount equal to the total value of the Merger Consideration divided by the total number of issued and outstanding Corporation Shares as of immediately prior to the Effective Time; provided, however, that each holder of a Corporation Share (each, an “**Effective Time Stockholder**” and, collectively, the “**Effective Time Stockholders**”) shall receive the specific allocation of the Merger Consideration set forth beside such holder’s name on a closing spreadsheet delivered by the Corporation (the “**Spreadsheet**”), it being acknowledged and agreed that, except as provided in Section 2.12 with respect to the Seller, each such holder will receive its pro rata share of the value of the Merger Consideration while the actual mix and manner of payment of such value may vary among such holders, as provided in Section 2.5 and Section 2.7(c). Any and all undeclared or unpaid dividends on the Corporation Shares immediately prior to the Effective Time shall be canceled at the Effective Time. Any Corporation Shares held in the treasury of the Corporation immediately prior to the Effective Time shall be canceled and no consideration of any kind shall be delivered in exchange therefor under this Agreement.

2.5 Payment of the Merger Consideration.

- (a) **Payment of Cash and Stock to Certain Stockholders.** Subject to adjustment for the Seller pursuant to the terms of Sections 2.5(c) and 2.12, each Mixed Consideration Holder shall be entitled to receive its pro rata share of the Merger Consideration in the form of both cash and Issued Shares as follows:
- (i) Such Mixed Consideration Holder’s pro rata share of the Issued Shares, which shall be determined on the basis of the following formula: the number of Issued Shares multiplied by a fraction, the numerator of which is the number of Corporation Shares owned by such Mixed Consideration Holder, and the denominator of which is the total number of Corporation Shares owned by all Mixed Consideration Holders; plus
- (ii) A portion of the Initial Cash Merger Consideration equal to such Mixed Consideration Holder’s pro rata share of the Closing Value (determined based on the total number of issued and outstanding Corporation Shares as of immediately prior to the Effective Time), less the portion of the Closing Date Share Value to which such Mixed Consideration Holder is entitled pursuant to Section 2.5(a)(i). For purposes of this Agreement, “**Closing Value**” shall mean an amount equal to the Initial Cash Merger Consideration plus the Closing Date Share Value; and “**Closing Date Share Value**” shall mean the cash value of the Issued Shares, calculated by (X) multiplying the number of Issued Shares by the volume weighted average closing price of one Issued Share on the TSX over the ten

trading days immediately preceding the Closing Date (calculated in Canadian dollars) and then (Y) converted from Canadian dollars into U.S. dollars based on the exchange rate on the close of business on the Business Day immediately preceding the Closing Date.

- (b) **Payment of Cash Only to Certain Stockholders.** Subject to adjustment for the Seller pursuant to the terms of Sections 2.5(c) and 2.12, each Effective Time Stockholder who is not a Mixed Consideration Holder (which, for the avoidance of doubt, shall be deemed to include (i) each Effective Time Uncertificated Stockholder who does not constitute a Uncertificated Mixed Consideration Holder and (ii) each Effective Time Certificated Stockholder who does not constitute a Certificated Mixed Consideration Holder) (a “**Cash-Only Stockholder**”) shall receive 100% of its pro rata share of the Closing Value (determined based on the total number of issued and outstanding Corporation Shares as of immediately prior to the Effective Time) in the form of cash, and shall not receive any of the Issued Shares.
- (c) **Funding of Holdback Funds by the Seller.** The Holdback Funds and the Appraisal Holdback Funds shall be deducted from the Initial Cash Merger Consideration otherwise payable to the Seller (or as directed in writing by the Seller) at the Closing pursuant to Section 2.5(a) or 2.5(b).
- (d) **Withholding.** Buyer Parent, the Surviving Corporation or the Exchange Agent, as the case may be, shall be entitled to deduct and withhold from each Effective Time Stockholder’s respective portion of the Merger Consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under Applicable Laws. Such amounts shall be treated for all purposes of this Agreement as having been paid to the applicable Effective Time Stockholders in respect of which Buyer Parent, the Surviving Corporation or the Exchange Agent made such deduction and withholding.
- (e) **No Fractional Shares.** No fractional Issued Shares shall be issued pursuant to the Merger, nor will any fractional Issued Share interest involved entitle the holder thereof to vote, to receive dividends or to exercise any other rights of a shareholder of Buyer Issuer. In lieu thereof, any Person who would otherwise be entitled to a fractional share of the Issued Shares pursuant to the provisions hereof shall receive an amount in cash equal to the value of such fractional share. The value of such fractional share shall be product of such fraction (rounded down to the nearest hundredth of a share) multiplied by the Closing Date Share Value of one Issued Share (*i.e.*, the Closing Date Share Value divided by the number of Issued Shares).

2.6 Stockholders’ Rights upon Merger.

- (a) Upon consummation of the Merger and except as otherwise provided in Section 2.6(b), each Corporation Share outstanding immediately prior to the Effective Time shall cease to represent any rights with respect of the Corporation, and, subject to Applicable Law and this Agreement, the Corporation Shares shall only represent the right to receive the applicable portion of the Merger Consideration payable hereunder with respect to such Corporation Shares.
- (b) Notwithstanding anything contained herein to the contrary, to the extent that appraisal rights are available under the DGCL, any Corporation Shares that are issued and outstanding immediately prior to the Effective Time and that have not been voted for adoption of this Agreement and with respect to which appraisal rights have been properly and timely perfected in accordance with the DGCL (the “**Dissenting Shares**”) shall not be converted into the right to receive the applicable portion of the Merger Consideration payable hereunder with respect to such Corporation Shares at or after the Effective Time

(such amount, the “**Dissenting Share Consideration**”). If a holder of Dissenting Shares effectively withdraws or loses his, her or its right to appraisal and payment under the DGCL, then, as of the occurrence of such event, such holder’s Dissenting Shares shall cease to be Dissenting Shares and shall be converted into and represent the right to receive the Dissenting Share Consideration (in the form of Merger Consideration) payable with respect to such Corporation Shares hereunder upon: (i) in the case of an Effective Time Certificated Stockholder, the delivery to the Exchange Agent of the certificates representing the Corporation Shares (the “**Certificates**”) which are former Dissenting Shares owned by such Dissenting Shareholder together with a duly completed and validly executed Letter of Transmittal (with a proper Medallion Signature Guarantee, if required), a properly completed and executed Substitute Form W-9 (or, if applicable, IRS Form W-8), and all other documents requested in connection with the Letter of Transmittal; and (ii) in the case of an Effective Time Uncertificated Stockholder, the withdrawal or losing of such Effective Time Uncertificated Stockholder’s right to appraisal and payment under the DGCL (it being understood that in the case of an Effective Time Uncertificated Stockholder, such Person need not surrender any documentation to the Exchange Agent or the Buyer, Buyer Parent or the Corporation, but rather, the Buyer Parent shall instruct the Exchange Agent to transmit such Dissenting Share Consideration to the Depository Trust Company (“**DTC**”) for distribution to the applicable Effective Time Uncertificated Stockholder who was the former holder of Dissenting Shares). For purposes of clarification, the holders of such former Dissenting Shares shall only be entitled to receive Merger Consideration in the form of cash and shall not receive any Issued Shares. The Corporation shall give the Buyer Parent prompt notice of any demand received by the Corporation regarding appraisal rights or the exercise of appraisal rights in respect of the Corporation Shares. Except with the prior written consent of Buyer Parent or as may otherwise be required under Applicable Law, the Corporation shall not make any payment with respect to, or settle or offer to settle, any such demands.

2.7 Payment Mechanics for Shares.

- (a) Pursuant to an exchange agent agreement between the Buyer Issuer, the Buyer Parent, the Buyer, the Corporation, the Seller and the Exchange Agent, which shall be in form and substance acceptable to the Buyer Parent and the Corporation, acting reasonably, and which shall be executed by all parties thereto prior to the distribution of the Letters of Transmittal (the “**Exchange Agent Agreement**”), on or prior to the Closing Buyer Parent shall deposit, or shall cause to be deposited, with an exchange agent selected by Buyer Parent with the Corporation’s prior approval, which shall not be unreasonably withheld (the “**Exchange Agent**”), for the benefit of the Effective Time Stockholders, the Initial Cash Merger Consideration (net of the Holdback Funds and the Appraisal Holdback Funds deducted from the Initial Cash Merger Consideration pursuant to Section 2.5(c)) and the Issued Shares to be paid in connection with the Merger (the “**Exchange Fund**”), it being understood that any and all interest earned on funds deposited therein pending payment shall be turned over to Surviving Corporation. The Exchange Agent shall, pursuant to irrevocable instructions, make the payments provided for in this Section 2.7, and the Exchange Fund shall not be used for any other purpose.
- (b) The Corporation shall, within ten (10) Business Days of the date of this Agreement, deliver or cause to be delivered to: (i) each record holder of Corporation Shares as of the record date for the Corporation’s stockholder meeting, at the address set forth opposite such holder’s name on Section 2.7(b) of the Seller Disclosure Letter (as updated from time to time in writing by the Corporation), proxy materials and/or an information statement relating to the transactions contemplated by this Agreement and a letter of transmittal and instructions in the form attached hereto as Appendix D (a “**Letter of Transmittal**”); and (ii) DTC for the delivery to each beneficial holder of Uncertificated Corporation Shares such proxy materials and/or an information statement relating to the

transactions contemplated by this Agreement and a Letter of Transmittal. The Letter of Transmittal shall: (w) provide for the surrender of the Certificates held by the Effective Time Certificated Stockholders in exchange for their respective portions of the Merger Consideration; (x) require (A) the provision of a "VOI Ticket" number relating to any Uncertificated Corporation Shares on the face of the Letter of Transmittal in the case of Uncertificated Corporation Shares beneficially held by Effective Time Uncertificated Stockholders who desire to be Mixed Consideration Holders in exchange for their respective portions of the Merger Consideration and (B) the deposit of the Uncertificated Corporation Shares to the DTC system via DEL Contra CUSIP by each Uncertificated Intermediary Holder (with regard to the Uncertificated Mixed Consideration Holder(s) to which such Uncertificated Intermediary Holder relates); (y) permit the establishment of Accredited Investor status; and (z) specify an LT Return Deadline that is thirty (30) days after the date on which the Letter of Transmittal is mailed as provided herein. With regard to any Effective Time Certificated Stockholder only, upon surrender of a Certificate for cancellation to the Exchange Agent together with the submission of a duly completed and validly executed Letter of Transmittal (with a proper Medallion Signature Guarantee, if required), a properly completed and executed Substitute Form W-9 (or, if applicable, IRS Form W-8), and all other documents requested in connection with the Letter of Transmittal to the Exchange Agent, such Effective Time Certificated Stockholder to which such Letter of Transmittal relates shall be entitled to receive in exchange therefor such Effective Time Certificated Stockholder's applicable portion of the Merger Consideration calculated in accordance with, and payable when and as provided in, this Agreement. In the event any Certificates shall have been lost, stolen or destroyed, the Corporation's transfer agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the satisfaction of all customary conditions required by the Corporation's transfer agent (including, but not limited to, the delivery of a bond in such amount as such transfer agent may reasonably require and/or a written indemnification against any claim that may be made against the Surviving Corporation, Buyer Parent, Buyer Issuer and/or the transfer agent with respect to the Certificates alleged to have been lost, stolen or destroyed), replacement Certificates for such lost, stolen or destroyed Certificates (if all customary conditions are satisfied before the Effective Time) or an instruction to the Exchange Agent that such lost, stolen or destroyed Certificates have been effectively surrendered in exchange for Merger Consideration (if all customary conditions are satisfied after the Effective Time). With regard to any Effective Time Uncertificated Stockholder only, if such Effective Time Uncertificated Stockholder is a Mixed Consideration Holder (by qualifying as an Uncertificated Mixed Consideration Holder prior to the LT Return Deadline), the Effective Time Uncertificated Stockholder to which such Uncertificated Corporation Shares relate shall be entitled to receive in exchange therefor such Effective Time Uncertificated Stockholder's applicable portion of the Merger Consideration calculated in accordance with, and payable when and as provided in, this Agreement. With regard to any Effective Time Uncertificated Stockholder who does not qualify as an Uncertificated Mixed Consideration Holder, such Effective Time Uncertificated Stockholder shall be entitled to receive such Effective Time Uncertificated Stockholder's applicable portion of the Merger Consideration in the form of cash only regardless of whether any documentation (including, but not limited to, a Letter of Transmittal) is submitted to the Exchange Agent with respect to such Effective Time Uncertificated Stockholder's Uncertificated Corporation Shares. (X) Following the Effective Time and pending an Effective Time Certificated Stockholder's submission of Certificates for cancellation together with a duly completed and validly executed Letter of Transmittal (with a proper Medallion Signature Guarantee, if required), a properly completed and executed Substitute Form W-9 (or, if applicable, IRS Form W-8), and all other documents requested in connection with the Letter of Transmittal to the Exchange Agent; and (Y) following the Effective Time with respect to all Effective Time Uncertificated Stockholders, each such record holder of outstanding Corporation Shares will be deemed, for all purposes, to hold an irrevocable right to receive that amount of consideration equal to his, her or its respective portion of the Merger Consideration into which such Effective

Time Stockholder's Corporation Shares shall have been so converted in accordance with this Agreement.

- (c) Buyer Parent shall cause the Exchange Agent to pay and deliver to: (i) each Effective Time Certificated Stockholder that surrenders a Certificate together with a Letter of Transmittal that has been duly completed and validly executed (with a proper Medallion Signature Guarantee if required by the Letter of Transmittal) in accordance with the instructions thereto and all other documents requested in connection with the Letter of Transmittal to the Exchange Agent; (ii) DTC for DTC's distribution to each Effective Time Uncertificated Stockholder who does not qualify as an Uncertificated Mixed Consideration Holder (whether or not such Effective Time Uncertificated Stockholder has delivered to the Exchange Agent a Letter of Transmittal that has been duly completed and validly executed (with a proper Medallion Signature Guarantee) in accordance with the instructions thereto and all other documents requested in connection with the Letter of Transmittal); and (iii) each Uncertificated Intermediary Holder (with regard to the Uncertificated Mixed Consideration Holder to which such Uncertificated Intermediary Holder relates), such Person's applicable portion of the Initial Cash Merger Consideration calculated and payable in accordance with this Agreement, plus such Person's applicable portion of the Issued Shares, if any, that such Person is entitled to in accordance with this Agreement (or if such Person is a Cash-Only Stockholder, solely the dollar amount determined pursuant to Section 2.5(b)), less applicable Taxes required to be withheld with respect to such payments; provided that the Exchange Agent shall not be required to withhold any applicable Taxes from cash that is delivered to Effective Time Uncertificated Stockholders through DTC. Buyer Parent shall use its best commercial efforts to cause the Exchange Agent to make such payments and deliveries to: (x) an Effective Time Certificated Stockholder by no later than five (5) Business Days after the Exchange Agent's receipt of such stockholder's Certificate, duly completed and validly executed Letter of Transmittal (with a proper Medallion Signature Guarantee, if applicable) and all other documents requested in connection with the Letter of Transmittal (the "**Required Deliveries**") in the case of an Effective Time Certificated Stockholder; provided that for any Effective Time Certificated Stockholder who delivers the Required Deliveries to the Exchange Agent prior to the Effective Time, such payments and deliveries will not be made by the Exchange Agent to the Effective Time Certificated Stockholder until the Effective Time has occurred, the Closing Value has been finally agreed between Buyer Parent and Seller Representative, and Seller Representative has delivered the Spreadsheet updated to reflect the Closing Value (the "**Final Spreadsheet**") to Buyer Parent and the Exchange Agent; and thereafter the Exchange Agent shall promptly (and in no event more than three (3) Business Days following the satisfaction of the last of those conditions) make such payments and deliveries; (y) each applicable Uncertificated Intermediary Holder (with regard to any Uncertificated Mixed Consideration Holder to which such Uncertificated Intermediary Holder relates) if such Uncertificated Mixed Consideration Holder to whom the Uncertificated Intermediary Holder relates qualifies as such prior to the LT Return Deadline (which for clarity will occur prior to the Effective Time), promptly after the Effective Time has occurred, the Closing Value has been finally agreed between Buyer Parent and Seller Representative, and Seller Representative has delivered the Final Spreadsheet to Buyer Parent and the Exchange Agent (and in no event more than three (3) Business Days following the satisfaction of the last of those conditions); and (z) DTC (with regard to each Effective Time Uncertificated Stockholder who does not qualify as a Uncertificated Mixed Consideration only) as promptly as practicable (and in no event more than three (3) Business Days following its receipt of the Final Spreadsheet), the occurrence of the Effective Time, and the final determination of the Closing Value by Buyer Parent and the Seller Representative.
- (d) At or after the Effective Time, there shall be no transfers on the transfer books of the Corporation of the Corporation Shares that were outstanding immediately prior to the Effective Time.

- (e) Any portion of the Exchange Fund that remains unclaimed by an Effective Time Stockholder two years after the Effective Time shall be delivered to the Surviving Corporation, and any Effective Time Certificated Stockholder who has not returned its Certificates, together with a Letter of Transmittal that has been duly completed and validly executed in accordance with the instructions thereto and all other documents requested in connection with the Letter of Transmittal to the Exchange Agent shall thereafter look only to the Surviving Corporation for payment of such Effective Time Stockholder's portion of the Initial Cash Merger Consideration and Issued Shares. Notwithstanding anything to the contrary in this Agreement, none of the Buyer Issuer, the Buyer Parent, the Buyer, the Surviving Corporation, the Seller Representative or any other Party shall be liable to any Person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Applicable Law.

2.8 Closing Working Capital. The Closing Working Capital shall be estimated at Closing and shall be finalized as follows:

- (a) not less than two Business Days prior to the Closing Date, the Seller will deliver to Buyer Parent:
 - (i) the most recently prepared consolidated financial statements of the Corporation, which in any event must be current to the end of a month ending not more than fifty (50) days before the Closing Date, (the "**Best Estimates Financial Statements**") prepared in accordance with IFRS and on the same basis and applying the same accounting principles, policies and practices that were used in preparing the Financial Statements; and
 - (ii) a statement (the "**Best Estimates Working Capital Statement**") setting out the Estimated Working Capital, together with supporting calculations made in accordance with the Working Capital calculation methodology attached as Appendix B to this Agreement.
- (b) within 120 days after the Closing Date, Buyer Parent will cause the Surviving Corporation to deliver to the Seller:
 - (i) consolidated financial statements of the Corporation (the "**Closing Financial Statements**") as of the Closing Date, prepared in accordance with IFRS and on the same basis and applying the same accounting principles, policies and practices that were used in preparing the Financial Statements; and
 - (ii) a statement (the "**Closing Working Capital Statement**") setting out the Closing Working Capital, together with supporting calculations made in accordance with the Working Capital calculation methodology attached as Appendix B to this Agreement.

2.9 Working Capital Adjustment.

- (a) At Closing, the Initial Cash Merger Consideration will be increased or decreased, as the case may be, as follows:
 - (i) if the Estimated Working Capital is greater than the Target Working Capital, then the amount of such difference will be added to the Initial Cash Merger Consideration payable at Closing; or
 - (ii) if the Estimated Working Capital is less than the Target Working Capital, then the amount of such difference will be deducted from the Initial Cash Merger Consideration payable at Closing.

- (b) Subject to Section 2.10, within five days of receipt or deemed receipt by Buyer Parent of the Seller's Acceptance Notice, if:
 - (i) the Closing Working Capital is greater than the Estimated Working Capital, then the amount of such difference shall be paid by Buyer Parent to the Effective Time Stockholders, together with interest on such amount as provided in Section 2.11; or
 - (ii) the Closing Working Capital is less than the Estimated Working Capital, then the amount of such difference shall be paid by the Seller to Buyer Parent, together with interest on such amount as provided in Section 2.11.

