Offer To Purchase Shares

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This document is an Offer to Purchase Shares (the “Agreement”) and is effective [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "First Party"), a company organised and existing under the laws of the [STATE/PROVINCE] of [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "Second Party"), a company organised and existing under the laws of the [STATE/PROVINCE] of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

WHEREAS [COMPANY NAME] a company incorporated under [STATE/PROVINCE];

WHEREAS the authorised capital of [COMPANY NAME] consists of an unlimited number each of Class A shares, Class B Shares, Class C shares, Class E shares and Class F shares and of [NUMBER] Class D shares;

WHEREAS [SECOND PARTY NAME] wishes to purchase all but not less than all of the issued and outstanding shares of every class of [COMPANY NAME];

IN CONSIDERATION of the mutual covenants in this Agreement, and of other consideration (the receipt and sufficiency of which are acknowledged by each of [SECOND PARTY NAME] and [FIRST PARTY NAME], they agree as follows.

# INTERPRETATION

* 1. **Definitions**

In this Agreement,

“Accounts Receivable” means all accounts receivable of [COMPANY NAME] at the Closing Time;

“Accounting Records” means all of the books of account, accounting records and other financial data and information of [COMPANY NAME] and the Subsidiaries relating to the Business, including copies of filed Tax Returns and tax assessment notices for each of the fiscal years of [COMPANY NAME] and the Subsidiaries commencing on or after [DATE];

“Affiliate” has the meaning ascribed to such term by subsection 1(4) of the [COUNTRY] Business Corporations [ACT/LAW/RULE];

“Agreement” means this offer to purchase shares including all attached Appendices, as the same may be supplemented, amended, restated or replaced from time to time;

“Applicable law” means any domestic or foreign statute, [YOUR COUNTRY LAW], ordinance, regulation, by-law (zoning or otherwise) or Order that applies to [COMPANY NAME];

“Articles” means the respective articles of incorporation, amendment, continuance and amalgamation, as the case may be, of [COMPANY NAME] and each of the Subsidiaries;

“Assets” means all of the assets, real and personal, tangible and intangible, and undertaking of [COMPANY NAME], including those tangible assets listed in Appendix [SPECIFY];

“Benefit Plans” means all bonus, deferred compensation, incentive compensation, share purchase, share appreciation and share option, severance or termination pay, hospitalisation or other medical benefits, life or other insurance, dental, disability, salary continuation, vacations, supplemental unemployment benefits, profit-sharing, mortgage assistance, pension, retirement or supplemental retirement plan, program, agreement or arrangement, and each other employee benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by [COMPANY NAME] or any of the Subsidiaries for the benefit of any Employee thereof, whether or not insured or funded and whether formal or informal;

“Books and Records” means the Accounting Records and all books, records, books of account, sales and purchase records, lists of suppliers and customers, formulae, business reports and research and development information of [COMPANY NAME] and each of the Subsidiaries, including without limitation, all data and information stored electronically or on computer related media;

“Business” means the business carried on by [COMPANY NAME], one of the Subsidiaries of manufacturing, distributing, installing and servicing industrial air purification systems;

“Business Day” means a day other than a Saturday or Sunday, on which [COUNTRY] chartered banks are open for the transaction of domestic business in [STATE/PROVINCE], [STATE/PROVINCE];

“Closing” means the completion of the sale to, and purchase by, [SECOND PARTY NAME] of, the Shares and the completion of all other transactions contemplated by this Agreement which are to occur contemporaneously with the purchase and sale of the Shares;

“Closing Date” means [DATE], or such other Business Day as the parties agree in writing as the date that the Closing shall take place;

“Closing Document” means any document delivered at or subsequent to the Closing Time as provided in or pursuant to, this Agreement;

“Closing Time” means [HOUR] on the Closing Date or such other time on that date as the Parties agree in writing that the Closing shall take place;

“Collective Agreement” means any collective agreement, letters of understanding, letters of intent or other written communication with any trade union or association, which may qualify as a trade union, which would cover any Employees;

“Condition of the Business” means the state of the Assets, liabilities, operations and financial position of [COMPANY NAME] and the Subsidiaries;

“Contracts” means the contracts, agreements, licence agreements and other obligations of [COMPANY NAME] and the Subsidiaries relating to the Business listed on Schedule [SPECIFY];

“Convertible Security” means a security of a body corporate, which is convertible into, exchangeable for, or which carries a right or obligation to purchase, one or more shares or Voting Securities of such body corporate;