2.10 Acceptance of or Objection to Closing Financial Statements.

- (a) **Delivery of Objection Notice.** If the Seller objects in good faith to any item of the Closing Financial Statements or the Closing Working Capital Statement, the Seller shall so advise Buyer Parent by delivery to Buyer Parent of a written notice (the "**Objection Notice**") within 45 days after the delivery to the Seller of the Closing Financial Statements and the Closing Working Capital Statement. The Objection Notice shall set out the reasons for the Seller's objection as well as the amount in dispute and reasonable details of the calculation of such amount. The Seller or Buyer Parent, as the case may be, shall pay in accordance with the terms of this Agreement any amount that is not in dispute and is otherwise payable hereunder (the "**Undisputed Amount**", and any amount that remains subject to dispute is referred to herein as the "**Dispute Amount**"). If the Seller does not object to any item of the Closing Financial Statements or the Closing Working Capital Statement, the Seller may notify Buyer Parent in writing to that effect (such notice being referred to herein as the "**Seller's Acceptance Notice**"). If the Seller does not deliver an Objection Notice or a Seller's Acceptance Notice to Buyer Parent within the 30 day period referred to in this Section 2.10, the Seller shall be deemed to have delivered a Seller's Acceptance Notice to Buyer Parent on the last day of such 30 day period.
- (b) **Resolution of Disputes.** Buyer Parent shall give the Seller and its accountants sufficient access to the Books and Records of the Corporation to enable the Seller to fully review the Closing Financial Statements and the Closing Working Capital Statement and the basis on which they were prepared and to exercise its rights under this Section 2.10 (including the right to make copies of extracts, where relevant). The Seller and Buyer Parent shall attempt to resolve all of the items in dispute set out in any Objection Notice within 30 days of receipt of the Objection Notice by Buyer Parent. Any items in dispute not resolved within such 30 day period shall be referred as soon as possible thereafter by the Seller and Buyer Parent to the Independent Auditor. The Independent Auditor shall act as expert and not as arbitrator and shall be required to determine the items in dispute that have been referred to it as soon as reasonably practicable but in any event not later than 30 days after the date of referral of the dispute to it. In making its determination, the Independent Auditor will only consider the issues in dispute placed before it. The Seller and Buyer Parent shall provide or make available, and Buyer Parent shall ensure that the Surviving Corporation's auditors or accountants, as applicable, provides or makes available, all documents and information and working papers in its possession or under its control as are reasonably required by the Independent Auditor to make its determination. The determination of the Independent Auditor shall be final and binding on the Parties, absent manifest error, and the Closing Financial Statements and the Closing Working Capital Statement shall be (or not be) adjusted in accordance with such determination.
- (c) **Audit Expenses.** The fees and expenses of the Independent Auditor in acting in accordance with this Section 2.10 shall be paid by the Seller, unless the Independent

Auditor determines that Buyer Parent is obligated to pay any additional Working Capital adjustment to the Seller in excess of the Undisputed Amount, in which case Buyer Parent shall pay a percentage of the fees and expenses of the Independent Auditor equal to the percentage of the Dispute Amount represented by such Working Capital adjustment (subject to a maximum of 100%) and the Seller shall pay the remainder of the Independent Auditor's fees and expenses, if any.

- (d) **Payment in Accordance with Closing Financial Statements and Closing Working Capital Statement.** No later than (i) five days after the receipt or deemed receipt by Buyer Parent from the Seller of the Seller's Acceptance Notice, (ii) five days after resolution, by agreement of the Parties, of the dispute which was the subject of the Objection Notice or (iii) failing such resolution, within five days after the final determination of the Independent Auditor (in each case, the "**Working Capital Adjustment Date**"), the Seller or Buyer Parent, as the case may be, shall pay to the applicable Person(s) the applicable amount pursuant to Section 2.9(b).

2.11 Interest. Any amount required to be paid by the Seller or Buyer Parent pursuant to Section 2.9(b) shall be paid together with interest on such amount calculated and compounded monthly from the Closing Date to the Working Capital Adjustment Date, at the rate per annum equal to the Prime Rate.

2.12 Holdback Funds and Appraisal Holdback Funds.

- (a) **Holdback Funds.** On the Closing Date, pursuant to the terms of Section 2.5(c), the Buyer or its designee shall deduct the Holdback Funds from the Initial Cash Merger Consideration otherwise payable to the Seller, and the Holdback Funds shall be held by Buyer and the Surviving Corporation, as the case may be, for the satisfaction of:
- (i) Buyer Losses for which the Buyer Parent or any other Buyer Indemnified Parties are entitled to indemnification, payment or reimbursement out of the Holdback Funds in accordance with the terms of this Agreement; or
 - (ii) subject to Section 2.13(b), any Prescribed Transaction Costs that were not Estimated Prescribed Transaction Costs or that were not otherwise deducted from the Initial Cash Merger Consideration.

Any Holdback Funds shall be disbursed pursuant to Section 2.13(b) or Section 8.8, as the case may be.

- (b) **Appraisal Holdback Funds.** On the Closing Date, pursuant to the terms of Section 2.5(c), the Buyer or its designee shall deduct the Appraisal Holdback Funds from the Initial Cash Merger Consideration otherwise payable to the Seller and shall hold such funds for the satisfaction of any amounts payable by Buyer Parent, or by the Surviving Corporation after the Effective Time, in connection with either:
- (i) any Dissenting Shares; or
 - (ii) subject to Section 2.13(b), any Prescribed Transaction Costs that were not Estimated Prescribed Transaction Costs or that were not otherwise deducted from the Initial Cash Merger Consideration.

The following provisions shall apply to the Appraisal Holdback Funds:

- A. The Appraisal Holdback Funds shall be released to the Seller as follows:

- 1 in the event that on Closing the Appraisal Rights Demand Deadline Date has passed and no Appraisal Rights Demands have been made, the Appraisal Holdback Funds shall be disbursed to the Seller on the date that is sixty days following the Closing Date; or
 - 2 in the event that on Closing the Appraisal Rights Demand Deadline Date has passed and any Appraisal Rights Demand has been made, any unused Appraisal Holdback Funds shall be disbursed to the Seller upon the later to occur of:
 - a) the date that is sixty days following the Closing Date; and
 - b) the date that is five Business Days following the date on which all Appraisal Rights Demand Actions have either been settled by a written agreement or agreements entered into with each claimant Minority Stockholder or a court of competent jurisdiction has entered a final judgment in respect of each Appraisal Rights Demand Action and the time periods for the filing of appeals of all such judgments, respectively, have expired with no appeals being filed, any remaining Appraisal Holdback Funds shall be disbursed to the Seller (or as directed in writing by the Seller).
- B. The Buyer Parent may satisfy any expenses incurred in connection with the Prescribed Transaction Costs described in subsection (iv) of the definition of Prescribed Transaction Costs, including, without limitation, any amounts payable to a holder of Dissenting Shares, from the Appraisal Holdback Funds (the “**Appraisal Fund Offsets**”). Where an Appraisal Fund Offset has been made, then the amount of Dissenting Share Consideration that would otherwise have been paid to such holder shall be reduced by an by an amount equal to such Appraisal Fund Offsets.
- (c) **Merger Consideration Adjustments.** Any Appraisal Holdback Funds not distributed to the Seller pursuant to the provisions of this Section 2.12 shall be deemed to be and treated for all purposes as adjustments to the Merger Consideration payable to the Seller.

2.13 Prescribed Transaction Costs.

- (a) **Estimated Prescribed Transaction Costs.** At least two Business Days prior to the Closing Date, the Corporation shall provide to Buyer Parent a schedule of the Prescribed Transaction Costs (segregated by payee, to the extent reasonably known or anticipated), that have been incurred prior to Closing and that may be incurred through the Closing (together, “**Estimated Prescribed Transaction Costs**”), together with final invoices from the applicable payees and any reasonable supporting documentation the Corporation or Buyer Parent requests.
- (b) **Post-Closing Prescribed Transaction Costs.** Following the Closing Date, if there are any Prescribed Transaction Costs that were not Estimated Prescribed Transaction Costs or that were not otherwise deducted in the calculation of the Initial Cash Merger Consideration, the amount of such excess shall be paid by the Seller within ten (10) days of written demand made by the Buyer Parent, failing which the Buyer Parent may, at its sole election, use any Appraisal Holdback Funds or Holdback Funds to make such

payment, any such use to be a deduction from any Appraisal Holdback Funds or Holdback Funds, as the case may be, to otherwise be distributed to the Seller pursuant to this Agreement.

2.14 Organizational Documents of the Surviving Corporation. The Amended and Restated Certificate of Incorporation and Amended and Restated By-Laws of the Surviving Corporation shall be as set forth in Appendices E and F attached to this Agreement, respectively.

2.15 Directors and Officers of the Surviving Corporation. The directors and officers set forth on Appendix G attached to this Agreement shall be the directors and officers of the Surviving Corporation, effective as of the Effective Time, until their successors shall have been duly elected and qualified or until their earlier death, resignation or removal.

PART 3 REPRESENTATIONS AND WARRANTIES OF THE SELLER PARTIES

3.1 Representations and Warranties of the Selling Stockholders. Except as set forth in the Seller Disclosure Letter, the Selling Stockholders jointly and severally represent and warrant to the Buyer and Buyer Parent as follows, and acknowledge and agree that the Buyer and Buyer Parent are relying upon such representations in warranties in connection with entering into this Agreement:

(a) **Fundamental Representations Regarding the Selling Stockholders.**

(i) **Individuals.** Each of the Selling Stockholders who is an individual has the right and capacity to enter into this Agreement.

(ii) **DRIH Inc. and Kayla Inc.**

A. DRIH Inc. and Kayla Inc.: (A) are corporations duly incorporated and validly existing and, with respect to the filing of corporate returns, are in good standing under the laws of Ontario and Barbados, respectively; and (B) have all requisite power and capacity necessary to own or lease and to operate their assets currently owned or leased and to conduct their business as currently conducted.

B. DRIH Inc. and Kayla Inc. have the corporate power and capacity to enter into and perform their obligations under this Agreement and each of the Transaction Documents to which each of them is or will be a party. DRIH Inc. and Kayla Inc. have taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement, along with all transactions contemplated herein. At the Applicable Delivery Date, DRIH Inc. and Kayla Inc. will have taken all necessary corporate action to authorize the execution, delivery and performance of the Transaction Documents to which each of them is a party, along with all transactions contemplated therein.

(iii) **Enforceability.** This Agreement has been duly executed and delivered by each of the Selling Stockholders. At the Applicable Delivery Dates, each of the Transaction Documents to which a Selling Stockholder is a party will be duly executed and delivered by such Selling Stockholder. This Agreement is, and at the Applicable Delivery Dates each of the Transaction Documents to which a Selling Stockholder is a party will be, a valid and legally binding agreement of the applicable Selling Stockholder, enforceable against it in accordance with its terms except, with respect to each such agreement, as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and

by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (b) **Non-Contravention.** Subject to obtaining the Seller Required Consents, the execution and delivery of this Agreement and the Transaction Documents by the Selling Stockholders, and the performance of their respective obligations and consummation of the transactions hereunder and thereunder do not and will not:
 - (i) breach or constitute a default under the Constatng Documents of DRIH Inc. or Kayla Inc.;
 - (ii) result in a violation of any Applicable Law to which any of the Selling Stockholders is subject; or
 - (iii) breach or constitute a default under any judgment, order or decree of any Governmental Authority by which any of the Selling Stockholders is bound.
- (c) **Government Authorization.** Except for the Seller Required Governmental Consents, no authorization, consent, permit or approval of, or other action by, or filing with or notice to, any Governmental Authority having jurisdiction is required in connection with the execution and delivery by the Selling Stockholders of this Agreement and the Transaction Documents and the performance of their respective obligations hereunder and thereunder.

3.2 Representations and Warranties of the Seller. Except as set forth in the Seller Disclosure Letter, the Seller represents and warrants to the Buyer and Buyer Parent as follows, and acknowledges and agrees that the Buyer and Buyer Parent are relying upon such representations in warranties in connection with entering into this Agreement:

- (a) **Fundamental Representations Regarding the Seller.**
 - (i) **Incorporation, etc.** The Seller: (A) is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware; and (B) has all requisite power and capacity necessary to own or lease and to operate its assets currently owned or leased.
 - (ii) **Power and Authorization.** The Seller has the limited liability company power and capacity to enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is or will be a party. The Seller has taken all necessary limited liability company action to authorize the execution, delivery and performance of this Agreement, along with all transactions contemplated herein. At the Applicable Delivery Dates, the Seller will have taken all necessary limited liability company action to authorize the execution, delivery and performance of the Transaction Documents to which the Seller is a party, along with all transactions contemplated therein.
 - (iii) **Enforceability.** This Agreement has been duly executed and delivered by the Seller. At the Applicable Delivery Dates, each of the Transaction Documents to which the Seller is a party will be duly executed and delivered by the Seller. This Agreement is, and at the Applicable Delivery Dates each of the Transaction Documents to which the Seller is a party will be, a valid and legally binding agreement of the Seller, enforceable against the Seller in accordance with its terms except, with respect to each such agreement, as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and

by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (iv) **No Shareholders Agreements.** Other than this Agreement and any Voting and Waiver Agreements, there are no agreements to which the Seller is a party, including pooling agreements, voting trusts or other similar arrangements, with respect to the ownership or voting of any of the Corporation Shares owned by the Seller.

(b) **Fundamental Representations Regarding the Corporation.**

- (i) **Incorporation, etc.** The Corporation: (A) is a corporation duly incorporated and validly existing and is in good standing under the laws of the State of Delaware; and (B) has all requisite power and capacity necessary to own or lease and to operate its Assets currently owned or leased and to conduct the Business.
- (ii) **Registration.** The Corporation is, in all material respects, registered to carry on business and is in good standing with respect to filing of reports under the Applicable Laws of every jurisdiction in which it operates and where such registration is required under Applicable Law.
- (iii) **Power and Authorization.** The Corporation has the corporate power and capacity to enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is or will be a party. The Corporation has taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement, along with all transactions contemplated herein. At the Applicable Delivery Dates, the Corporation will have taken all necessary corporate action to authorize the execution, delivery and performance of the Transaction Documents to which the Corporation is a party, along with all transactions contemplated therein.
- (iv) **Constating Documents.** A true copy of the Certificate of Incorporation and the by-laws of the Corporation, as amended and/or restated as of the date hereof, have been delivered to the Buyer and Buyer Parent by the Seller. Such Certificate of Incorporation and by-laws constitute all of the Constating Documents of the Corporation and are complete, correct and in full force and effect.
- (v) **Corporate History.** Section 3.2(b)(v) of the Seller Disclosure Letter sets forth a list of (A) all predecessors of the Corporation (whether corporations, limited liability companies or otherwise), (B) all previous corporate names of the Corporation and its predecessors, and (C) the registered business names of the Corporation.
- (vi) **Enforceability.** This Agreement has been duly executed and delivered by the Corporation. At the Applicable Delivery Dates, each of the Transaction Documents to which the Corporation is a party will be duly executed and delivered by the Corporation. This Agreement is, and at the Applicable Delivery Dates each of the Transaction Documents to which the Corporation is a party will be, a valid and legally binding agreement of the Corporation, enforceable against the Corporation in accordance with its terms except, with respect to each such agreement, as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (vii) **Authorized and Issued Capital.** The authorized share capital of the Corporation is 4,500,000 Corporation Shares, of which 1,642,477 Corporation Shares are issued and outstanding as of the date of this Agreement.
 - (viii) **Title to Corporation Shares.** Prior to the Effective Time, the Seller and the Minority Stockholders will be the only legal, beneficial and registered owners, as applicable, of the issued and outstanding Corporation Shares as set out opposite their respective names on Section 3.2(b)(viii) of the Seller Disclosure Letter. All of the issued and outstanding Corporation Shares as of the date of this Agreement are validly issued, fully paid and non-assessable and represent as of the date hereof all of the issued and outstanding shares of every class of the Corporation. The Seller owns its Corporation Shares free and clear of all Encumbrances, except for (A) those restrictions on transfer, if any, contained in the Constatting Documents of the Corporation, (B) Encumbrances granted by the Buyer and (C) Encumbrances imposed by applicable United States federal and state securities laws.
 - (ix) **Competing Rights.** Except as disclosed pursuant to Section 3.2(b)(ix) of the Seller Disclosure Letter, there are no options, warrants or other rights for the purchase, subscription or issuance of Corporation Shares or other securities of the Corporation owned by the Seller, and no securities convertible into or exchangeable for Corporation Shares have been authorized or agreed to be issued by the Corporation or are issued and outstanding, and there are no other agreements or arrangements to which the Corporation is a party in force which provide for the present or future issue, allotment, transfer, redemption, retraction, repayment or conversion of, or compensation for, any Corporation Shares, except as otherwise provided in this Agreement.
 - (x) **Insolvency or Amalgamation.** Except for the Merger, no proceedings have been or will be taken or authorized by the Corporation, or to the knowledge of the Seller by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding-up of the Corporation or with respect to any amalgamation, merger, consolidation, arrangement or reorganization relating to the Corporation.
 - (xi) **Subsidiaries.** The Corporation does not own, directly or indirectly, any shares in or other securities of, or have any interest in the assets or business of, any other Person, other than the subsidiaries of the Corporation as disclosed pursuant to Section 3.2(b)(xi) of the Seller Disclosure Letter (the "**Subsidiaries**").
- (c) **Fundamental Representations Regarding the Subsidiaries.**
- (i) **Incorporation, etc.** Each Subsidiary: (A) is a corporation duly incorporated, validly existing and is in good standing under the laws of the jurisdiction indicated opposite the name of the Subsidiary as disclosed pursuant to Section 3.2(c)(i) of the Seller Disclosure Letter; and (B) has all requisite power and capacity necessary to own or lease and to operate its Assets currently owned or leased and to conduct that part of the Business that it conducts.
 - (ii) **Registration.** Each Subsidiary is, in all material respects, registered to do business and is in good standing with respect to filing of reports under the Applicable Laws of every jurisdiction in which it operates and where such registration is required under Applicable Law.
 - (iii) **Power and Authorization.** Each Subsidiary has the corporate power and capacity to enter into and perform its obligations under each of the Transaction

Documents to which it is or will be a party. At the Applicable Delivery Dates, each Subsidiary will have taken all necessary corporate action to authorize the execution, delivery and performance of the Transaction Documents to which it is a party, along with all transactions contemplated therein.

- (iv) **Enforceability.** At the Applicable Delivery Dates, each of the Transaction Documents to which each Subsidiary is a party will be duly executed and delivered by such Subsidiary. At the Applicable Delivery Dates each of the Transaction Documents to which each Subsidiary is a party will be a valid and legally binding agreement of such Subsidiary, enforceable against such Subsidiary in accordance with its terms except, with respect to each such agreement, as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- (v) **Constating Documents.** A true copy of the Certificate of Incorporation and the by-laws of each Subsidiary, as amended and/or restated as of the date hereof, have been delivered to the Buyer and Buyer Parent by the Seller. Such Certificates of Incorporation and by-laws constitute all of the Constating Documents of the Subsidiaries and are complete, correct and in full force and effect.
- (vi) **Corporate History.** Section 3.2(c)(vi) of the Seller Disclosure Letter sets forth a list of (A) all predecessors of each Subsidiary (whether corporations, limited liability companies or otherwise), (B) all previous corporate names of each Subsidiary and its predecessors, and (C) the registered business names of each Subsidiary.
- (vii) **Authorized and Issued Capital.** The authorized and issued share capital of each Subsidiary as of the date of this Agreement is disclosed pursuant to Section 3.2(c)(vii) of the Seller Disclosure Letter and will remain unchanged as of the Closing Date.
- (viii) **Title to Shares.** The legal and beneficial owners of the issued and outstanding share capital of each of the Subsidiaries is disclosed pursuant to Section 3.2(c)(viii) of the Seller Disclosure Letter and all such share capital is validly issued, fully paid and non-assessable and represents all of the issued and outstanding capital of each Subsidiary. The Corporation, directly or indirectly, owns all of the issued and outstanding share capital of each Subsidiary, free and clear of all Encumbrances, except for (A) those restrictions on transfer, if any, contained in the Constating Documents of a Subsidiary, (B) Encumbrances granted by the Buyer and (C) Encumbrances imposed by applicable United States federal and state securities laws.
- (ix) **No Shareholders Agreements.** There are no shareholder agreements, pooling agreements, voting trusts or other similar arrangements with respect to the ownership or voting of any of the shares of the Subsidiaries.
- (x) **Competing Rights.** No options, warrants or other rights for the purchase, subscription or issuances of common stock or other securities of any Subsidiary or securities convertible into or exchangeable for common stock of any Subsidiary have been authorized or agreed to be issued or are issued and outstanding, and there are no other agreements or arrangements in force which provide for the present or future issue, allotment, transfer, redemption, retraction,

repayment or conversion of, or compensation for, any share capital of the Subsidiaries.

- (xi) **Insolvency or Amalgamation.** No proceedings have been or will be taken or authorized by the Corporation or any Subsidiary, or to the knowledge of the Corporation by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding-up of any Subsidiary or with respect to any amalgamation, merger, consolidation, arrangement or reorganization relating to any Subsidiary.

- (d) **Government Authorization.** Except for the Seller Required Governmental Consents, no authorization, consent, permit or approval of, or other action by, or filing with or notice to, any Governmental Authority having jurisdiction is required in connection with the execution and delivery by the Seller, the Corporation or any of the Subsidiaries, as applicable, of this Agreement and the Transaction Documents and the performance of their respective obligations hereunder and thereunder.

- (e) **Required Consents.**
 - (i) The Seller Required Governmental Consents are disclosed pursuant to Section 3.2(e)(i) of the Seller Disclosure Letter.
 - (ii) The Seller Required Private Consents are disclosed pursuant to Section 3.2(e)(ii) of the Seller Disclosure Letter.

- (f) **Non-Contravention.** Subject to obtaining the Seller Required Consents, the execution and delivery of this Agreement and the Transaction Documents by the Seller, the Corporation or any of the Subsidiaries, as applicable, and the performance of their respective obligations and consummation of the transactions hereunder and thereunder do not and will not:
 - (i) breach or constitute a default under the Constating Documents of the Seller, the Corporation or any of the Subsidiaries;
 - (ii) assuming compliance with the matters referred to in Section 3.2(e), result in a violation of any Applicable Law to which the Seller, the Corporation or any of the Subsidiaries, the Business or the Assets, is subject;
 - (iii) breach or constitute a default under any judgment, order or decree of any Governmental Authority by which the Seller, the Corporation or any of the Subsidiaries is bound;
 - (iv) assuming compliance with the matters referred to in Section 3.2(e), breach or constitute a default under any of the terms, provisions or conditions of any material agreement, indenture, instrument or other document to which the Seller, the Corporation or any of the Subsidiaries is a party or is bound;
 - (v) relieve any Person from any material obligation to the Corporation or any of the Subsidiaries (whether contractual or otherwise) or enable any Person to terminate any such obligation or any material right or benefit enjoyed by the Corporation or any of the Subsidiaries or to exercise any material right in respect of which the Corporation or any of the Subsidiaries is bound; or
 - (vi) result in the creation, imposition or enforcement of any Encumbrance on or over any of the Assets or undertakings of the Corporation or any of the Subsidiaries or

result in any present or future indebtedness of the Corporation or any of the Subsidiaries becoming due and payable prior to its stated maturity.

- (g) **Books and Records.** All transactions of the Corporation and the Subsidiaries have been accurately recorded, in all material respects, in the Books and Records. The minute books of the Corporation and the Subsidiaries are included in their respective Books and Records and contain, in all material respects, all records of the meetings and proceedings of their respective shareholders and directors. Since August 19, 2013, the Corporation and the Subsidiaries have, in all material respects, kept all records required to be kept by the DGCL and any other Applicable Laws and all such records are accurate and up to date in all material respects, and to the extent that any of the records required to be kept by the DGCL and any other Applicable Laws are not accurate and up to date in any material respect in relation to the period of time prior to August 19, 2013, all commercially reasonable steps have been taken to rectify any inaccuracy and to bring them up to date in all material respects. The Books and Records of the Corporation and the Subsidiaries are otherwise up to date and complete in all material respects, and fairly present the financial position and the affairs of the Corporation and the Subsidiaries in all material respects. Originals of the Books and Records are in the custody or control of the Corporation.
- (h) **Financial Statements.**
- (i) True and complete copies of the 2013 Audited Financial Statements, the 2014 Audited Financial Statements and the 2015 Interim Financial Statements are disclosed pursuant to Section 3.2(h)(i) of the Seller Disclosure Letter.
- (ii) The 2013 Audited Financial Statements and the 2014 Audited Financial Statements have been audited by the Auditors and prepared in accordance with IFRS applied on a basis consistent with that of prior fiscal years.
- (iii) Except as disclosed in Section 3.2(h)(iii) of the Seller Disclosure Letter, the 2013 Audited Financial Statements and the 2014 Audited Financial Statements are accurate and complete and fairly present the assets, liabilities and financial position of the Corporation, as at the date thereof, and the results of its operations and the changes in its financial position for the fiscal year then ending, in all material respects.
- (iv) The 2015 Interim Financial Statements are accurate and complete and fairly present the assets, liabilities and financial position of the Corporation, as at the date thereof, and the results of its operations and the changes in its financial position for the fiscal year then ending, in all material respects.
- (i) **Internal Controls.** The Corporation has established and maintains a system of “internal controls over financial reporting” (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance: (i) regarding the reliability of the Corporation’s financial reporting and the preparation of financial statements for external purposes in accordance with IFRS; (ii) that receipts and expenditures of the Corporation are being made only in accordance with the authorization of the Corporation’s management and directors; and (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of the Corporation’s assets that could have a material effect on the Corporation’s financial statements.
- (j) **Provisions and Reserves.** The 2013 Audited Financial Statements and the 2014 Audited Financial Statements and, as of the date hereof, the 2015 Interim Financial Statements, make adequate provision or reserve for all reasonably anticipated liabilities,

losses, costs and expenses of the Corporation and the Subsidiaries on a consolidated basis (including Taxes).

- (k) **Liabilities.** Except to the extent expressly disclosed or reserved against in the 2015 Interim Financial Statements as of the date hereof, incurred since December 31, 2014 in the Ordinary Course or disclosed pursuant to Section 3.2(k) of the Seller Disclosure Letter, the Corporation and the Subsidiaries do not have any outstanding indebtedness or any liabilities or obligations (whether accrued, absolute, contingent or otherwise) required to be accrued on the 2015 Interim Financial Statements as of the date hereof, in accordance with IFRS. Any liabilities or obligations incurred in the Ordinary Course since December 31, 2014 that are not reflected in the Interim Financial Statements do not exceed \$50,000 individually or in the aggregate.
- (l) **Debt.** Section 3.2(l) of the Seller Disclosure Letter contains a list of all outstanding indebtedness of the Corporation or any of the Subsidiaries to:
- (i) lenders who are not any of the Seller, the Corporation or any of the Subsidiaries and who are Arm's Length from the Seller Parties (collectively, "**Third Party Debt**");
 - (ii) lenders who are not any of the Corporation or any of the Subsidiaries but who are either Seller Parties or are not at Arm's Length from the Seller Parties (collectively, "**Related Party Debt**"); and
 - (iii) lenders who are any of the Corporation or any of the Subsidiaries (collectively, "**Intercompany Debt**");
- in each case listing the name(s) of the lender(s); principal amount of the loan; interest rate; maturity; and description of any security given in respect of the loan. All Third Party Debt, Related Party Debt and Intercompany Debt is or will be adequately accounted for in the Financial Statements, as the case may be.
- (m) **Accounts Receivable.** All Accounts Receivable held by the Corporation and the Subsidiaries shown in the 2015 Interim Financial Statements as of the date hereof, the 2014 Audited Financial Statements and the Closing Financial Statements are or will be, as applicable, *bona fide*, arising in the Ordinary Course, and good and collectible without set-off or counterclaim. Each doubtful or bad debt has been specifically reviewed and the reserve taken or to be taken, as applicable, in each of the 2015 Unaudited Financial Statements as of the date hereof, the 2014 Audited Financial Statements and the Closing Financial Statements is or will be adequate, as applicable.
- (n) **Guarantees.** Except as disclosed pursuant to Section 3.2(n) of the Seller Disclosure Letter, neither the Corporation nor any of the Subsidiaries has any guarantees, indemnities or contingent or indirect obligations with respect to the liabilities or obligations of any other Person in excess of \$50,000.
- (o) **Indebtedness to Seller.** Except for the payment of salaries and reimbursement for out-of-pocket expenses in the Ordinary Course and as disclosed pursuant to Section 3.2(o) of the Seller Disclosure Letter, neither the Corporation nor any of the Subsidiaries is indebted to any manager, director, officer, Employee or equity owner of the Seller Parties, the Corporation or any of the Subsidiaries, or to any Affiliate or Associate of any of the foregoing.
- (p) **Government Grants.** There are no contracts or agreements relating to grants or other forms of assistance, including loans with interest at below market rates, received by the Corporation or any of the Subsidiaries from any Governmental Authority.

- (q) **Bank Accounts.** The name of each bank or other depository in which the Corporation and the Subsidiaries maintain any bank account, trust account or safety deposit box is disclosed pursuant to Section 3.2(q) of the Seller Disclosure Letter, along with the particulars thereof including the names of all persons authorized to draw thereon or who have access thereto.
- (r) **Seller Material Adverse Effect.** Since the Balance Sheet Date there has been no Seller Material Adverse Effect.
- (s) **Status of the Business.**
- (i) The Normalized EBITDA of the Corporation and the Subsidiaries (on a consolidated basis, but exclusive of, and without taking into account, the acquisitions by the Corporation of the franchise systems and/or brands known as Planet Smoothie and Tasti-D-Lite (acquired by the Corporation in a transaction that closed on June 2, 2015), Maui Wowi (acquired by the Corporation in a transaction that closed on November 2, 2015) and Pinkberry (acquired by the Corporation in a transaction that closed on December 11, 2015)), for the 12 month period ending on the calendar month preceding the date of this Agreement was equal to or greater than \$28,665,000.
 - (ii) The system sales of the Franchise Unit and the Corporate Units for the 12 month period ending on the calendar month preceding the date of this Agreement was greater than or equal to \$800,000,000.
 - (iii) The revenue of the Corporation and the Subsidiaries (on a consolidated basis), calculated in accordance with IFRS, for the 12 month period ending on the calendar month preceding the date of this Agreement was equal to or greater than \$125,000,000.
 - (iv) As at the end of the calendar month preceding the date of this Agreement the number of Franchise Units was 2,866 and the total number of Corporate Units was 42.
- (t) **No Unusual Transactions.** Since the Balance Sheet Date, and except as disclosed pursuant to Section 3.2(t) of the Seller Disclosure Letter and other than the transactions contemplated by this Agreement, the Business has been carried on in the Ordinary Course.
- (u) **Assets.** As of the date hereof, the Corporation and each Subsidiary, as applicable, is the legal and beneficial owner of each Asset owned by such applicable entity included as an asset in the 2015 Interim Financial Statements or acquired by any of them since December 31, 2014 (except for any current assets and long-term notes receivable sold or realized in the Ordinary Course since December 31, 2014). As of the Closing Date, the Corporation and each Subsidiary, as applicable, will be the legal and beneficial owner of each Asset owned by such applicable entity to be included as an asset in the 2015 Interim Financial Statements or acquired by any of them since December 31, 2014 (except for any current assets and long-term notes receivable sold or realized in the Ordinary Course since December 31, 2014). All Assets of the Corporation and the Subsidiaries are held free of any Encumbrance, except for Permitted Encumbrances. Except as provided in this Agreement, there are no agreements or arrangements in force which are capable of becoming an agreement or option to purchase any such Assets, other than agreements or arrangements entered into by the Corporation or a Subsidiary in the Ordinary Course.

- (v) **Assets Sufficient for the Business.** The Assets owned, leased or licensed by the Corporation and the Subsidiaries together with the services and facilities to which the Corporation or any of the Subsidiaries has contractual rights comprise all of the Assets, services and facilities necessary for the carrying on of the Business as it is currently carried on in all material respects. All such Assets are in the possession of or under the control of the Corporation and the Subsidiaries.
- (w) **Insider Contracts.** Except as disclosed pursuant to 3.2(w) of the Seller Disclosure Letter, neither the Corporation nor any Subsidiary is currently, nor has it been at any time during the two years prior to the date hereof, party to any contract, arrangement or commitment (including any loan agreement, guarantee or indemnity) with the Seller, any Selling Stockholder, any Affiliate or Associate of the Seller or any Selling Stockholder or with any of the Minority Stockholders (other than any Voting and Waiver Agreements or otherwise in connection with the Merger).
- (x) **Material Contracts.** Section 3.2(x) of the Seller Disclosure Letter contains a list of all Material Contracts as of the date hereof. Without limiting the foregoing, Section 3.2(x) of the Seller Disclosure Letter sets out accurately in all material respects the following, in each case sorted by Franchised Business:
- (i) the following information for each Franchise Agreement: store number; names of parties; name of area developer or master franchisee (if applicable); location; address; name; effective date; expiry date; royalty fee; ad fund fee; and description of any Franchisor Relief;
 - (ii) the following information for each Master Franchise Agreement: names of the parties; territory; effective date; expiry date; royalty fee; ad fund fee; any Franchisor Relief; and underlying locations (store number and location name); and
 - (iii) the following information for each Area Developer Agreement: names of the parties; territory; effective date; expiry date; royalty fee; ad fund fee; any Franchisor Relief; and underlying locations (store number and location name).

A true and complete copy of each Material Contract disclosed pursuant to Section 3.2(x) of the Seller Disclosure Letter has been provided to the Buyer. Each Material Contract is valid and subsisting, in full force and effect and unamended. Neither the Corporation nor any of the Subsidiaries or, to the knowledge of the Seller, any other party thereto, is, or will with the lapse of time be, in default thereunder, except to the extent of any Franchisor Relief as disclosed pursuant to Section 3.2(x) of the Seller Disclosure Letter. The Seller is not aware of any intention on the part of any Person who is a party to a Material Contract to breach, terminate, alter or amend such Material Contract.

- (y) **Leases.** As of the date hereof, neither the Corporation nor any of the Subsidiaries is a party to any real property lease other than the Leases. Section 3.2(y) of the Seller Disclosure Letter contains a list of all Leases as of the date hereof and accurately sets out in all material respects with respect to each Lease: store name, number and state; tenant, landlord name, guarantor; lease commencement date; rent commencement date; initial term and renewal term expiration dates; security deposit; TI allowances; other inducements; renewal term commencement dates; annual base rent; and other miscellaneous notes. Except as set forth on Section 3.2(y) of the Seller Disclosure Letter, the Leases are valid and subsisting, in full force and effect and unamended. Except as set forth on Section 3.2(y) of the Seller Disclosure Letter, all rental and other payments required to be paid pursuant to the Leases have been duly paid, and neither the Corporation nor any of the Subsidiaries or, to the knowledge of the Seller, any other

party to the Leases, is in material default in meeting its respective obligations under the Leases, in all material respects.

- (z) **Corporate Units.** Section 3.2(z) of the Seller Disclosure Letter contains a list, sorted by Franchised Business of all Corporate Units as of the date hereof, including the following information for each Corporate Unit: store number; location; name; and address.
- (aa) **Committed Units.** Section 3.2(aa) of the Seller Disclosure Letter contains a list, sorted by Franchised Business, of all Committed Units as of the date hereof, including the following information for each Committed Unit: store number; location; name; address; and whether it is a Franchise Unit or Corporate Unit.
- (bb) **Franchise Fee Deposits.** Section 3.2(bb) of the Seller Disclosure Letter contains a list as of the date hereof, sorted by Franchised Business and with reference to store number and Franchisee, of:
 - (i) any deposits, unit fees or franchise fees received by the Corporation or any of the Subsidiaries from a Franchisee in relation to a Committed Unit;
 - (ii) any deposits received by the Corporation or any of the Subsidiaries from a prospective franchisee; and
 - (iii) any other deposits received by the Corporation or any of the Subsidiaries from a Franchisee on account of any franchise fee due from that Franchisee;with (i), (ii) and (iii) collectively referred to herein as the “**Franchise Fee Deposits**”.
- (cc) **Franchisee Security.** Section 3.2(cc) of the Seller Disclosure Letter lists each Franchise Agreement, Lease or security agreement pursuant to which a Franchisee grants a security interest to the Corporation, any of the Subsidiaries or any Seller Party as of the date hereof. All filing or registrations with Governmental Authorities necessary to preserve, protect or perfect such security interests have been made except where the failure to make any such filing or registration would not, and would not reasonably be expected to result in, a Seller Material Adverse Effect. Except as disclosed pursuant to Section 3.2(cc) of the Seller Disclosure Letter, all such security interests are first priority security interests in favor of the Corporation or a Subsidiary.
- (dd) **Material Customers and Material Suppliers.** Section 3.2(dd) of the Seller Disclosure Letter contains a list of the Material Customers and the Material Suppliers.
- (ee) **Owned Real Property.** Section 3.2(ee) of the Seller Disclosure Letter contains a list of all owned real property (the “**Owned Real Properties**”) in respect of which the Corporation or any of the Subsidiaries holds an interest (other than leasehold interests) as of the date hereof, together with details of each such interest (other than leasehold interests). To the knowledge of the Seller, each of such properties and any buildings and structures on them are in good and substantial repair and are fit for the purposes for which they are presently used, in all material respects. The Corporation and the Subsidiaries hold good and valid title to, and all material rights necessary for the continued possession, enjoyment and use of, such properties for their present purposes. All such properties are free and clear of Encumbrances except for Permitted Encumbrances. With respect to such Owned Real Properties, the Seller has delivered or made available to the Buyer true, complete and correct copies of all documents and other instruments in the possession of the Seller, the Corporation or the Subsidiaries relating to the Owned Real Properties. To the knowledge of the Seller, the use and operation of the owned property in the conduct of the Business does not violate in any material respect any Applicable Law, covenant, condition, restriction, easement, license, permit or agreement to which

the Corporation or any of the Subsidiaries is subject or is a party. There are no Actions pending nor, to the Seller's knowledge, threatened against or affecting the owned property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

- (ff) **Leased Assets.** Section 3.2(ff) of the Seller Disclosure Letter contains a list as of the date hereof of all personal property in respect of which the Corporation or a Subsidiary is lessee or licensee and for which the annual leasing cost payable to a given lessor or licensor in respect of such property exceeds \$50,000 annually. To the knowledge of the Seller, all leases, licences, agreements and documentation related to such personal property are valid and subsisting. All rental and other payments required to be paid by the Corporation or any Subsidiary pursuant to personal property leases or licenses have been duly paid and neither the Corporation nor any of the Subsidiaries nor, to the knowledge of the Seller, any other party, is in default in any material respect in meeting its obligations under such leases, licences, agreements or documentation.

- (gg) **Plant and Equipment.** All plant, equipment, vehicles and other equipment owned or used by the Corporation or any of the Subsidiaries having a replacement value of \$50,000 or more as of the date hereof are:
 - (i) in a good state of repair and condition and in satisfactory working order and have been regularly and properly maintained consistent in all material respects with any warranty or manufacturers requirements; and
 - (ii) are free and clear of all Encumbrances or rights of third parties other than Permitted Encumbrances.

- (hh) **Inventory.** The Corporation's and the Subsidiaries' inventories of supplies and other goods used in the Business now held are adequate in relation to the current trading requirements of the Business and in good condition, free from defects and capable of being sold in the Ordinary Course. All such inventory is owned by the Corporation and the Subsidiaries, as applicable, free and clear of Encumbrances (other than Permitted Encumbrances), and not held on a consignment basis.

- (ii) **Systems.** Section 3.2(ii) of the Seller Disclosure Letter sets out the details of the material parts of the Systems and all material documentation relating to the Systems as of the date hereof. The Corporation or a Subsidiary is entitled as owner, lessee or licensee to use each part of the Systems for all purposes necessary to carry on the Business as presently conducted and the Business is not dependent on any information technology (including data storage and processing) facilities which are not under the exclusive ownership or control of the Corporation or a Subsidiary. The Systems:
 - (i) are free from any material defect and have been and are being properly and regularly maintained consistent with, in all material respects, any warranty or requirements of a manufacturer or licensor;
 - (ii) to the knowledge of the Seller, do not infringe the rights of any Person; and
 - (iii) have the capacity and performance necessary to fulfil the present requirements of the Business in all material respects.

- (jj) **Intellectual Property Rights.**
 - (i) Section 3.2(jj)(i) of the Seller Disclosure Letter contains a list of all material Intellectual Property Rights owned or licensed by the Corporation or any of the Subsidiaries. The Intellectual Property Rights owned or licensed by the

Corporation and its Subsidiaries constitute the rights required to operate the Business in the Ordinary Course, and are either legally and beneficially owned by the Corporation or a Subsidiary or are licensed to the Corporation or a Subsidiary, as applicable, under valid and binding licence agreements and, in each case, are free from any Encumbrance other than Permitted Encumbrances. All license or other payments required to be paid by the Corporation or any of the Subsidiaries with respect to such Intellectual Property Rights have been duly paid in all material respects.

- (ii) To the knowledge of the Seller, the conduct of the Business does not infringe the Intellectual Property Rights of any Person and is in accordance with all agreements pursuant to which the Corporation or the Subsidiaries has the right to use or license any third party Intellectual Property Rights. Except as disclosed pursuant to Section 3.2(jj)(ii) of the Seller Disclosure Letter, no Person has instituted or threatened any proceeding or action against the Corporation or any of the Subsidiaries alleging any infringement by the Corporation or any of the Subsidiaries, or any of their Affiliates or Associates of any Intellectual Property Rights of any Person.
- (iii) Except as disclosed in Section 3.2(jj)(iii) of the Seller Disclosure Letter, the Seller is not aware of any challenge, infringement or other violation by any third party of any of the Intellectual Property Rights owned by or licensed to the Corporation or any of the Subsidiaries.
- (iv) Except as set forth on Section 3.2(jj)(iv) of the Seller Disclosure Letter, the consummation of the transactions contemplated by this Agreement will not result in a material loss or impairment of or payment of any material amounts with respect to, nor require the consent of any other Person in respect of, the Corporation's or the Subsidiaries' right to own, use or hold for use any of the Intellectual Property Rights as owned, used or held for use in the conduct of the Business as currently conducted.
- (v) Each of the Corporation and the Subsidiaries has taken all commercially reasonable steps to maintain its Intellectual Property Rights and to protect and preserve the confidentiality of all trade secrets included in the Intellectual Property Rights. All registrations and filings necessary to preserve the rights of the Corporation and the Subsidiaries in and to their Intellectual Property Rights have been made.
- (kk) **No Breach of Applicable Laws.** Each of the Corporation and the Subsidiaries has conducted and is carrying on the Business in compliance in all material respects with all Applicable Laws in each jurisdiction where it carries on the Business.
- (ll) **Licences and Permits.** The Corporation and the Subsidiaries collectively hold all material authorizations, licences and permits from any Person, Governmental Authority or other body which are necessary for carrying on the Business and for owning, leasing, using or operating their Assets. Each such material authorization, licence and permit is listed in Section 3.2(ll) of the Seller Disclosure Letter and is in full force and effect. To the knowledge of the Seller, neither the Corporation nor any of the Subsidiaries is in material breach of or in material default under any of the terms or conditions of any such authorization, licence or permit and no party is or will be entitled to terminate or revoke any such authorization, licence or permit as a result of the transactions contemplated by this Agreement.
- (mm) **Litigation.** Except as disclosed pursuant to Section 3.2(mm)(i) and (ii) of the Seller Disclosure Letter: (A) there is no Action in progress or pending or, to the knowledge of

the Seller, threatened against or relating to the Corporation or any of the Subsidiaries or affecting their Assets or the Business; and (B) there is no judgement, decree, injunction, rule or order of any court or Governmental Authority outstanding against the Corporation or any of the Subsidiaries or any of their respective Assets.

(nn) **Insurance.** The Corporation and the Subsidiaries are insured by reputable insurers against liability, loss and damage in such amounts and against such risks as are customarily carried and insured against by owners of businesses, properties and assets comparable to the Business and the Assets, and such insurance coverage will be continued in full force and effect to and including the Closing Date. Section 3.2(nn) of the Seller Disclosure Letter contains a list as of the date hereof of all material insurance policies (specifying the insured, the amount of coverage, the type of insurance, the policy number and any pending claims thereunder) maintained by the Corporation and the Subsidiaries as of the date hereof. True and complete copies of all of the most recent inspection reports, if any, received from insurance underwriters as of the date hereof as to the condition of the Assets and the Business have been delivered to the Buyer. Neither the Corporation nor any of the Subsidiaries is in material default with respect to any of the provisions contained in any such insurance policy. For any current claim that has not been settled or finally determined, neither the Corporation nor any of the Subsidiaries has failed to give any notice or present any claim under any such insurance policy in a due and timely fashion such that the insurer would be entitled to terminate coverage or deny liability on any such claim. All such material insurance policies are in full force and effect and neither the Corporation nor any of the Subsidiaries is in default, whether as to the payment of premium or otherwise, under the terms of any such policy.

(oo) **Employee Matters.**

(i) Except as disclosed pursuant to Section 3.2(oo)(i) of the Seller Disclosure Letter, neither the Corporation nor any of the Subsidiaries has, nor has it ever had, any Employees, independent contractors or consultants providing services in Canada.

(ii) Section 3.2(oo)(ii) of the Seller Disclosure Letter contains a list of all persons who are Employees, independent contractors or consultants of the Corporation or the Subsidiaries as of the date hereof, including any Employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) location of employment; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; and (v) commission, bonus or other incentive-based compensation. Except as disclosed pursuant to Section 3.2(oo)(ii) of the Seller Disclosure Letter, as of the date hereof, all compensation, including wages, commissions and bonuses, payable to all Employees, independent contractors or consultants of the Corporation and the Subsidiaries for services performed on or prior to the date hereof have been paid in full (or accrued in full in the balance sheet contained in the 2015 Interim Financial Statements) and there are no outstanding agreements, understandings or commitments of the Corporation or the Subsidiaries with respect to any compensation, commissions or bonuses.

(iii) Section 3.2(oo)(iii) of the Seller Disclosure Letter contains a list of all Employees as of the date hereof who: (A) are on secondment or other extended leave of absence (excluding Employees on maternity leave); and (B) are employed under a contract of employment that is not terminable by the Corporation or any of the Subsidiaries on three months' notice or less.

(iv) Section 3.2(oo)(iv) of the Seller Disclosure Letter contains a list of all Employees who have been given notice to terminate their contract of employment or who will

be entitled, by reason of the transactions contemplated in this Agreement, to any one-off payment, severance, bonus, change of control payment or commission or to terminate their employment.

- (v) Neither the Corporation nor any of the Subsidiaries is, and nor has been for the past five years, a party to, bound by, or negotiating any collective bargaining agreement or other contract with a union, works council or labour organization (collectively, a “**Union**”), and, to the knowledge of the Seller, there is not, and has not been for the past five years, any Union representing or purporting to represent any Employee of the Corporation or the Subsidiaries, and no Union or group of Employees is seeking or has sought to organize Employees for the purpose of collective bargaining. To the knowledge of the Seller, there has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labour disruption or dispute affecting the Corporation or any of its Employees. Neither the Corporation nor any of the Subsidiaries has a duty to bargain with any Union.
- (vi) The Corporation and the Subsidiaries have complied with all of the requirements of the Immigration Reform and Control Act of 1986, The Immigration Act of 1990, The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Immigration and Nationality Act and with all other Applicable Laws relating thereto. No Employees of the Corporation or the Subsidiaries subject to the jurisdiction of the Department of Homeland Security or the legacy Immigration and Naturalization Service have ever worked without employment authorization from such US Governmental Authorities. Form I-9’s have been properly completed by all of the present and past Employees of Corporation and the Subsidiaries, in all material respects, and the Corporation has retained such forms to the extent required by Applicable Laws. Neither the Corporation nor any of the Subsidiaries has received any notice, written or oral, from the Social Security Administration (“**SSA**”) regarding the failure of any Employee’s social security number to match such Employee’s name in the SSA database and neither the Corporation nor any of the Subsidiaries has received any notices, written or oral, from the Department of Homeland Security or any other US Governmental Authority regarding the employment authorization of any Employees. No officers, directors, Employees or other representatives of the Corporation or any of the Subsidiaries or any Affiliates of the foregoing have participated in any unfair immigration-related employment practices, nor has the Corporation or any of the Subsidiaries or any Affiliate of the foregoing discriminated against any individual with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment: (i) because of such individual’s national origin; or (ii) because of such individual’s citizenship status. There are no Actions pending or, to the Seller’s knowledge, threatened against the Corporation or any of the Subsidiaries or any Affiliate of the foregoing relating to the compliance with local, state or federal Applicable Laws in the US pertaining to immigration matters.
- (vii) The Corporation has complied with the Worker Adjustment and Retraining Notification Act (“**WARN Act**”) in all material respects and it has no plans to undertake any action before the Closing Date that would trigger the WARN Act.

(pp) **Employment Benefits.**

- (i) Section 3.2(pp)(i) of the Seller Disclosure Letter contains a list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing,

deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, welfare, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Corporation or the Subsidiaries for the benefit of any current or former Employee, officer, director, retiree, independent contractor or consultant of the Corporation or the Subsidiaries or any spouse or dependent of such individual, or under which the Corporation or the Subsidiaries or any of their ERISA Affiliates has or may have any liability, or with respect to which the Corporation or the Subsidiaries or any of their ERISA Affiliates would reasonably be expected to have any liability, contingent or otherwise (each, a "**Benefit Plan**"). Section 3.2(pp)(i) of the Seller Disclosure Letter discloses separately: (A) each Benefit Plan that contains a change in control provision; and (B) each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by the Corporation or the Subsidiaries primarily for the benefit of Employees outside of the United States (a "**Non-U.S. Benefit Plan**").

- (ii) With respect to each Benefit Plan, the Seller has made available to the Buyer accurate, current and complete copies of each of the following: (A) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (B) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (C) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (D) copies of any summary plan descriptions, summaries of material modifications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (E) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the IRS; (F) in the case of any Benefit Plan for which a Form 5500 is required to be filed, a copy of the two most recently filed Form 5500, with schedules and financial statements attached; (G) actuarial valuations and reports related to any Benefit Plans with respect to the two most recently completed plan years; (H) the non-discrimination tests performed under the Code for the two most recently completed plan years; and (I) copies of material notices, letters or other correspondence from the IRS, the United States Department of Labour, Pension Benefit Guaranty Corporation or other US Governmental Authority relating to the Benefit Plan.
- (iii) Except as disclosed in Section 3.2(pp)(iii) of the Seller Disclosure Letter, each Benefit Plan and related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each, a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance in all material respects with all Applicable Laws in the US (including ERISA and the Code). Each Benefit Plan that is intended to be qualified under Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and has received a favorable and current determination letter from the IRS, or with respect to a prototype plan, can rely on an opinion letter from the IRS to the prototype plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal

income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject the Corporation or the Subsidiaries or any of their ERISA Affiliates or, with respect to any period on or after the Closing Date, the Buyer or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Section 4975 of the Code. Except as disclosed in Section 3.2(pp)(iii) of the Seller Disclosure Letter, all benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all Applicable Laws in the US and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, IFRS. All Non-U.S. Benefit Plans that are intended to be funded and/or book-reserved are funded and/or book-reserved, as appropriate, based upon reasonable actuarial assumptions.

- (iv) Neither the Corporation or the Subsidiaries, nor any of their ERISA Affiliates has: (A) incurred or reasonably expects to incur, either directly or indirectly, any liability under Title I or Title IV of ERISA or related provisions of the Code or other local Applicable Laws in the US relating to employee benefit plans; (B) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (C) withdrawn from any Benefit Plan; or (D) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA.
- (v) With respect to each Benefit Plan: (A) no such plan is a Multiemployer Plan; (B) no such plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); (C) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; (D) no such plan is subject to the minimum funding standards of Section 412 of the Code or Title IV of ERISA, and none of the assets of the Corporation or any ERISA Affiliate is, or may reasonably be expected to become, the subject of any lien arising under Section 302 of ERISA or Section 412(a) of the Code; and (E) no "reportable event," as defined in Section 4043 of ERISA, has occurred with respect to any such plan.
- (vi) Each Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without material liabilities to the Buyer, the Corporation, the Subsidiaries or any of their respective Affiliates other than ordinary administrative expenses typically incurred in a termination event. Neither the Corporation nor any of the Subsidiaries has any commitment or obligation nor has made any representations to any Employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.
- (vii) Other than as required under Section 601 et. seq. of ERISA or other Applicable Law in the US, no Benefit Plan provides post-termination or retiree welfare benefits to any individual for any reason, and none of the Corporation, the Subsidiaries or any of their ERISA Affiliates has any liability to provide post-termination or retiree welfare benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree welfare benefits.

- (viii) There is no pending or, to the knowledge of the Seller, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and there exists no fact or set of circumstances that would reasonably be expected to give rise to any such Action. No Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a US Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any US Governmental Authority.
 - (ix) There has been no amendment to, announcement by the Seller, the Corporation, the Subsidiaries or any of their Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan or collective bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year with respect to any director, officer, Employee, independent contractor or consultant, as applicable. None of Seller, the Corporation or the Subsidiaries, nor any of their Affiliates has any commitment or obligation or has made any representations to any director, officer, manager, Employee, independent contractor or consultant of the Corporation, the Subsidiaries or any Affiliate thereof, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.
 - (x) Each Benefit Plan that is subject to Section 409A of the Code has been administered in all material respects in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. Neither the Seller, the Corporation, the Subsidiaries nor any Affiliate thereof has any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.
 - (xi) Each individual who is classified by the Corporation or the Subsidiaries as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.
 - (xii) Except as disclosed in Section 3.2(pp)(xii) of the Seller Disclosure Letter, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (A) entitle any current or former director, officer, Employee, independent contractor or consultant of the Corporation, the Subsidiaries or any Affiliate thereof to severance pay or any other payment; (B) accelerate the time of payment, funding or vesting, or increase the amount of compensation due to any such individual; (C) limit or restrict the right of the Corporation or the Subsidiaries to merge, amend or terminate any Benefit Plan; (D) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (E) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; or (F) require a "gross-up" or other payment to any "disqualified individual" within the meaning of Section 280G(c) of the Code. The Seller has made available to the Buyer true and complete copies of any Section 280G calculations prepared (whether or not final) with respect to any disqualified individual in connection with the transactions.
- (qq) **Environmental.**
- (i) The Corporation and the Subsidiaries are in compliance with all applicable Environmental Laws except where the failure to do so would not reasonably be

expected to have a Seller Material Adverse Effect. To the knowledge of the Seller, there are no contaminants located in the ground or in groundwater under any of the Owned Real Properties or Leased Real Properties; except for contaminants in concentrations which would not (A) exceed applicable cleanup or response thresholds or (B) reasonably be expected to have a Seller Material Adverse Effect.

- (ii) The Corporation and the Subsidiaries have not been required by any Governmental Authority to (i) alter any of the Owned Real Properties or Leased Real Properties in a material way in order to be in compliance with Environmental Laws, or (ii) perform any environmental closure, decommissioning, rehabilitation, restoration or post-remedial investigations, on, about, or in connection with any such property.
- (iii) Section 3.2(qq)(iii) of the Seller Disclosure Letter lists all material reports and documents relating to the environmental matters affecting the Corporation and the Subsidiaries or any of the Owned Real Properties or Leased Real Properties which are in the possession or under the control of the Seller. Copies of all such reports and documents have been provided to the Buyer.

(rr) **Taxes.**

- (i) Except as disclosed in Section 3.2(rr)(i) of the Seller Disclosure Letter, with respect to any taxable period for which a Tax Return of the Corporation or any of the Subsidiaries has not yet been filed or for which Taxes are not yet due and owing, the Corporation or the Subsidiary, as applicable, has made adequate and sufficient accruals and reserves for those Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income), and those accruals and reserves for Taxes are specifically set forth on the 2015 Interim Financial Statements. All required estimated Tax payments have been timely made by or on behalf of the Corporation and the Subsidiaries.
- (ii) Except as disclosed in Section 3.2(rr)(ii) of the Seller Disclosure Letter, (A) no agreement or document extending the period to file a Tax Return or the period of assessment or collection of any Tax payable by the Corporation or any of the Subsidiaries is currently in effect, (B) there are no requests or demands to extend or waive any period of limitations, (C) no audit, litigation, appeal or other proceeding by any Governmental Authority is pending or, to the knowledge of the Seller, has been threatened with respect to any Taxes or Tax Returns of the Corporation or any of the Subsidiaries, (D) no power of attorney granted by the Corporation or any of the Subsidiaries with respect to Taxes is currently in force, and (E) no issue relating to Taxes was raised in writing by any Governmental Authority in any completed audit or examination that reasonably can be expected to recur in a later taxable period.
- (iii) There are no Encumbrances on any of the Assets used to carry on the Business that arose in connection with any failure (or alleged failure) to pay any Tax, except for Encumbrances for Taxes not yet due.
- (iv) Except as disclosed pursuant to Section 3.2(rr)(iv) of the Seller Disclosure Letter and except for the current affiliated group of which the Corporation is the common parent, neither the Corporation nor any of the Subsidiaries: (A) has been a member of an affiliated group for Tax purposes; (B) has acquired stock in a corporation in a transaction subject to Treasury Regulations Section 1.1502-36; (C) has any liability for Taxes of any other Person (1) under Treasury Regulations Section 1.1502-6 (or any comparable provision of Tax Law), (2) as a

transferee or successor, (3) by contractual obligation, or (4) by operation of Applicable Law or otherwise; and (D) is not and has never been a party to or bound by or had any liability or potential liability with respect to any Tax Sharing Agreement other than the Tax Sharing Agreement the only parties to which are any of the Corporation and the Subsidiaries.

- (v) Except as disclosed in Section 3.2(rr)(v) of the Seller Disclosure Letter, neither the Corporation nor any of the Subsidiaries is or has been subject to Tax in any jurisdiction, other than the jurisdiction in which it is organized, by virtue of having a permanent establishment, trade or business, office or other fixed place of business or other presence in that jurisdiction, and no claim has ever been made by a Governmental Authority against the Corporation or any of the Subsidiaries in a jurisdiction where it does not file Tax Returns that it is or may be subject to taxation in that jurisdiction.
- (vi) The Corporation and each of the Subsidiaries have complied in all material respects with all Applicable Laws relating to the collection and withholding of Taxes (including all information reporting and record keeping requirements), and each of them has duly and timely paid over to the appropriate Governmental Authority all amounts of those Taxes, including all Taxes with respect to amounts paid or owing to any non-U.S. Person, Employee (including with respect to any salaries, wages and other compensation), independent contractor, creditor, stockholder or other third party.
- (vii) Neither the Corporation nor any of the Subsidiaries is a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.
- (viii) Except as disclosed pursuant to Section 3.2(rr)(iv) of the Seller Disclosure Letter, neither the Corporation nor any of the Subsidiaries is a partnership, a partner in a partnership or a party to any joint venture, contract or other arrangement that could be treated as a partnership for U.S. Federal income tax purposes. Neither the Corporation nor any of the Subsidiaries owns any interest in any "controlled foreign corporation" (as defined in Section 957 of the Code), "passive foreign investment company" (as defined in Section 1297 of the Code) or other entity the income of which is or could be required to be included in the income of the Corporation and the Subsidiaries on a consolidated basis.
- (ix) The Corporation and each of the Subsidiaries has properly recorded in accordance with IFRS a reserve for Taxes in the 2015 Interim Financial Statements and with respect to any item of income or deduction reported for Financial Statement purposes which item of income or deduction is required to be included in, or excluded from, taxable income for any taxable period (or portion thereof) ending after the Closing Date.
- (x) The Corporation and the Subsidiaries have properly disclosed on their respective U.S. Federal Income Tax Returns all positions taken thereon that could give rise to a substantial understatement of U.S. Federal income Tax within the meaning of Section 6662 of the Code. Neither the Corporation or any of the Subsidiaries has consummated or participated in, or is currently participating in: (A) any transaction that was or is a "tax shelter" transaction as defined in Section 6662 of the Code (or the Treasury Regulations promulgated thereunder); or (B) any transaction that was or is a "listed transaction" or "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code or Treasury Regulations Section 1.6011-4(b).

- (xi) The Books and Records accurately set forth in all material respects the following information with respect to the Corporation and the Subsidiaries: (A) the basis of the Corporation and the Subsidiaries in their respective assets; and (B) the amount of any deferred gain or loss allocable to the Corporation and each Subsidiary, as applicable, arising out of any intercompany transaction. The Corporation and the Subsidiaries have previously experienced an ownership change within the meaning of Section 382 of the Code. No representation, either express or implied, is made as to the amount of, limitations on or availability of any net operating loss, net capital loss, unused investment or other credit, foreign tax credit or other tax attribute available either to reduce taxable income or tax liability in any period ending after the Closing Date.
- (xii) Neither the Corporation nor any of the Subsidiaries has made an election under Section 108(i) of the Code to defer the recognition of any cancellation of indebtedness income.
- (xiii) Neither the Corporation nor any of the Subsidiaries has filed, or has ever been required to file, a Section UTP (Uncertain Tax Position Statement), determined without regard to the value of its assets.
- (xiv) Within the sixty (60) month period ending on the Closing Date, neither the Corporation nor any of the Subsidiaries (including any entity that is treated as disregarded from its owner for U.S. Federal income tax purposes) has filed an election pursuant to Form 8832 to change its entity tax classification for U.S. Federal tax purposes.
- (xv) The Seller has at all times since its formation been treated as a disregarded Entity for all U.S. federal, state and local income tax purposes.
- (ss) **GST/HST/Sales Tax.** Except as disclosed pursuant to Section 3.2(ss) of the Seller Disclosure Letter, neither the Corporation nor any of the Subsidiaries is required to be registered for, or to collect and remit, GST/HST pursuant to the Excise Tax Act, R.S.C. 1985, c.E-15 (Canada) ("**GST/HST**"), nor is it required to be registered for, or to collect and remit, any provincial sales tax pursuant to the Social Service Tax Act (British Columbia), Provincial Sales Tax Act (Saskatchewan), Retail Sales Tax Act (Manitoba) or the Quebec Sales Tax (Quebec).
- (tt) **Advisory Fees.** Except as disclosed pursuant to Section 3.2(tt) of the Seller Disclosure Letter and other than legal counsel, there is no investment banker, broker, finder or other intermediary or advisor that has been retained by or is authorized to act on behalf of any of the Seller Parties, the Corporation or any of the Subsidiaries who might be entitled to any fee, commission or reimbursement from the Surviving Corporation, any of the Subsidiaries or the Buyer.
- (uu) **Competition Act.** The aggregate value of the assets in Canada of the Corporation and the Subsidiaries, and the annual gross revenues from sales in and from Canada generated from the assets in Canada of the Corporation and the Subsidiaries, do not exceed, in either case, \$82,000,000 as determined in accordance with Part IX of the Competition Act and the Notifiable Transactions Regulations thereunder.
- (vv) **Investment Canada Act.** The Corporation is not a Canadian business within the meaning of the Investment Canada Act.
- (ww) **Full Disclosure.** The information contained in the documents, certificates and written statements furnished to the Buyer Parties by or on behalf of the Seller relating to the Business and the financial affairs, Assets and liabilities of the Corporation and

Subsidiaries does not (i) contain any untrue statement of a material fact or (ii) omit to state any material fact which is necessary in order to make the statements relating to the Business and the financial affairs, Assets and liabilities of the Corporation and Subsidiaries therein not misleading.

3.3 Seller Disclosure Letter.

- (a) The disclosures, qualifications, exceptions and other information contemplated in Section 3.1 and Section 3.2 that are to be disclosed in the Seller Disclosure Letter shall be arranged in the Seller Disclosure Letter using numbering that corresponds to the Section numbering in Section 3.1 and Section 3.2.
- (b) The purpose of the Seller Disclosure Letter is to set out the qualifications, exceptions and other information called for in Section 3.1, Section 3.2 and elsewhere in this Agreement. The Parties acknowledge and agree that the Seller Disclosure Letter and the information and disclosures contained therein do not constitute or imply, and will not be construed as:
 - (i) any representation, warranty, covenant or agreement which is not expressly set out in this Agreement;
 - (ii) an admission of any liability or obligation of the Seller Parties, the Corporation or the Subsidiaries;
 - (iii) an admission that the information is material;
 - (iv) a standard of materiality, a standard for what is or is not in the Ordinary Course, or any other standard contrary to the standards contained in the Agreement; or
 - (v) an expansion of the scope of effect of any of the representations, warranties and covenants set out in the Agreement, including Section 3.1 and Section 3.2.
- (c) Disclosure of any information in the Seller Disclosure Letter that is not strictly required under this Agreement has been made for informational purposes only and does not imply disclosure of all matters of a similar nature. Inclusion of an item in any Section of the Seller Disclosure Letter is deemed to be disclosure for all purposes for which disclosure is required under this Agreement.

PART 4 REPRESENTATIONS AND WARRANTIES OF THE BUYER PARTIES

4.1 Representations and Warranties of the Buyer Parties. Except as set forth in the Buyer Disclosure Letter or the Public Record, as the case may be, the Buyer Parties jointly and severally represent and warrant to the Seller Parties as follows, and acknowledge and agree that the Seller Parties are relying upon these representations in warranties in connection with entering into this Agreement:

- (a) **Fundamental Representations Regarding Buyer Issuer.**
 - (i) **Incorporation, etc.** Buyer Issuer: (A) is a corporation duly incorporated and validly existing and, with respect to the filing of corporate returns, is in good standing under the laws of Canada; and (B) has all requisite power and capacity necessary to own or lease and to operate its assets currently owned or leased and to conduct its business as currently conducted. Buyer Issuer is a reporting issuer or the equivalent in the provinces of British Columbia, Alberta and Ontario and not in default under applicable securities laws and, to the knowledge of Buyer Issuer, no circumstances exist which could jeopardize any such status.

- (ii) **Power and Authorization.** Buyer Issuer has the corporate power and capacity to enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is or will be a party. The board of directors of Buyer Issuer has approved the execution by Buyer Issuer and the Buyer of this Agreement and the Transaction Documents, and the performance by each of Buyer Issuer and the Buyer of the transactions contemplated hereunder and thereunder to which each of them is a party. At the Applicable Delivery Dates, Buyer Issuer will have taken all necessary corporate action to authorize the execution, delivery and performance of the Transaction Documents to which the Buyer Issuer is a party, along with all transactions contemplated therein

- (iii) **Enforceability.** This Agreement has been duly executed and delivered by Buyer Issuer. At the Applicable Delivery Dates, each of the Transaction Documents to which the Buyer Issuer is a party will be duly executed and delivered by Buyer Issuer. This Agreement is, and at the Applicable Delivery Dates each of the Transaction Documents to which the Buyer Issuer is a party will be, a valid and legally binding agreement of Buyer Issuer, enforceable against Buyer Issuer in accordance with its terms except, with respect to each such agreement, as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (iv) **Shareholder Agreements.** To the knowledge of Buyer Issuer, there are no shareholder agreements, pooling agreements, voting trusts or similar agreements with respect to the ownership or voting of any of the securities of Buyer Issuer.

- (v) **Issued Shares.**
 - A. Buyer Issuer is authorized to issue an unlimited number of common shares and as of the date hereof, there are 19,120,567 common shares in the capital of Buyer Issuer issued and outstanding.

 - B. Prior to Closing, the Buyer Issuer shall use its best commercial efforts to have caused the TSX to have conditionally approved for listing the Issued Shares on the TSX, subject to the fulfilment of all of the Listing Conditions. On the Closing Date, the Issued Shares issued to the Seller will be duly and validly created, authorized, issued and delivered as fully paid and non-assessable common shares in the capital of Buyer Issuer, and will not have been issued in violation of any preemptive rights or contractual rights to purchase securities of Buyer Issuer.

 - C. Computershare Investor Services Inc. has been duly appointed as the registrar and transfer agent of Buyer Issuer with respect to the Issued Shares.

 - D. Except as disclosed in the Public Record, Buyer Issuer has designed and maintain a system of "internal controls over financial reporting" (as such term is defined in NI 52-109) intended to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS, and there are no material weaknesses in its internal controls over financial reporting. Except as disclosed in the Public Record, Buyer Issuer has designed and maintains "disclosure controls

and procedures” (as such term is defined in NI 52-109) intended to provide reasonable assurance that material information relating to Buyer Issuer and its subsidiaries and Affiliates is made known to Buyer Issuer’s chief executive officer and chief financial officer, including that such information required to be disclosed by Buyer Issuer in “annual filings” or in “interim filings” (as such terms are defined in NI 52-109) or other reports submitted by Buyer Issuer under applicable securities laws is recorded, processed, summarized and reported within the time periods specified in applicable securities laws.

(b) **Fundamental Representations Regarding Buyer Parent.**

- (i) **Incorporation, etc.** Buyer Parent is: (A) is a corporation duly incorporated and validly existing and is in good standing under the laws of the State of Delaware; and (B) has all requisite power and capacity necessary to own or lease and to operate its assets currently owned or leased and to conduct its business as currently conducted.
- (ii) **Power and Authorization.** Buyer Parent has the corporate power and capacity to enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is or will be a party. At the Applicable Delivery Dates, Buyer Parent will have taken all necessary corporate action to authorize the execution, delivery and performance of the Transaction Documents to which the Buyer Parent is a party, along with all transactions contemplated therein.
- (iii) **Enforceability.** This Agreement has been duly executed and delivered by Buyer Parent. At the Applicable Delivery Dates, each of the Transaction Documents to which the Buyer Parent is a party will be duly executed and delivered by Buyer Parent. This Agreement is, and at the Applicable Delivery Dates each of the Transaction Documents to which the Buyer Parent is a party will be, a valid and legally binding agreement of Buyer Parent, enforceable against Buyer Parent in accordance with its terms except, with respect to each such agreement, as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) **Fundamental Representations Regarding Buyer.**

- (i) **Incorporation, etc.** The Buyer is: (A) is a corporation duly incorporated and validly existing and is in good standing under the laws of the State of Delaware; and (B) has all requisite power and capacity necessary to own or lease and to operate its assets currently owned or leased and to conduct its business as currently conducted.
- (ii) **Power and Authorization.** The Buyer has the corporate power and capacity to enter into and perform its obligations under this Agreement and each of the Transaction Documents to which it is or will be a party. At the Applicable Delivery Dates, the Buyer will have taken all necessary corporate action to authorize the execution, delivery and performance of the Transaction Documents to which the Buyer is a party, along with all transactions contemplated therein.
- (iii) **Enforceability.** This Agreement has been duly executed and delivered by the Buyer. At the Applicable Delivery Dates, each of the Transaction Documents to which the Buyer is a party will be duly executed and delivered by the Buyer. This

Agreement is, and at the Applicable Delivery Dates each of the Transaction Documents to which the Buyer is a party will be, a valid and legally binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms except, with respect to each such agreement, as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Applicable Laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- (d) **Non-Contravention.** Subject to obtaining the Buyer Required Governmental Consents, the execution and delivery of this Agreement and the Transaction Documents by the Buyer Parties and the performance of their obligations and consummation of the transactions hereunder and thereunder do not and will not:
- (i) breach or constitute a default under the Constatng Documents of a Buyer Party;
 - (ii) result in a violation of any Applicable Law to which any of the Buyer Parties or their respective business or assets is subject which would or would reasonably be expected to have a Buyer Material Adverse Effect;
 - (iii) breach or constitute a default under any judgment, order or decree of any Governmental Authority by which a Buyer Party is bound which would or would reasonably be expected to have a Buyer Material Adverse Effect;
 - (iv) breach or constitute a default under any of the terms, provisions or conditions of any agreement, indenture, instrument or other document to which a Buyer Party is bound which would or would reasonably be expected to have a Buyer Material Adverse Effect; or
 - (v) result in the creation, imposition or enforcement of any Encumbrance on or over the Issued Shares or otherwise prevent or significantly impede the issuance of the Issued Shares by Buyer Issuer to the Seller.
- (e) **Compliance with Applicable Laws.** Each of the Buyer Parties has conducted and is conducting its business in compliance with all Applicable Laws in each jurisdiction in which it carries on its business.
- (f) **Government Authorization.** Except for the Buyer Required Governmental Consents, no authorization, consent, permit or approval of, or other action by, or filing with or notice to, any Governmental Authority having jurisdiction is required in connection with the execution and delivery by the Buyer Parties, as applicable, of this Agreement and the Transaction Documents and the performance of their respective obligations hereunder and thereunder, where the failure to obtain the authorization, consent, permit or approval of, or other action by, or filing with or notice to, the Governmental Authority would have a Buyer Material Adverse Effect.
- (g) **Required Governmental Consents.** The Buyer Required Governmental Consents are disclosed pursuant to Section 4.1(g) of the Buyer Disclosure Letter.
- (h) **Litigation.** Except as disclosed in the Public Record, there is no Action in progress or pending or, to the Knowledge of the Buyer Parties, threatened against or relating to any of the Buyer Parties, and there is no judgment, decree, injunction, rule or order of any court or Governmental Authority outstanding against any of the Buyer Parties, which has or will materially adversely affect the ability of any of the Buyer Parties to consummate the transactions herein contemplated herein or which would or would reasonably be expected to result in a Buyer Material Adverse Effect.

- (i) **No Buyer Material Adverse Effect.** Since November 30, 2015, there has not been any Buyer Material Adverse Effect.
- (j) **Public Record.** The information and statements collectively set forth in the filings of Buyer Issuer on the SEDAR website as at the date hereof including all documents and other information incorporated by reference therein (the “**Public Record**”) as it relates to Buyer Issuer and its subsidiaries, other than information and statements which have been revised or amended subsequent to the respective dates of such information and statements, are true, correct and complete in all material respects and did not contain any material misrepresentation, or omit to state a material fact that was necessary to be stated in order for a statement not to be misleading, as of the respective dates of such information or statements and Buyer Issuer has not filed any confidential material change reports which continue to be confidential.
- (k) **No Cease Trade Order.** No Governmental Authority (including the TSX and any securities commission in Canada) has issued any order, ruling or determination which is currently outstanding that has the effect of ceasing or suspending the trading in any securities of Buyer Issuer, or prohibiting the distribution of the Issued Shares, and no such order, ruling or determination is, pending or, to the knowledge of Buyer Issuer, contemplated or threatened.
- (l) **Shareholder Vote.** Except as may be required by in the TSX Conditional Approval Letter, the execution and performance of this Agreement by the Parties and the performance and completion of the transactions contemplated herein and any of the Transaction Documents by the Parties does not require approval in a vote of security holders of Buyer Issuer.
- (m) **Full Disclosure.** The information contained in the documents, certificates and written statements furnished to the Seller Parties by or on behalf of the Buyer Parties relating to the business and the financial affairs, assets and liabilities of the Buyer Parties does not (i) contain any untrue statement of a material fact or (ii) omit to state any material fact which is necessary in order to make the statements relating to the business and the financial affairs, assets and liabilities of the Buyer Parties therein not misleading.

4.2 Buyer Disclosure Letter.

- (a) The disclosures, qualifications, exceptions and other information contemplated in Section 4.1 that are to be disclosed in the Buyer Disclosure Letter shall be arranged in the Buyer Disclosure Letter using numbering that corresponds to the Section numbering in Section 4.1.
- (b) The purpose of the Buyer Disclosure Letter is to set out the qualifications, exceptions and other information called for in Section 4.1 and elsewhere in this Agreement. The Parties acknowledge and agree that the Buyer Disclosure Letter and the information and disclosures contained therein do not constitute or imply, and will not be construed as:
 - (i) any representation, warranty, covenant or agreement which is not expressly set out in this Agreement;
 - (ii) an admission of any liability or obligation of the Buyer Parties or their subsidiaries;
 - (iii) an admission that the information is material;
 - (iv) a standard of materiality, a standard for what is or is not in the Ordinary Course, or any other standard contrary to the standards contained in the Agreement; or

- (v) an expansion of the scope of effect of any of the representations, warranties and covenants set out in the Agreement, including Section 4.1.
- (c) Disclosure of any information in the Buyer Disclosure Letter that is not strictly required under this Agreement has been made for informational purposes only and does not imply disclosure of all matters of a similar nature. Inclusion of an item in any Section of the Buyer Disclosure Letter is deemed to be disclosure for all purposes for which disclosure is required under this Agreement.

PART 5 PRE-CLOSING COVENANTS OF THE PARTIES

5.1 Conduct of Business Prior to Closing. Except as otherwise permitted by or contemplated in this Agreement, during the Interim Period, the Seller shall cause the Corporation, the Corporation shall, and the Corporation shall cause each of the Subsidiaries to, conduct the Business in the Ordinary Course, use commercially reasonable efforts to preserve the Business and the Assets of the Corporation and the Subsidiaries and the goodwill of the Business and business relationships with suppliers, customers and others having relations with the Corporation and the Subsidiaries, but will use its best commercial efforts to:

- (a) comply in all material respects with all Applicable Laws affecting the operation of Business and pay all required Taxes;
- (b) defend any Action challenging or adversely affecting this Agreement or the consummation of the transactions contemplated hereby;
- (c) have lifted or rescinded any injunction or restraining order or other order relating to it which may adversely affect the ability of the Parties to consummate the transactions contemplated hereby;
- (d) keep available the services of present officers, Employees, agents and other personnel of the Corporation and its Subsidiaries and pay their wages and benefits up to and including the Closing Date;
- (e) continue in force and unamended all existing policies of directors' and officers' insurance presently maintained by any member of the Corporation and its Subsidiaries for the benefit of the directors and officers of the Corporation and its Subsidiaries; and
- (f) continue to collect all Accounts Receivable and pay its and their respective liabilities as they come due.

For certainty, nothing contained in this Agreement shall give, or shall be construed to give, any of the Buyer Parties, directly or indirectly, the right to control or direct the operations of the Corporation or any of the Subsidiaries prior to the Effective Time. Prior to the Effective Time, the Corporation and each of the Subsidiaries shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its part of the Business, its respective Assets and its respective operations.

5.2 Restrictions Prior to Closing. Except as agreed to in writing by the Buyer, as required by Applicable Law or as otherwise permitted by or contemplated in this Agreement or the Seller Disclosure Letter, during the Interim Period, neither the Corporation nor any of the Subsidiaries shall:

- (a) incur or agree to incur any liability in excess of \$50,000 individually or in the aggregate, other than in the Ordinary Course;
- (b) enter into, amend or terminate or agree to enter into, amend or terminate any Material Contract, other than in the Ordinary Course;

- (c) create, allot, issue, purchase or redeem any of its share or loan capital or acquire any equity in any other Person or agree to do so;
- (d) make, declare or pay any dividend or other distribution on the Corporation Shares;
- (e) except in the Ordinary Course, compromise or settle any Action relating to the Assets, the Business, the Corporation or any of the Subsidiaries in excess of \$50,000 individually or in the aggregate without the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed);
- (f) sell, transfer or otherwise dispose of any Assets or acquire any Assets except in the Ordinary Course and provided that the value of any such sale, transfer, disposition or acquisition does not exceed the amount of \$50,000 individually or in the aggregate;
- (g) split, combine, recapitalize, or reclassify any of the Corporation Shares;
- (h) amend the Constatng Documents of the Corporation or any of the Subsidiaries, other than in connection with the Merger;
- (i) adopt a plan of liquidation or resolutions providing for the liquidation or dissolution of the Corporation or any of the Subsidiaries;
- (j) acquire or agree to acquire any of its outstanding securities or other equity interests, other than in connection with the Merger;
- (k) reorganize, amalgamate or merge with any other Person, nor acquire or agree to acquire by amalgamating, merging or consolidating with, purchasing all or substantially all of the Assets of or otherwise, any business of any corporation, partnership, association or other business organization or division thereof, other than in connection with the Merger;
- (l) make any capital expenditure which individually exceeds \$50,000;
- (m) increase its indebtedness for borrowed money or make any loan or advance or assume, guarantee or otherwise become liable with respect to the liabilities or obligations of any Person, other than in the Ordinary Course;
- (n) grant any general increase in the rate of wages, salaries, bonuses or other remuneration of any Employees except as may be required by the terms of a Material Contract or as may be done in the Ordinary Course;
- (o) increase the benefits to which Employees are entitled under any Employee Benefit Plan or create any new Employee Benefit Plan;
- (p) remove any director or terminate any officer or other senior employee without cause;
- (q) remove its auditor;
- (r) amend, modify, terminate, cancel or let lapse any material insurance policy of the Corporation or any Subsidiary in effect on the date of this Agreement, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance companies of recognized standing providing coverage substantially equal to or greater than the coverage under the terminated, cancelled or lapsed policies for substantially similar premiums are in full force and effect;
- (s) except in the Ordinary Course, cancel or waive any material claims or rights which individually or in the aggregate are in excess of \$50,000;

- (t) amend in any material respect any tax filing of the Corporation or its Subsidiaries; or
- (u) authorize, agree, or otherwise commit, whether or not in writing, to do any of the foregoing.

5.3 Access to Information. Subject to Applicable Law, during the Interim Period the Corporation shall (and shall cause the Subsidiaries to) provide to the Buyer Parties and their Representatives reasonable access, during normal business hours, to all of the properties, Employees, books, records, databases, contacts, commitments and records of the Corporation and the Subsidiaries relating to the Business, and shall furnish to the Buyer Parties any information reasonably requested by them relating to the Business; provided, that such access does not unreasonably interfere with the day-to-day operations of the Business. The Corporation and the Subsidiaries are not required to disclose any information to the Buyer Parties where such disclosure is prohibited by Applicable Law or by the terms of any agreement.

5.4 Consent to Use of Financial Statements. The Corporation consents to the use of the 2013 Audited Financial Statements, the 2014 Audited Financial Statements, the 2015 Audited Financial Statements and available interim consolidated financial statements of the Corporation by the Buyer Parties and their Representatives for purposes of obtaining financing and in relation to any disclosure or filing obligation it may have in respect of this Agreement and the transactions contemplated herein (including, without limitation, in each case the preparation and filing of any prospectus that is required pursuant to applicable securities legislation). The Buyer Parties hereby jointly and severally covenant and agree to indemnify and hold harmless the Seller Indemnified Parties from and against any Damages suffered or incurred by any of them as a result of, or arising out of, such use by the Buyer Parties pursuant to this Section 5.4, and such indemnity shall not be subject to the limitations set forth in Article 8.

5.5 Seller Required Private Consents. The Corporation shall use its commercially reasonable efforts to obtain (and shall cause the Subsidiaries to use commercially reasonable efforts to obtain) any consents, assignments, approvals or authorizations required to be obtained by the Corporation or the Subsidiaries under any Material Contracts or Leases, as disclosed pursuant to Section 3.2(e)(ii) of the Seller Disclosure Letter (the "**Seller Required Private Consents**").

5.6 Notification by the Seller.

- (a) The Seller shall promptly notify the Buyer in writing of any action or circumstance that arises during the Interim Period which results, or would reasonably be expected to result, in:
 - (i) an EBITDA Deficiency;
 - (ii) a Seller Material Adverse Effect;
 - (iii) any failure to achieve a Specific Financial Target in accordance with Section 6.1(e);
 - (iv) a material breach of any representation or warranty or covenant of a Seller Party contained in this Agreement; or
 - (v) any occurrence of the information provided in the Seller Disclosure Letter becoming untrue or incorrect in any material respect and having the effect, or reasonably be expected to have the effect, of reducing earnings before interest, income taxes, depreciation and amortization of the Corporation or its Subsidiaries by \$50,000 or more.
- (b) During the Interim Period, the Buyer shall promptly notify the Seller in writing if the Buyer becomes aware of any action or circumstance referred to in Section 5.6(a).

- (c) Following notice by either the Seller or the Buyer pursuant to Section 5.6(a) or Section 5.6(b), the Seller shall amend the Seller Disclosure Letter to (i) qualify the applicable representations and warranties in respect of (A) any matter occurring after the date of this Agreement and (B) any information required for the conditions in Section 6.1 to be satisfied on or before Closing (provided that such information was not within the Knowledge of the Seller as of the date of this Agreement), and promptly. The Buyer shall be deemed to have accepted and agreed to the amended Seller Disclosure Letter and to have waived in full any breach or inaccuracy of the representations and warranties of the Seller Parties contained herein, and any corresponding condition in Section 6.1, addressed by the amendment(s) to the Seller Disclosure Letter; provided, that where such amendment(s) would or would reasonably be expected to result in a Seller Material Adverse Effect, the Buyer may terminate this Agreement within ten Business Days of receiving the amended Seller Disclosure Letter. If the Buyer does not terminate this Agreement in accordance with this Section 5.6(c), the Buyer Parties shall be deemed to have accepted and agreed to the amended Seller Disclosure Letter and to have waived in full any breach or inaccuracy of the specific representation and warranty that was qualified, and any corresponding condition in Section 6.1, including any right to assert any indemnification claim in respect thereof, provided that such qualified representation and warranty is itself true and correct.

5.7 Notification by the Buyer.

- (a) The Buyer shall promptly notify the Seller in writing of any action or circumstance that arises during the Interim Period which results, or would reasonably be expected to result, in:
 - (i) a Buyer Material Adverse Effect;
 - (ii) a material breach of any representation or warranty or covenant of the Buyer Parties contained in this Agreement; or
 - (iii) any information provided in the Buyer Disclosure Letter becoming untrue or incorrect in any material respect.
- (b) During the Interim Period, the Seller shall promptly notify the Buyer in writing if the Seller becomes aware of any action or circumstance referred to in Section 5.7(a).
- (c) Following notice by either the Buyer or the Seller pursuant to Section 5.7(a) or Section 5.7(b) prior to the Closing Date, the Buyer shall amend the Buyer Disclosure Letter to (i) qualify the applicable representations and warranties in respect of (A) any matter occurring after the date of this Agreement and (B) any information required for the conditions in Section 6.2 to be satisfied on or before Closing (provided, that such information was not within the Knowledge of the Buyer Parties as of the date of this Agreement), and promptly (and in any case at least ten Business Days prior to the Closing Date) deliver an amended Buyer Disclosure Letter to the Seller reflecting any such amendment(s). The Seller shall be deemed to have accepted and agreed to the amended Buyer Disclosure Letter and to have waived in full any breach or inaccuracy of the representations and warranties of the Buyer Parties contained herein, and any corresponding condition in Section 6.2, addressed by the amendment(s) to the Buyer Disclosure Letter; provided, that where such amendment(s) would or would reasonably be expected to result in a Buyer Material Adverse Effect, the Seller Representative may terminate this Agreement within ten Business Days of receiving the amended Buyer Disclosure Letter. If the Seller Representative does not terminate this Agreement in accordance with this Section 5.7(c), the Seller Parties shall be deemed to have accepted and agreed to the amended Buyer Disclosure Letter and to have waived in full any breach or inaccuracy of the representations and warranties of the Buyer Parties

contained herein, and any corresponding condition in in Section 6.2, including any right to assert any indemnification claim in respect thereof, addressed by the amendment(s) to the Buyer Disclosure Letter.

5.8 Pursuit of Required Governmental Consents.

- (a) The Seller shall be responsible for obtaining the Seller Required Governmental Consents at its expense (including with respect to any filing fees), provided that Seller Required Governmental Consents that pertain exclusively to the Corporation or its Subsidiaries may be obtained at the expense of the Corporation provided they are accounted for as Prescribed Transaction Costs. The Buyer shall be responsible for obtaining the Buyer Required Governmental Consents at its expense (including with respect to any filing fees).
- (b) Subject to Section 5.13(b), each of the Seller and the Buyer Parties shall use its commercially reasonable efforts to obtain, or cause to be obtained, on or prior to Closing, all Required Governmental Consents.
- (c) Without limiting the generality of the undertakings of the Seller and the Buyer Parties pursuant to Section 5.8(a), each of the Seller and the Buyer Parties shall use its commercially reasonable efforts to:
 - (i) respond to any inquiries by any Governmental Authority regarding antitrust/competition, securities or other matters with respect to the transactions contemplated by this Agreement or any Transaction Document;
 - (ii) avoid the imposition of any Governmental Order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Transaction Document; and
 - (iii) in the event any Governmental Order adversely affecting the ability of the Parties to consummate the transactions contemplated by this Agreement or any Transaction Document has been issued, to have such Governmental Order vacated or lifted.
- (d) The Seller and the Buyer Parties shall cooperate fully with each other and their respective Affiliates in promptly seeking to obtain all Required Governmental Consents. The Parties shall not willfully take any action (or not take any action) that will have the effect of delaying, impairing or impeding the receipt of any Required Governmental Consents.
- (e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of any Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Seller Parties, the Corporation or the Subsidiaries with Governmental Authorities in the Ordinary Course, any disclosure which is not permitted by Applicable Law or any disclosure containing confidential information) shall be disclosed to the other Parties hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Parties with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to

provide the other Parties with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

- (f) The Buyer Parties and the Corporation shall each pay when due and be responsible for their own fees (including legal fees) incurred in connection with the filing by the Parties of the pre-merger notification and report forms relating to the Merger and all other transactions contemplated by this Agreement; provided that, in the event that only one filing fee is required in relation to the HSR Act, then such fee shall be shared equally by the Buyer Parties and the Corporation.

5.9 BAR Documentation.

- (a) The Seller shall, at its sole cost and expense, prepare and deliver to the Buyer the following documentation (collectively, the “**BAR Financial Statements**”) at least forty-five (45) days prior to the date on which the Buyer Issuer is required to file the BAR Financial Statements under applicable securities legislation:
 - (i) the audited consolidated financial statements of the Corporation for the fiscal year ended December 31, 2015, consisting of a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position as at the end of such fiscal year, and including the notes to such financial statements, prepared in accordance with IFRS applied on a basis consistent with that of prior fiscal years, without any changes in accounting principles (the “**2015 Audited Financial Statements**”); and
 - (ii) unaudited consolidated financial statements of the Corporation for the interim period of the Corporation started following the date of the 2015 Audited Financial Statements and ended on the date of the Corporation’s most recently completed interim period ending on or prior to the Closing date, consisting of a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position as at the end of such interim period, and unaudited consolidated financial statements for a comparable period in the Corporation’s preceding financial year, together with the notes thereto, if such consolidated financial statements are required to be included by Buyer Issuer in the Business Acquisition Report required to be filed by Buyer Issuer under NI 51-102 in connection with the consummation of the transactions contemplated by this Agreement; provided, that notwithstanding anything to the contrary in this Section 5.9(a)(ii), the Buyer Parties will pay up to \$50,000 in respect of the Seller’s costs of preparing the consolidated financial statements contemplated in this Section 5.9(a)(ii).
- (b) The Seller acknowledges that any or all of the BAR Financial Statements, together with the 2013 Audited Financial Statements and the 2014 Audited Financial Statements, may be filed by the Buyer Issuer with the Ontario Securities Commission in accordance with the requirements of NI 51-102 and, if so filed, will be publicly available on SEDAR.

5.10 Financing. The Buyer will use its best commercial efforts to obtain the Merger Financing and to execute a binding commitment letter with respect to such Merger Financing as soon as reasonably practicable following the date of this Agreement. The Buyer will provide the Seller Representative with a copy of any commitment letter with respect to the Merger Financing promptly after the execution of such commitment letter.

5.11 Corporation Stockholder Approval.

- (a) The Corporation shall within ten Business Days from the date of this Agreement mail or otherwise provide to the holders of Corporation Shares proxy materials and/or an

information statement relating to the transactions contemplated by this Agreement, including any information required by the DGCL (i) in connection with this Agreement, the Merger and the Requisite Stockholder Approval and (ii) with respect to any appraisal rights available under the DGCL. Such materials submitted to the holders of Corporation Shares in connection with the transactions contemplated by this Agreement shall be subject to prior review and approval by Buyer Parent, which approval shall not be unreasonably delayed or withheld.

- (b) The Corporation will obtain the Requisite Stockholder Approval for the purpose of adopting this Agreement in accordance with the DGCL, the Corporation's Certificate of Incorporation and Bylaws and any agreement or instrument by which the Corporation is bound and for such other purposes as may be necessary or desirable in connection with effectuating the transactions contemplated hereby.

5.12 Takeover Statutes. If any Takeover Statute is or may become applicable to the Merger or any the other transactions contemplated hereby, the Corporation and the Corporation's Board of Directors will grant such approvals, and will take such other actions as are necessary so that the Merger or any the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby or thereby and will otherwise act to eliminate or minimize the effects of any Takeover Statute on the Merger or any of the other transactions contemplated hereby. For purposes of this Agreement, "**Takeover Statute**" means any "business combination," "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation enacted under state or federal laws in the United States.

5.13 Mutual Covenants.

- (a) Each of the Seller, the Corporation and the Buyer Parties shall use commercially reasonable efforts to comply promptly with all requirements imposed by Applicable Law on it with respect to this Agreement.
- (b) Each of the Seller, the Corporation and the Buyer Parties shall use commercially reasonable efforts to, upon reasonable consultation with one another, oppose, lift or rescind any injunction, restraining or other order, decree or ruling seeking to restrain, enjoin or otherwise prohibit or adversely affect the consummation of the transactions contemplated by this Agreement and defend or cause to be defended, any proceedings to which it is a party or brought against it or its directors or officers challenging the transactions contemplated by this Agreement.
- (c) Each of the Seller, the Corporation and the Buyer Parties shall use commercially reasonable efforts to not take any action, or refrain from taking any commercially reasonable action, or permitting any action to be taken or not taken, which is inconsistent with this Agreement or which would reasonably be expected to prevent, materially delay or otherwise impede the consummation of the transactions contemplated by this Agreement.

**PART 6
CONDITIONS**

6.1 Conditions for the Benefit of the Buyer Parties. The obligation of Buyer Parties to complete the Merger and the transactions contemplated under this Agreement shall be subject to the fulfillment of each of the following conditions on or prior to the Closing Date, which are for the exclusive benefit of Buyer Parties and may be waived by the Buyer Parties, in their sole discretion, in whole or in part, at any time prior to the Closing Date:

- (a) **Accuracy of Representations and Warranties.** Except as contemplated by this Agreement (including Section 5.6), the representations and warranties of the Seller

Parties set out in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date (except for representations and warranties made as of a specified date, the truth and correctness of which shall be determined as of that specified date) and, for this purpose, any reference to “material”, “Seller Material Adverse Effect” or other concepts of materiality in such representations and warranties shall be disregarded.

- (b) **Performance of Obligations.** Each Seller Party and the Corporation shall have performed and complied in all material respects with all obligations, covenants and agreements to be performed and complied with by it under this Agreement on or before the Closing Date.
- (c) **Seller Required Private Consents.** The Seller shall have obtained all of the Seller Required Private Consents.
- (d) **Seller Material Adverse Effect.** Subject to Section 5.6(c), there shall have been no Seller Material Adverse Effect during the Interim Period.
- (e) **Specific Financial Targets.** The Specific Financial Targets shall have been achieved as of each of: (i) the date of each quarter-end of the Corporation during the Interim Period; (ii) the end of the calendar month that precedes the Closing Date; and (iii) the Closing Date.
- (f) **Closing Documentation.** All documents listed in Section 9.1 shall have been received by the Buyer.
- (g) **Appraisal Rights Demand Deadline Date.** The Appraisal Rights Demand Deadline Date shall have passed.

6.2 Conditions for the Benefit of the Seller Parties and the Corporation. The obligation of the Seller Parties and the Corporation to complete the Merger and the transactions contemplated under this Agreement shall be subject to the fulfilment of each of the following conditions, which are for the exclusive benefit of the Seller Parties and the Corporation and may be waived by the Seller and the Corporation, in their sole discretion, in whole or in part, at any time prior to the Closing Date:

- (a) **Accuracy of Representations and Warranties.** Except as contemplated by this Agreement (including Section 5.7), the representations and warranties of the Buyer Parties set out in this Agreement shall be true and correct in all material respects as of the Closing Date with the same force and effect as if such representations and warranties were made on and as of such date (except for representations and warranties made as of a specified date, the truth and correctness of which shall be determined as of that specified date) and, for this purpose, any reference to “material”, “Buyer Material Adverse Effect” or other concepts of materiality in such representations and warranties shall be disregarded.
- (b) **Performance of Obligations.** Each of the Buyer Parties shall have performed and complied in all material respects with all obligations, covenants and agreements to be performed and complied with by it under this Agreement on or before the Closing Date.
- (c) **Buyer Material Adverse Effect.** Subject to Section 5.7(c), there shall have been no Buyer Material Adverse Effect during the Interim Period.
- (d) **Closing Documentation.** All documents listed in Section 9.2 shall have been received by the Seller.

6.3 Other Mutual Closing Conditions. The obligations of the Seller Parties, the Corporation, and the Buyer Parties to complete the Merger and the transactions contemplated under this Agreement shall be subject to the fulfillment of each of the following conditions, which are for the benefit of each of the Seller Parties, the Corporation and the Buyer Parties, and which conditions may only be waived by the mutual consent of each of the Seller Parties, the Corporation and the Buyer Parties:

- (a) each of the Required Governmental Consents shall have been made, given or obtained (including, for certainty, that any applicable waiting periods and any extensions thereof shall have expired or been terminated);
- (b) there shall not be any Governmental Order that enjoins or prohibits any of the transactions contemplated by this Agreement and such Governmental Order shall have become final and non-appealable; and
- (c) no Applicable Law is in effect that makes the consummation of any of the transactions contemplated by this Agreement illegal or otherwise prohibits or enjoins the consummation of any of the transactions contemplated by this Agreement.

PART 7 TAX MATTERS

7.1 Tax Covenants.

- (a) Except as may otherwise be required by Applicable Laws, the Seller (and, prior to the Closing, the Corporation, the Subsidiaries and their respective Affiliates and Representatives) shall not, to the extent it may affect, or relate to, the Corporation or the Subsidiaries, make, change or rescind any Tax election, except for the following Applications for Change in Accounting Methods to be filed with the Corporation's 2014 U.S. federal income tax return, (i) deferred revenue for gift cards (specifically IRS Automatic Method Change No. 84), (ii) deferred revenue for initial franchise fees (specifically IRS Automatic Method Change No. 84), (iii) repair and maintenance costs (specifically IRS Automatic Method Change No. 184), (iv) non-incidental material and supplies (specifically IRS Automatic Method Change No. 186), (v) incidental material and supplies (specifically IRS Automatic Method Change No. 187), and (vi) acquisition or production costs (specifically IRS Automatic Method Change No. 192), amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax assets of Buyer, the Surviving Corporation or the Subsidiaries in respect of any Post-Closing Tax Period, without the prior written consent of Buyer.
- (b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid one-half (1/2) by the Seller and one-half (1/2) by the Buyer when due. The Seller and the Buyer shall cooperate and coordinate as to the timely preparation and filing of any Tax Return or other document with respect to such Taxes or fees (and the Buyer shall cooperate with respect thereto as necessary) and the timely payment of any such Tax.
- (c) The Buyer shall prepare, or cause to be prepared, all Tax Returns required to be filed by the Surviving Corporation after the Closing Date with respect to a Pre-Closing Tax Period. Any such Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by Applicable Laws) and without a change of any election or any accounting method and shall be submitted by the Buyer to the Seller (together with schedules, statements and, to the extent requested by the Seller, supporting documentation) at least 45 days prior to the due date (including extensions) of such Tax

Return. If the Seller objects to any item on any such Tax Return, it shall, within ten days after delivery of such Tax Return, notify the Buyer in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, the Buyer and the Seller shall negotiate in good faith and use their best commercial efforts to resolve such items. If the Buyer and the Seller are unable to reach such agreement within ten days after receipt by the Buyer of such notice, the disputed items shall be resolved by the Independent Auditor and any determination by the Independent Auditor shall be final. The Independent Auditor shall resolve any disputed items within twenty (20) days of having the item referred to it pursuant to such procedures as it may require. If the Independent Auditor is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by the Buyer and then amended to reflect the Independent Auditor's resolution. The costs, fees and expenses of the Independent Auditor shall be borne equally by the Buyer and the Seller. The preparation and filing of any Tax Return of the Surviving Corporation or the Subsidiaries that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer.

- (d) After Closing, the Buyer shall not amend, supplement or otherwise modify any Tax Return, Tax election or other Tax filing filed by the Corporation or any of the Subsidiaries relating to any Pre-Closing Tax Period without the prior written consent of the Seller Representative.

7.2 Termination of Existing Tax Sharing Agreements. Any and all existing Tax Sharing Agreements (whether written or not) binding upon the Corporation or the Subsidiaries shall be terminated as of the Closing Date. After such date neither the Corporation, the Subsidiaries nor any of the Seller Parties, or their Affiliates or respective Representatives, shall have any further rights or liabilities thereunder.

7.3 Straddle Period. In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Effective Time, the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

- (a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and
- (b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

7.4 Cooperation and Exchange of Information. The Seller and the Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this Part 7 or in connection with any audit or other proceeding in respect of Taxes of the Surviving Corporation and the Subsidiaries. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of the Seller and the Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Corporation or the Surviving Corporation, as applicable, for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other Party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Corporation or the Surviving Corporation, as applicable, for any taxable period beginning before the Closing Date, the

Seller or the Buyer (as the case may be) shall provide the other Party with reasonable written notice and offer the other Party the opportunity to take custody of such materials.

7.5 Tax Treatment of Indemnification Payments. Any indemnification payments arising under this Agreement in respect of the representations and warranties of the Seller Parties in Section 3.2(rr) or in respect of the obligations under this Part 7 shall be treated as an adjustment to the Initial Cash Merger Consideration by the Parties for Tax purposes, unless otherwise required by Applicable Laws.

7.6 State Tax Filings. The Seller agrees, at its sole cost and expense, to prepare and file the required US state income tax returns of the Corporation and, to the extent applicable, any Subsidiary for the calendar tax years from and including 2007 through to and including 2014 on or prior to January 31, 2016.

7.7 Section 382. The Seller agrees to prepare, or cause to be prepared, at its sole cost and expense, the appropriate analysis under Section 382 of the Code relating to the change of control of the Corporation that occurred in August 2013, and to provide such analysis and all related back up materials to the Buyer prior to Closing.

7.8 Survival. Notwithstanding anything in this Agreement to the contrary, the provisions of this Part 7 shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.

7.9 Overlap. To the extent that any obligation or responsibility pursuant to Part 5 may overlap with an obligation or responsibility pursuant to this Part 7, the provisions of this Part 7 shall govern.

PART 8 SURVIVAL AND INDEMNITY

8.1 Survival of Representations and Warranties. The representations and warranties of each Party to this Agreement shall survive Closing and shall continue in full force and effect as follows:

- (a) for the Seller Fundamental Reps, and the corresponding representations and warranties set out in the certificate delivered pursuant to Section 9.1(b), indefinitely;
- (b) for the Buyer Fundamental Reps, and the corresponding representations and warranties set out in the certificate delivered pursuant to Section 9.2(d), indefinitely;
- (c) for the representations and warranties of the Seller in Section 3.2(rr), and the corresponding representations and warranties set out in the certificate to be delivered pursuant to Section 9.1(b), until 60 days after the last date on which an assessment or reassessment for a Governmental Charge can be made against the Surviving Corporation and the Subsidiaries in respect of any taxation year to which such representations and warranties extend;
- (d) for any claim against a Party based on fraudulent misrepresentation, indefinitely; and
- (e) for all other representations and warranties in this Agreement, a period of 36 months from the Closing Date.

8.2 Indemnification of the Buyer Parties. Subject to Section 8.4, each Selling Stockholder jointly and severally covenants and agrees to indemnify and hold harmless the Buyer Parties, together with their respective Affiliates, Associates and Representatives (collectively, the "**Buyer Indemnified Parties**"), from and against any Damages suffered or incurred by any of them as a result of, or arising out of:

- (a) any breach or inaccuracy of any of the representations or warranties of any of the Seller Parties in this Agreement for which a Notice of Claim under Section 8.5 has been

provided to the Seller Representative within the applicable period specified in Section 8.1;

- (b) a breach of any covenant, term or agreement made in this Agreement by any of the Seller Parties;
- (c) any Taxes payable by the Surviving Corporation or the Subsidiaries in relation to the Pre-Closing Tax Period for which and only to the extent that (i) no specific reserve has been accrued for in the Closing Financial Statements, or (ii) any adequate reserve that has been accrued for in the Closing Financial Statements is insufficient specifically in relation to such debts and liabilities (and, for the avoidance of doubt, only to the extent of such insufficiency), including: (A) any assessment or reassessment for Taxes relating to the Pre-Closing Tax Period; (B) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Surviving Corporation or any of the Subsidiaries (or any predecessor thereof) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of Applicable Laws; and (C) any Taxes of any Person imposed on the Surviving Corporation or any of the Subsidiaries arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date (any such instance being a “**Tax Loss**”);
- (d) the legal proceedings described in 3.2(mm)(i) of the Seller Disclosure Letter for which and only to the extent that: (i) no specific reserve has been accrued for in the Closing Financial Statements; (ii) any adequate reserve that has been accrued for in the Closing Financial Statements is insufficient specifically in relation to such debts and liabilities (and, for the avoidance of doubt, only to the extent of such insufficiency); or (iii) the proceeds of any insurance policy that is in place are insufficient (and, for the avoidance of doubt, only to the extent of such insufficiency), in each case to pay any such debts and liabilities;
- (e) the legal proceedings described in 3.2(mm)(ii) of the Seller Disclosure Letter for which and only to the extent that: (i) no specific reserve has been accrued for in the Closing Financial Statements; (ii) any adequate reserve that has been accrued for in the Closing Financial Statements is insufficient specifically in relation to such debts and liabilities (and, for the avoidance of doubt, only to the extent of such insufficiency); or (iii) the proceeds of any insurance policy that is in place are insufficient (and, for the avoidance of doubt, only to the extent of such insufficiency), in each case to pay any such debts and liabilities;
- (f) all debts and liabilities, other than Tax Losses and those liabilities contemplated in Sections 8.2(d) and 8.2(e), payable by the Surviving Corporation or the Subsidiaries in relation to the period prior to the Effective Date for which and only to the extent that: (i) no specific reserve has been accrued for in the Closing Financial Statements; (ii) any adequate reserve that has been accrued for in the Closing Financial Statements is insufficient specifically in relation to such debts and liabilities (and, for the avoidance of doubt, only to the extent of such insufficiency); or (iii) insufficient applicable insurance coverage is available (and, for the avoidance of doubt, only to the extent of such insufficiency), in each case to pay any such debts and liabilities; and
- (g) all other contingent liabilities which the Surviving Corporation becomes obligated to pay for matters relating to the period prior to the Effective Time, whether or not disclosed or reflected in the Seller Disclosure Letter and whether or not the Seller or the Corporation has notice of such contingent liabilities or of the facts or circumstances which give rise to such contingent liabilities;

which Damages are collectively referred to herein as the “**Buyer Losses**” and each, a “**Buyer Loss**”.

8.3 Indemnification of Seller Parties. Subject to Section 8.4, the Buyer Parties jointly and severally covenant and agree to indemnify and hold harmless the Seller Parties, together with their respective Affiliates, Associates and Representatives (“collectively, the **“Seller Indemnified Parties”**”), from and against any Damages suffered or incurred by any of them as a result of, or arising out of:

- (a) any of the representations or warranties of the Buyer Parties in this Agreement for which a Notice of Claim under Section 8.5 has been provided to the Buyer within the applicable period specified in Section 8.1; and
- (b) a breach of any covenant, term or agreement made in this Agreement by the Buyer or Buyer Parent;

which Damages are collectively referred to herein as the **“Seller Losses”** and each, a **“Seller Loss”**.

8.4 Limitations.

- (a) A Party has no obligation or liability for indemnification or otherwise with respect to any representation or warranty made by such Party in this Agreement, or the certificates delivered pursuant to Section 9.1(b) or Section 9.2(d), as the case may be, after the end of the applicable time period specified in Section 8.1, except for claims relating to the representations and warranties of which the Party has been notified prior to the end of the applicable time period.
- (b) Following Closing, a Party has no obligation or liability for indemnification or otherwise with respect to any breach or inaccuracy of any representation or warranty in this Agreement, or the certificates delivered pursuant to Section 9.1(b) or Section 9.2(d), as the case may be, or any failure to perform or fulfil any covenants or obligations, if the Party making the claim had knowledge (meaning, in the case of any of the Buyer Parties, Knowledge of such Buyer Party and, in the case of the Seller, the Knowledge of the Seller) of the breach, inaccuracy or failure to perform on or prior to Closing.
- (c) Following the date that is 36 months from the Closing Date, the Selling Stockholders shall have no liability for, or obligation to make any payment in respect of, for indemnification or otherwise, any Buyer Losses under Sections 8.2(d), 8.2(e), 8.2(f) and 8.2(g).
- (d) The Selling Stockholders shall have no liability for, or obligation to make any payment in respect of, for indemnification or otherwise, any Buyer Losses under Section 8.2 until the total of all Buyer Losses with respect to such matters exceeds \$1,000,000 (such amount, the **“Basket Amount”**), and then for the entire amount of such Buyer Losses (including the Basket Amount) up to a maximum of \$35,000,000 (the **“Cap”**); provided, that the Basket Amount will not apply to any Buyer Losses under Sections 8.2(c) or 8.2(e); and, provided, further, that the aggregate liability of each of the Selling Stockholders shall not in any circumstance exceed the amount of such Selling Stockholder’s share (based on its pro-rata holding of the shares of CanKal Corporation, as set out in Section 8.4(e) of the Seller Disclosure Letter) of the Initial Cash Merger Consideration. In determining whether the total of all Buyer Losses exceeds the Basket Amount, no individual or series of related Buyer Losses which do not exceed \$10,000 (the **“Threshold Amount”**) will be included and such Buyer Losses shall not be counted toward the Basket Amount. The limitations set out in this Section 8.4(d) shall not apply to Buyer Losses as a result of or arising out of: (i) any breach of inaccuracy of any of the Seller Fundamental Reps; or (ii) any fraudulent misrepresentation.
- (e) The Buyer Parties shall have no liability for, or obligation to make any payment in respect of, for indemnification or otherwise, any Seller Losses under Section 8.3 until the total of all Seller Losses with respect to such matters exceeds the Basket Amount, and then for the entire amount of such Seller Losses (including the Basket Amount) up to a maximum

of the Cap. In determining whether the total of all Seller Losses exceeds the Basket Amount, no individual or series of related Seller Losses which do not exceed the Threshold Amount will be included and such Seller Losses shall not be counted toward the Basket Amount. The limitations set out in this Section 8.4(e) shall not apply to Seller Losses as a result of or arising out of: (i) any breach of inaccuracy of any of the Buyer Fundamental Reps; or (ii) any fraudulent misrepresentation. For the avoidance of doubt, this Section 8.4(e) is subject in its entirety to Section 13.2(c).

8.5 Claims.

- (a) If a Third Party Claim is instituted or asserted against an Indemnified Party, the Indemnified Party will promptly deliver to the Indemnifying Party a notice in writing (a "**Notice of Claim**") of the Third Party Claim. The Notice of Claim must specify in reasonable detail, the identity of the Person making the Third Party Claim and, to the extent known, the nature of the Damages and the estimated amount needed to investigate, defend, remedy or address the Third Party Claim.
- (b) If an Indemnified Party becomes aware of a Direct Claim, the Indemnified Party will promptly deliver a Notice of Claim to the Indemnifying Party of the Direct Claim.
- (c) A Notice of Claim to an Indemnifying Party under this Section 8.5 of a Third Party Claim or a Direct Claim is assertion of a claim for indemnification against the Indemnifying Party under this Agreement. Upon receipt of such Notice of Claim, the provisions of Section 8.6 will apply to any Direct Claim and the provisions of Section 8.7 will apply to any Third Party Claim.

8.6 Direct Claims.

- (a) Following receipt of Notice of Claim with respect to a Direct Claim, the Indemnifying Party shall have 30 days to investigate the Direct Claim and respond in writing. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party such information relied upon by the Indemnified Party to substantiate the Direct Claim, together with all such other information as the Indemnifying Party may reasonably request.
- (b) If the Indemnifying Party disputes the validity or amount of the Direct Claim, the Indemnifying Party shall provide written notice of the dispute to the Indemnified Party within the 30 day period specified in Section 8.6(a). The dispute notice must describe in reasonable detail the nature of the Indemnifying Party's dispute. During the 30 day period immediately following receipt of a dispute notice by the Indemnified Party, the Indemnifying Party and the Indemnified Party shall attempt in good faith to resolve the dispute. If the Indemnifying Party and the Indemnified Party fail to resolve the dispute within that 30 day time period, the Indemnified Party is free to pursue all rights and remedies available to it, subject to this Agreement. If the Indemnifying Party fails to respond in writing to the Direct Claim within the 30 day period specified in Section 8.6(a), the Indemnifying Party is deemed to have rejected the Direct Claim, in which event the Indemnified Party is free to pursue all rights remedies available to it, subject to this Agreement.

8.7 Third Party Claims.

- (a) Upon receipt of a Notice of Claim with respect to a Third Party Claim, the Indemnifying Party may participate in the investigation and defence of the Third Party Claim and may also elect to assume the investigation and defence of the Third Party Claim.

- (b) In order to assume the investigation and defence of a Third Party Claim, the Indemnifying Party must give the Indemnified Party written notice of its election within 30 days of Indemnifying Party's receipt of the Notice of Claim with respect to the Third Party Claim.
- (c) If the Indemnifying Party assumes the investigation and defence of a Third Party Claim:
 - (i) the Indemnifying Party will pay for all costs and expenses of the investigation and defence of the Third Party Claim except that the Indemnifying Party will not, so long as it diligently conducts such defence, be liable to the Indemnified Party for any fees of other counsel or any other expenses with respect to the defence of the Third Party Claim, incurred by the Indemnified Party after the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim; and
 - (ii) the Indemnifying Party will reimburse the Indemnified Party for all costs and expenses incurred by the Indemnified Party in connection with the investigation and defence of the Third Party Claim prior to the date the Indemnifying Party validly exercised its right to assume the investigation and defence of the Third Party Claim.
- (d) If the Indemnified Party undertakes the defence of the Third Party Claim, the Indemnifying Party will not be bound by any determination of the Third Party Claim or any compromise or settlement of the Third Party Claim effected without the consent of the Indemnifying Party (which consent may not be unreasonably withheld or delayed).
- (e) The Indemnifying Party will not be permitted to compromise and settle or to cause a compromise and settlement of a Third Party Claim without the prior written consent of the Indemnified Party, which consent may not be unreasonably withheld or delayed, unless
 - (i) the terms of the compromise and settlement require only the payment of money for which the Indemnified Party is entitled to full indemnification under this Agreement;
 - (ii) the Indemnified Party is not required to admit any wrongdoing, take or refrain from taking any action, acknowledge any rights of the Person making the Third Party Claim or waive any rights that the Indemnified Party may have against the Person making the Third Party Claim; and
 - (iii) the Indemnified Party receives, as part of the compromise and settlement, a legally binding and enforceable unconditional release from any and all obligations or liabilities it may have with respect to the Third Party Claim.
- (f) The Indemnified Party and the Indemnifying Party agree to keep the other fully informed of the status of any Third Party Claim and any related proceedings. If the Indemnifying Party assumes the investigation and defence of a Third Party Claim, the Indemnified Party will, at the request and expense of the Indemnifying Party, use its reasonable efforts to make available to the Indemnifying Party, on a timely basis, those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in investigating and defending the Third Party Claim. The Indemnified Party shall, at the request and expense of the Indemnifying Party, make available to the Indemnifying Party, or its representatives, on a timely basis all documents, records and other materials in the possession, control or power of the Indemnified Party, reasonably required by the Indemnifying Party for its use solely in defending any Third Party Claim of which it has elected to assume the investigation and defence. The Indemnified Party shall cooperate on a timely basis with the Indemnifying Party in the defence of any Third Party Claim.

8.8 Holdback Funds.

- (a) Any payment the Selling Stockholders are obligated to make to any Buyer Indemnified Party pursuant to this Part 8 (an “**Indemnification Payment**”) in accordance with and subject to the limitations set forth herein shall be satisfied first, to the extent the amount of the outstanding Holdback Funds is sufficient to satisfy such Indemnification Payment, by offsetting the amount of such Indemnification Payment against the Holdback Funds (excluding any Appraisal Holdback Funds) and, second, if the amount of the outstanding Holdback Funds (excluding any Appraisal Holdback Funds) is insufficient to pay all or any part of such Indemnification Payment, then the Selling Stockholders shall be required to pay all of such additional sums due and owing to the Buyer Indemnified Parties pursuant to this Part 8 (subject to the limitations set forth herein) by wire transfer of immediately available funds promptly after the date such Indemnification Payment is finally determined to be owing.
- (b) Subject to Sections 2.13(b) and 8.8(a), the Holdback Funds shall be paid to the Seller as follows:
 - (i) on the date that is 12 months from the Closing Date, an amount equal to the Holdback Funds then outstanding, minus \$16,666,666 and minus any unpaid amounts set out in a Notice of Claim delivered in accordance with Section 8.5 (“**Pending Claims**”) prior to such date, shall be paid to the Seller (or as otherwise directed in writing by the Seller);
 - (ii) on the date that is 24 months from the Closing Date, an amount equal to the Holdback Funds then outstanding minus \$8,333,333 and minus any Pending Claims delivered prior to such date shall be paid to the Seller (or as otherwise directed in writing by the Seller); and
 - (iii) on the date that is 36 months from the Closing Date, the balance of the Holdback Funds then outstanding minus any Pending Claims delivered prior to such date shall be paid to the Seller (or as otherwise directed in writing by the Seller),

provided that amounts that are withheld on account of Pending Claims under subsection (i), (ii) or (iii) will be paid to the Seller if, and to the extent, that such Pending Claims are found not to qualify for indemnification.

8.9 Exclusion of Other Remedies. From and after the Closing, the remedial rights of the Buyer Indemnified Parties and the Seller Indemnified Parties relating to this Agreement or the transactions contemplated hereby shall be strictly limited to those contained in this Part 8, and such indemnification rights shall be the sole and exclusive remedies of the Buyer Indemnified Parties and the Seller Indemnified Parties subsequent to the Closing Date with respect to any matter in any way relating to this Agreement, or arising in connection herewith, except for (a) any rights or remedies the Parties have to seek equitable relief or that they have in respect of fraud or fraudulent misrepresentation and (b) in relation to any breach of a Seller Fundamental Rep. The Parties hereby acknowledge that the failure to comply with a covenant, obligation or other agreement contained in this Agreement or any Transaction Document may give rise to irreparable injury to a Party inadequately compensable in monetary damages, and, notwithstanding the first sentence of this Section 8.9, a Party may seek to enforce the performance of this Agreement by injunction, specific performance or other equitable remedy upon application to a court of competent jurisdiction. Except as otherwise provided in this Section 8.9, to the maximum extent permitted by Applicable Law, the Buyer Indemnified Parties and the Seller Indemnified Parties hereby waive all other rights and remedies with respect to any matter in any way relating to this Agreement or arising in connection herewith.

8.10 One Recovery. Any Indemnified Party shall not be entitled to double recovery for any Damages even though they may have resulted from the breach of more than one of the representations, warranties,

covenants and obligations of the Indemnifying Party in this Agreement. No Party has any liability or obligation with respect to any claim for indemnification to the extent that such matter was reflected as an adjustment to the Initial Cash Merger Consideration pursuant to Section 2.8.

8.11 Duty to Mitigate. Nothing in this Agreement in any way restricts or limits the general obligation under Applicable Law of an Indemnified Party to mitigate any Damages which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty, covenant or obligation of the Indemnifying Party under this Agreement. If any claim can be reduced by any recovery (including any Tax benefit), settlement, payment or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other Person, the Indemnified Party shall take all appropriate steps to enforce such recovery, settlement or payment, and the amount of any Damages of the Indemnified Party will be reduced by the amount of the proceeds actually recoverable by the Indemnified Party pursuant to any such claim, recovery, settlement or payment.

8.12 Adjustment to Initial Cash Merger Consideration. Any payment made by any Selling Stockholder as an Indemnifying Party pursuant to this Part 8 will constitute a dollar-for-dollar decrease of the Initial Cash Merger Consideration, and any payment made by the Buyer or Buyer Parent as an Indemnifying Party pursuant to this Part 8 will constitute a dollar-for-dollar increase of the Initial Cash Merger Consideration, in each case, including for Tax purposes (unless otherwise required by Applicable Laws).

8.13 Taxes and Insurance.

- (a) The amount which the Indemnifying Party is required to pay to, for or on behalf of the Indemnified Party pursuant to this Article 8 shall be reduced by any foreign, federal, state, provincial or local income Tax benefit to the Indemnified Party or any of its affiliates applicable to the indemnifiable Damages.
- (b) The Indemnifying Party shall make any indemnification payments determined to be payable to the Indemnified Party hereunder without regard to any expectation that the Indemnified Party will recover insurance proceeds or other amounts as a result of the matter giving rise to the claim for which indemnification payments are to be made. The Indemnified Party shall have an obligation to promptly seek to recover or make a claim for insurance proceeds or other amounts available as a result of any matter giving rise to an indemnification claim of the Indemnified Party against the Indemnifying Party. In addition, the Indemnifying Party shall, to the extent of any indemnification payment made by it, be subrogated to all rights of the Indemnified Party against any third party in respect of the claim to which the indemnification payment relates. If the Indemnified Party receives any insurance proceeds or other amounts as a result of the matter giving rise to any indemnification claim of the Indemnified Party prior to the Indemnifying Party paying such claim to the Indemnified Party, the Indemnifying Party's indemnification obligation with respect to such claim shall be reduced by the amount of any such insurance proceeds and other amounts actually received by the Indemnified Party less any deductibles or similar amounts actually paid by the Indemnified Party. If the Indemnified Party receives any insurance proceeds or other amounts as a result of the matter giving rise to any indemnification claim of the Indemnified Party after the Indemnifying Party has paid such claim to the Indemnified Party, then the Indemnified Party shall promptly turn over to the Indemnifying Party a portion of such insurance proceeds and other amounts that equals, dollar for dollar, the amount paid by the Indemnifying Party to the Indemnified Party with respect to the indemnification claim in question, but no more than the amount actually paid by the Indemnifying Party to the Indemnified Party with respect to the indemnification claim in question.

**PART 9
CLOSING**

9.1 Deliveries by the Seller. On the Closing Date the Seller, the Seller Representative and/or the Corporation shall deliver, or cause to be delivered, the following documents to the Buyer or such other Person entitled thereto, duly executed by the appropriate Person where required:

- (a) the Certificate of Merger, duly executed by the Corporation;
- (b) a certificate executed by the Seller Representative (in his capacity as such and without personal liability), dated as of the Closing Date, as to the matters referred to in Section 6.1(a), Section 6.1(b), Section 6.1(d) and Section 6.1(e);
- (c) a certificate of a senior officer of the Seller, without personal liability, certifying resolutions authorizing the entering into of this Agreement and the transactions contemplated herein, and specimen signatures;
- (d) a certificate of a senior officer of the Corporation, without personal liability, certifying resolutions authorizing the entering into of this Agreement and the transactions contemplated herein, and specimen signatures;
- (e) the Registration Rights Agreement executed by each Seller Party;
- (f) mutual releases of the Corporation executed by each Seller Party and each departing director of the Corporation in form and substance satisfactory to the Parties, acting reasonably, and executed resignations of such departing directors;
- (g) mutual releases of each Subsidiary executed by each Seller Party and each departing director of such Subsidiary in form and substance satisfactory to the Parties, acting reasonably, and executed resignations of such departing directors;
- (h) the BAR Financial Statements;
- (i) a certificate of good standing for the Corporation and of each Subsidiary, dated within five Business Days of the Closing Date, issued by the jurisdiction in which it is incorporated;
- (j) an opinion of the Seller's solicitors dated the Closing Date in form and substance satisfactory to the Buyer's Canadian Solicitors, acting reasonably, in respect of the Corporation and the Seller in respect of: incorporation; existence and registration; power and capacity; authorization; execution and delivery; enforceability; and non-contravention of constating documents;
- (k) all share transfer books, minute books and other corporate records of the Corporation and its Subsidiaries;
- (l) the corporate seal of every member of each of the Corporation and its Subsidiaries, to the extent that it may have a corporate seal pursuant to Applicable Laws and does, in fact, have a corporate seal;
- (m) consent to the Merger by Saputo Inc. pursuant to the Supply Agreement between the Corporation and Saputo Inc. dated as of July 1, 2015, as amended, in form and substance satisfactory to the Buyer, acting reasonably;
- (n) evidence of the Seller Required Consents;
- (o) the Registration Rights Agreement executed by the Seller;

- (p) agreements, each in a form satisfactory to the Seller and the Buyer and agreed to during the Interim Period, executed by each Seller Party pursuant to which each Seller Party agrees that it shall not, for a period commencing on the Closing Date and terminating on the third (3rd) anniversary of the Closing Date either directly or indirectly, as a shareholder, owner, co-owner, employer, investor, partner, proprietor, principal, director, officer, manager, employee, consultant, advisor, agent, lender, contractor, licensor, licensee or representative, either individually or in partnership or association or in conjunction with others or through the medium of any Person, or in any other manner whatsoever, directly or indirectly, do any of the following:
 - (i) induce, persuade or attempt to persuade any Person providing, directly or indirectly, employment, independent contracting, consulting, marketing, administration or other services to the Corporation to not provide or to cease to provide such services to the Corporation;
 - (ii) offer employment to or solicit the employment or engagement of or hire any officer, employee, producer, independent contractor or consultant of the Corporation while they are or, in the twenty-four (24) months preceding the Closing Date were, officers, employees, producers or consultants of the Corporation; or
 - (iii) procure or assist any Person in performing any acts prohibited by the foregoing;
- (q) evidence that the Contracts listed in items (2), (3) and (6) of Section 3.2(w) of the Seller Disclosure Letter have been terminated; and
- (r) all such other documents, instruments, records, conveyances, assignments, assurances, consents and certificates which, in the opinion of the Buyer acting reasonably, are necessary to effect and evidence the completion of the Merger and transactions contemplated hereunder.

9.2 Deliveries by Buyer. On the Closing Date the Buyer shall deliver, or cause to be delivered, the following documents to the Seller or such other Person entitled thereto, duly executed by the appropriate Person where required:

- (a) to the Exchange Agent, the Exchange Agreement, duly executed by Buyer Parent;
- (b) to the Exchange Agent, the Initial Cash Merger Consideration and the Issued Shares (including for any Cash-Only Stockholder, the Cash in lieu of Issued Shares for such Stockholder), as described in Section 2.7;
- (c) to the Corporation or to the applicable payees, their respective portions of the Prescribed Transaction Costs and Indebtedness, as described in Section 2.3(b);
- (d) a certificate executed by a senior officer of each of the Buyer and Buyer Parent, without personal liability, dated as of the Closing Date, as to the matters referred to in Section 6.2(a), Section 6.2(b) and Section 6.2(c);
- (e) a certificate of a senior officer of the Buyer, without personal liability, certifying resolutions authorizing the entering into of this Agreement and the transactions contemplated herein, and specimen signatures;
- (f) a certificate of a senior officer of Buyer Parent, without personal liability, certifying resolutions authorizing the entering into of this Agreement and the transactions contemplated herein, and specimen signatures;

- (g) a certificate of a senior officer of Buyer Issuer, including resolutions authorizing the entering into of this Agreement and the transactions contemplated herein, and specimen signatures;
- (h) an opinion from the Buyer's Canadian Solicitors addressed to the Seller in form and substance satisfactory to the Seller's Canadian Solicitors, acting reasonably in respect of, among other things, the issuance and free tradability of the Issued Shares (i.e. customary initial and first trade opinions);
- (i) the TSX Conditional Approval Letter;
- (j) **[intentionally deleted]**;
- (k) evidence of the Buyer Required Consents;
- (l) the Registration Rights Agreement executed by Buyer Issuer; and
- (m) all such other documents, instruments, records, conveyances, assignments, assurances, consents and certificates which, in the opinion of the Seller acting reasonably, are necessary to effect and evidence the completion of the Merger and transactions contemplated hereunder.

PART 10 POST-CLOSING COVENANTS

10.1 Access to Books and Records. For a period of five years from the Closing Date or for such longer period as may be required by Applicable Law, the Buyer will retain all original Books and Records existing on the Closing Date. So long as any such Books and Records are retained by the Buyer pursuant to this Agreement, the Seller Parties have the right to inspect and to make copies (at their own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference. The Buyer has the right to have its Representatives present during any such inspection.

10.2 D&O Insurance. The Buyer shall purchase as an extension to current insurance policies of the Corporation and the Subsidiaries, pre-paid non-cancellable run-off directors' and officers' liability insurance providing such coverage for such individuals on terms comparable to those contained in the current insurance policies of the Corporation and the Subsidiaries for six years after Closing. In addition, during such six year period, the Buyer shall not, and shall not permit the Surviving Corporation or the Subsidiaries, or any successor or assign thereof, to amend, repeal or modify any provision in the Constatng Documents of the Surviving Corporation or the Subsidiaries relating to the exculpation or indemnification of any current or former officer or director of the Corporation or the Subsidiaries (unless required by Applicable Law), it being the intent of the Parties that the officers and directors of the Corporation and the Subsidiaries to continue to be entitled to such exculpation and indemnification to the full extent of Applicable Law. If the Surviving Corporation or any of the Subsidiaries, or any successor or assign thereof (i) consolidates or amalgamates with or merges into any other Person or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Surviving Corporation or any of the Subsidiaries, as the case may be, assume all of the obligations set forth in this Section 10.2. This Section 10.2 is intended for the benefit of, and is enforceable by, each current and former officer and director of the Corporation and the Subsidiaries and his or her heirs, executors and representatives, and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have had by contract or otherwise.

PART 11 CONFIDENTIALITY

11.1 Prohibitions. Subject only to the last paragraph of Section 11.3, each of the Buyer Parties, on the one hand, and each of the Seller Parties, on the other hand, will use its commercially reasonable efforts to prevent public disclosure or knowledge of this Agreement and the transactions contemplated by it without the prior written approval of the other, which approval shall not be unreasonably withheld or conditioned or unduly delayed, and will maintain the confidentiality of this Agreement, of all information received during the course of the Buyer's due diligence, the possible purchase and sale and the negotiations regarding the transactions contemplated by this Agreement and of all information and documents obtained in the course of the negotiations and/or any due diligence review conducted by each Party. The foregoing will not restrict or otherwise affect the right of a Party to make any disclosure:

- (a) which is necessary for the Party to carry out and give full effect to the terms, provisions and intent hereof; provided, that the Parties acknowledge that the pursuit of the Required Governmental Consents in accordance with this Agreement will require that filings be made with Governmental Authorities and that disclosures required in relation thereto are permitted under this Part 11 and do not constitute a default of any obligation in this Part 11;
- (b) to consultants, lawyers, accountants, financial institutions, business associates, regulatory authorities or other Persons from whom any approvals or consents are required, provided that such disclosure is not intended for broad dissemination to the public; or
- (c) as may otherwise be required by Applicable Law (including any policies of the TSX or a securities commission), or for the purpose of enforcing the provisions hereof; provided, that, to the extent possible, the disclosing Party shall give the other Parties not less than two Business Days' prior written notice of such requirement.

11.2 Duration. Notwithstanding the terms of any other provision hereof but subject to Section 11.3, the obligations of confidentiality and non-disclosure set forth in this Part 11 are binding obligations of the parties and will survive the termination of this Agreement and will extend for a period of three years from the date of this Agreement, but will not apply to any information that is: (a) in the public domain (other than as a result of any breach by a Party of this Part 11); (b) received by a Party from a third party that, to the knowledge of such Party, is not under any obligation of confidentiality with respect to such information.

11.3 Public Announcements.

- (a) None of the Parties to this Agreement shall make or authorize any public announcement regarding the transactions contemplated by this Agreement without the prior written consent of the other Parties (such consent not to be unreasonably withheld, conditioned or delayed). The content of any public announcement shall be approved by the Buyer and the Seller, in each case acting reasonably. The foregoing will not restrict or otherwise affect the right of a Party to make any public announcement as may be required by Applicable Law (including any policies of the TSX or an applicable securities regulatory authority with jurisdiction), or for the purpose of enforcing the provisions hereof; provided, that, to the extent possible, the disclosing Party shall give the other Parties not less than five Business Days' prior written notice of such requirement so that the other Parties may seek a protective order or other appropriate remedy to prevent, or to limit the extent of the disclosure in, such public announcement.
- (b) The Parties shall release a press release in relation to the entering into of this Agreement and the Merger pursuant hereto in form and substance satisfactory to the Parties, acting reasonably, within 24 hours of the execution by all Parties of this Agreement.

PART 12
SELLER REPRESENTATIVE

12.1 Seller Representative. Each Seller Party hereby irrevocably designates and appoints Michael (the “**Seller Representative**”) as its true and lawful attorney-in-fact to represent and act for him/it for all purposes relating to this Agreement, subject only to the terms and conditions of this Part 12. The Seller Representative hereby accepts such designation and appointment and agrees to represent and act for the Seller Parties under this Agreement in accordance with the terms and conditions set forth in this Part 12.

12.2 Rights and Powers. In discharging his duties and responsibilities hereunder the Seller Representative shall have all rights and powers necessary and incident to the proper discharge thereof, and any decision or act of the Seller Representative shall be conclusive and absolutely binding upon and enforceable against each and all of the Seller Parties.

12.3 Authorization. Each Seller Party hereby authorizes the Seller Representative, at his sole discretion, to employ and instruct lawyers, accountants and others to assist it in the performance of his duties and responsibilities under this Agreement.

12.4 Authority of Seller Representative. Each Seller Party hereby authorizes the Seller Representative to (a) interpret and construe the provisions of this Agreement, (b) determine, resolve, settle or contest any request, action, suit, proceeding or arbitration that may arise under this Agreement in any manner the Seller Representative deems appropriate under the circumstances, including claims for indemnification or otherwise made by the Buyer or Buyer Parent, and (c) make all other decisions required to be made by the Seller Parties pursuant to this Agreement or any other agreement, certificate, instrument or other document executed in connection herewith. Any settlement by the Seller Representative of a request, action, suit, proceeding or arbitration or any final order or judgment or award of a court or tribunal of competent jurisdiction resulting from an action, suit, proceeding or arbitration by the Buyer or Buyer Parent against the Seller Representative shall be binding upon and enforceable against each of the Seller Parties. The Seller Representative agrees that within a commercially reasonable time after receipt of notice of a claim, he shall give each Seller Party notice of the same and shall from time to time keep the Seller Parties apprised as to developments with respect to such claim (including any settlement or compromise thereof). Such notices shall be sent to the Seller Parties at their respective addresses as may be communicated to the Seller Representative in writing by the Seller Parties.

12.5 Successor Seller Representative. Upon the death, disability or resignation of the Seller Representative, a successor Seller Representative shall be appointed by the Seller Parties. A successor Seller Representative shall become such upon notice of appointment received by the Buyer.

12.6 Decision Final. Notwithstanding any provision of this Part 12 which defines or limits the authority of the Seller Representative, the decisions, acts and instructions of the Seller Representative or the contesting of any actions shall be final, binding and conclusive upon each of the Seller Parties and the Buyer may rely upon any such decision, act or instruction of the Seller Representative as being the decision, act or instruction of each and all of the Seller Parties without the necessity of investigating or determining whether or not the Seller Representative has acted within the scope of the powers given to him under this Agreement. Notices or communications to or from the Seller Representative shall constitute notice to or from each and all of the Sellers Parties.

12.7 Indemnity of Seller Representative. The Seller Representative shall not be liable to any Stockholder for any act or omission taken pursuant to or in conjunction with this Agreement or any other agreement, certificate, instrument or other document executed in connection herewith, except for his own gross negligence, bad faith or willful misconduct. Each Seller Party shall jointly and severally indemnify the Seller Representative and hold the Seller Representative harmless against any loss, liability or expense incurred without gross negligence, bad faith or willful misconduct on the part of the Seller Representative and arising out of or in connection with the acceptance or administration of the Seller

Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel or other professional retained by the Seller Representative. Each Seller Party hereby agrees to pay (a) the reasonable fees, if any, of the Seller Representative relating to his services performed in such capacity, and (ii) all reasonable costs and expenses, including those of any legal counsel or other professional retained by the Seller Representative, in connection with the acceptance and administration of the Seller Representative's duties hereunder. The Seller Representative shall have no duties or responsibilities except those expressly set forth herein and in the other Transaction Documents to which the Seller Representative is a party.

PART 13 TERMINATION

13.1 Termination Rights. This Agreement may, by notice in writing given at or prior to the Closing (except as otherwise set forth in this Section 13.1), be terminated:

- (a) by mutual consent of the Seller Representative and the Buyer;
- (b) by the Buyer in accordance with Section 5.6(c);
- (c) by the Seller Representative in accordance Section 5.7(c);
- (d) by the Buyer, on or before the Closing Date, if, subject to Section 5.10, the Buyer cannot obtain, or is unable to close, the Merger Financing;
- (e) by the Buyer if a breach of any representation or warranty of the Seller Parties or failure to perform any covenant or agreement on the part of any Seller Party or the Corporation occurs that would cause any condition in Section 6.1(a) or Section 6.1(b) not to be satisfied, and such breach or failure is incapable of being cured or is not cured by the end of the day on the Outside Date; provided that any wilful breach shall be deemed incapable of being cured;
- (f) by the Buyer if the condition in Section 6.1(e) is not satisfied, which non-satisfaction shall be deemed incapable of being cured;
- (g) by the Seller Representative if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Buyer Parties occurs that would cause any condition in Section 6.2(a) or 6.2(b) not to be satisfied, and such breach or failure is incapable of being cured or is not cured by the end of the day on the Outside Date; provided that any wilful breach shall be deemed incapable of being cured; or
- (h) by either the Buyer or the Seller Representative if the Closing has not occurred by the end of the day on the Outside Date, provided that neither the Buyer nor the Seller Representative may terminate this Agreement under this Section 13.1 if the Buyer or Buyer Parent, on the one hand, or any Seller Party, on the other hand, as applicable, has failed to perform any one or more of its material obligations or covenants under this Agreement required to be performed at or prior to Closing and the Closing has not occurred as a result of such failure.

13.2 Notice and Effect of Termination.

- (a) Any termination of this Agreement pursuant to Subsections 13.1(b) to 13.1(h), inclusive, will be effective immediately upon delivery of a valid written notice of the termination (a "**Termination Notice**") by the Buyer to the Seller Representative or vice versa.
- (b) If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of

termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

- (c) If this Agreement is terminated by the Buyer pursuant to Section 13.1(d) or by the Seller Representative pursuant to Section 13.1(g), then the Buyer shall, within ten (10) Business Days of the date of termination, pay or cause to be paid to the Seller Representative (or as the Seller Representative may otherwise direct by notice in writing), by wire transfer of immediately available funds to an account or accounts designated by the Seller Representative, CDN\$200,000, which payment shall be made in consideration of the exchange of a full and final mutual release made by the Seller Parties and the Corporation, on the one hand, and the Buyer Parties, on the other hand, except that each Party shall be liable for any willful or intentional breach or fraud committed by such Party prior to such termination.
- (d) If this Agreement is terminated by the Seller Representative and the Buyer pursuant to Section 13.1(a) or by the Buyer pursuant to Section 13.1(e), the Parties are released from all of their obligations under this Agreement, except that each Party shall be liable for any willful or intentional breach or fraud committed by such Party prior to such termination.
- (e) Notwithstanding anything to the contrary in this Section 13.2, each Party's obligations under the following Parts and Sections shall survive termination of this Agreement: Part 11 (in accordance with Section 11.2) and Part 12 and Sections 14.2, 14.3, 14.4, 14.5 and 14.10.

PART 14 GENERAL

14.1 Buyer Issuer Guarantee. Buyer Issuer hereby unconditionally and irrevocably guarantees, and covenants and agrees to be jointly and severally liable with the Buyer and Buyer Parent, as principal obligor, for the due and punctual performance of each and every obligation of the Buyer and Buyer Parent under or relating to this Agreement, including ensuring that the Buyer and Buyer Parent has sufficient funds to pay any amounts and all related fees and expenses specifically required hereunder to be paid by the Buyer and Buyer Parent, including the Initial Cash Merger Consideration, in connection with this Agreement and the transactions contemplated hereby, without the necessity or the requirement by the Seller Parties first to pursue or exhaust their recourse against the Buyer or Buyer Parent. Buyer Issuer shall cause the Buyer and Buyer Parent to comply with all of their respective obligations under or relating to this Agreement and the transactions contemplated hereby.

14.2 Notices. In this Agreement:

- (a) any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been given if delivered by hand, transmitted by facsimile transmission, electronically mailed (email) or mailed by prepaid registered post in Canada or the United States of America, to the address or facsimile transmission number or email address of each Party set out below:
 - (i) if to any Seller Party, to the Seller Representative at:

210 Shields Court
Markham, Ontario L3R 8V2

Attention: Michael Serruya
Fax No: (905) 479-5232
Email address: MichaelS@yogenfruz.com

with copies (which shall not constitute notice) to:

Dorf & Nelson LLP
555 Theodore Fremd Avenue
Rye, NY 10580

Attention: Daniel R. Kaplan
Fax No: 914-381-7608
Email address: dkaplan@dorflaw.com

and to:

Stikeman Elliott LLP
5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9

Attention: Curtis Cusinato
Fax No: 416-947-0866
Email address: ccusinato@stikeman.com

(ii) if to the Corporation, to:

9311 E. Via De Ventura
Scottsdale, AZ 85258

Attention: Michael Reagan
Fax No: 480-362-4798
Email address: mjreagan@kahalamgmt.com

with copies (which shall not constitute notice) to:

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555 Theodore Fremd Avenue
Rye, NY 10580

Attention: Daniel R. Kaplan
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5300 Commerce Court West, 199 Bay Street
Toronto, ON M5L 1B9

Attention: Curtis Cusinato
Fax No: 416-947-0866
Email address: ccusinato@stikeman.com

(iii) if to any Buyer Party, to:

8150 Autoroute Transcanadienne, Suite 200
City of St-Laurent Quebec, H4S 1M5

Attention: Mr. Stanley Ma
Fax No: 514-336-9222

Email address: stanley@mtygroup.com

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

DLA Piper (Canada) LLP
100 King Street West
Suite 6000
Toronto, ON M5X 1E2

Attention: Mr. Justin Mooney
Fax No: 416-777-7436
Email address: justin.mooney@dlapiper.com

or to such other address, facsimile transmission number or email address as any Party may designate in the manner set out above; and

- (b) notice or communication will be considered to have been received:
- (i) if delivered by hand before 5:00pm on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business on the next Business Day;
 - (ii) if sent by facsimile transmission before 5:00pm on a Business Day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business on the next Business Day;
 - (iii) if emailed before 4:00pm on a Business Day, one hour after it is sent, provided that the sender does not receive either notice that the email could not reach its intended destination or an "Out of Office Reply", and if not sent during business hours, upon the commencement of business on the next Business Day; and
 - (iv) if mailed by prepaid registered post in Canada or the United States of America, upon the fifth Business Day following posting; except that, in the case of a disruption or an impending or threatened disruption in postal services every notice or communication will be delivered by hand or sent by facsimile transmission or e-mail.

14.3 Time of Essence. Time shall be of the essence in respect of this Agreement and the agreements and covenants in it.

14.4 Governing Law. This Agreement shall be governed by and construed in accordance with the Applicable Laws of the Province of Ontario and Applicable Laws of Canada applicable therein, and shall be treated in all respects as an Ontario contract.

14.5 Submission to Jurisdiction. Each of the Parties:

- (a) submits to the exclusive jurisdiction of the courts of the Province of Ontario;
- (b) agrees that it will bring any Action in relation to this Agreement or any Transaction Document exclusively in the Superior Court of Justice sitting in Toronto, Ontario; and
- (c) shall, if any appointed agent is required, notify the other Parties in writing of the name and address of its appointed agent.

14.6 Entire Agreement. This Agreement and the documents and instruments to be executed and delivered under it constitute the entire agreement between the Parties and supersedes any previous

agreement or arrangement, oral or written, between the Parties. This Agreement and the documents and instruments to be executed and delivered under it, contain all the covenants, representations, and warranties of the respective Parties. There are no oral representations or warranties between the Parties of any kind. This Agreement may not be amended or modified in any respect except by written instrument signed by all of the Parties.

14.7 Severability. If any provision of this Agreement is or becomes illegal, invalid or unenforceable under the laws of any jurisdiction, that shall not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

14.8 Enurement. This Agreement shall enure to the benefit of and shall be binding upon the Parties and their respective heirs, executors, administrators, successors and assigns.

14.9 Further Assurances. From time to time after the Closing Date, each Party will, at the request of any other Party, execute and deliver such additional conveyances, transfers and other assurances as may be reasonably required to effect the transactions contemplated by this Agreement and carry out the intent of this Agreement.

14.10 Costs and Expenses. Except as specifically provided otherwise in this Agreement, each Party shall be responsible for its own legal fees and other costs and expenses incurred in connection with the transactions contemplated by this Agreement, all negotiations between the Parties and the consummation of the transactions contemplated by this Agreement.

14.11 Assignment. No Party to this Agreement shall assign its rights under this Agreement without the prior written consent of the other Parties.

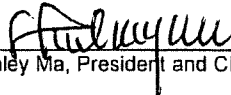
14.12 Counterparts. This Agreement may be executed in any number of counterparts and by different Parties on separate counterparts (which may be facsimile or email copies) but shall not take effect until each Party has executed at least one counterpart. Each counterpart, howsoever delivered, shall constitute an original and all counterparts, taken together, shall constitute a single agreement.

[Execution pages follow.]

TO EVIDENCE THEIR AGREEMENT, each of the parties has executed this Agreement as of the date first appearing above.

MTY FOOD GROUP INC.

Per:



Stanley Ma, President and CEO

I have authority to bind the corporation.

113 ACQUISITION CORP.

Per:



Stanley Ma, President and CEO

I have authority to bind the corporation.

MTY FRANCHISING USA, INC.

Per:



Stanley Ma, Chairman of the Board
and President

I have authority to bind the corporation.

KAHALA BRANDS, LTD.

Per:

Name:
Office:

And per:

Name:
Office:

We/I have authority to bind the corporation.

USKAL CORPORATION LLC

Per:

Name:
Office:

And per:

Name:
Office:

We/I have authority to bind the company.

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MTY FOOD GROUP INC.

Per:

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Per:

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I have authority to bind the corporation.

MTY FRANCHISING USA, INC.


Per:

Stanley Ma, Chairman of the Board
and President

I have authority to bind the corporation.

KAHALA BRANDS, LTD.

Per:



Name: MICHAEL SERRUYA
Office: Director


And per:

Name:
Office:

We/I have authority to bind the corporation.

USKAL CORPORATION LLC

Per:



Name: MICHAEL SERRUYA
Office: Director

And per:

Name:
Office:

We/I have authority to bind the company.


SIGNED, SEALED AND DELIVERED in the presence of:


(Signature)

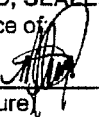
Simon SERRUYA
(Print Name)

210 Shields crt
(Address)

(Occupation)


MICHAEL SERRUYA

SIGNED, SEALED AND DELIVERED in the presence of:


(Signature)

MICHAEL SERRUYA
(Print Name)

210 Shields crt
(Address)

(Occupation)


SAM SERRUYA

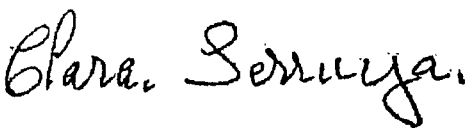
SIGNED, SEALED AND DELIVERED in the presence of:


(Signature)

MICHAEL SERRUYA
(Print Name)

210 Shields crt
(Address)

(Occupation)


CLARA SERRUYA

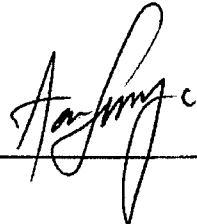
SIGNED, SEALED AND DELIVERED in the presence of:


(Signature)

MICHAEL SERRUYA
(Print Name)

210 Shields crt
(Address)

(Occupation)


AARON SERRUYA


SIGNED, SEALED AND DELIVERED in the presence of:


(Signature)

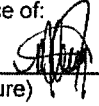
MICHAEL SERRUYA
(Print Name)

210 Shield crt.
(Address)

(Occupation)


SIMON SERRUYA


SIGNED, SEALED AND DELIVERED in the presence of:


(Signature)

MICHAEL SERRUYA
(Print Name)

210 Shields crt.
(Address)

(Occupation)


JACK SERRUYA

DRIH INC.
Per:

Name:
Office:

And per:

Name:
Office:

We/I have authority to bind the corporation.

**KAYLA FOODS INTERNATIONAL
(BARBADOS) INC.**
Per:

Name: *ARON SETHUJA*
Office: *DIRECTOR.*

And per:

Name:
Office:

We/I have authority to bind the corporation.

DRIH INC.

Per:



Name:

Office: PRESIDENT

And per:

Name:

Office:

We/I have authority to bind the corporation.

**KAYLA FOODS INTERNATIONAL
(BARBADOS) INC.**

Per:

Name:

Office:

And per:

Name:

Office:

We/I have authority to bind the corporation.