“Current Assets” at any time means the inventory, accounts receivable, cash and prepaid expenses of [COMPANY NAME] and the Subsidiaries at that time;

“Disposal” means any disposal by any means, including dumping, incineration, spraying, pumping, injecting, depositing or burying;

“Employees” means the employees of [COMPANY NAME] and the Subsidiaries on the Closing Date;

“Encumbrance” means any security interest, mortgage, lien, hypothec, pledge, hypothecation, assignment, charge, deemed trust, a voting trust or pooling agreement with respect to securities, an adverse claim or any other right or option, affecting the Assets or the Shares;

“Environmental [YOUR COUNTRY LAW]” means all national, provincial, municipal or local statutes, regulations, by-laws, or policies and Orders of any Governmental Authority, relating in whole or in part to the environment;

“Environmental Permits” includes all permits, certificates, approvals, consents, authorisations, registrations, and licences issued, granted, conferred, created or required by any Governmental Authority pursuant to any Environmental [YOUR COUNTRY LAW];

“Equipment” means all fixed assets and tangible personal property of [COMPANY NAME] and the Subsidiaries, including all equipment described in Schedule [SPECIFY] and all machines, machinery, trucks and other mobile equipment, fixtures, tools, moulds, jigs, dies, furniture, furnishings, vehicles, material handling equipment, typewriters, computers, photocopiers, office equipment, implements, tools and spare parts used by [COMPANY NAME] and the Subsidiaries in the Business;

“Equipment Leases” means the leases of personal property listed on Appendix [SPECIFY];

“Financial Statements” means (i) the audited consolidated financial statements of [COMPANY NAME] for the fiscal year ended [DATE], consisting of a balance sheet, statement of earnings and retained earnings, statement of changes in financial position, the notes thereto and the report of the auditor thereon, and (ii) the unaudited interim financial statements of [COMPANY NAME] for the five-month period from [DATE] to [DATE] inclusively, consisting of a balance sheet, statement of income and retained earnings, copies of which are attached as Appendix [SPECIFY];

“Generally Accepted Accounting Principles” means generally accepted accounting principles from time to time approved by the [COUNTRY] Institute of Chartered Accountants, or any successor institute, applicable as at the date on which any calculation or determination is required to be made in accordance with generally accepted accounting principles, and where the [COUNTRY] Institute of Chartered Accountants includes a recommendation in its Handbook concerning the treatment of any accounting matter, such recommendation shall be regarded as the only generally accepted accounting principle applicable to the circumstances that it covers;

“Governmental Authority” means any domestic or foreign government whether national, provincial or municipal and any governmental agency, governmental authority, governmental tribunal or governmental commission of any kind whatever;

“[TAX NUMBER]” means all goods and service taxes, sales taxes levied by the national government of [COUNTRY], value-added taxes or multistage taxes and all provincial sales taxes integrated with such national taxes, assessed, rated or charged upon [COMPANY NAME] or any of the Subsidiaries;

“Hazardous Substance” means any waste, hazardous substance, hazardous material, toxic substance, dangerous substance or dangerous goods as defined in any Environmental [YOUR COUNTRY LAW];

“including” means “including without limitation” and the term “including” should not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;

“Intellectual Property Rights” means all patents, trademarks, trade names, designs, graphics, logos and other commercial symbols of or relating to the Business, copyrights and industrial designs or similar rights of [COMPANY NAME] and the Subsidiaries, in each case whether registered or not, and including any pending applications for such registration, the whole as set forth in Appendix [SPECIFY], as well as all trade secrets and confidential information of [COMPANY NAME], all computer software owned by or licenced to [COMPANY NAME] and the Subsidiaries, and all know how of the Business, including without limitation all information of a scientific, technical or business nature whether in oral, written graphic, machine readable, electronic or physical form, and all patterns, plans, designs, research data, research plans, trade secrets and other proprietary knowhow, processes, formulas, drawings, technology, computer software and related manuals, unpatented blue prints, flow sheets, equipment and part lists, instructions, manuals, records and procedures;

“Inventory” means all inventories of raw materials, work in progress, stock in trade, finished goods, supplies, packaging and advertising and publicity materials of [COMPANY NAME] and the Subsidiaries, wherever located, and whether on consignment or not;

“Leases” means the leases or agreements in the nature of a lease of real property to which [COMPANY NAME] and the Subsidiaries, is a party which are listed in Appendix [SPECIFY], and “Leased Premises” means the lands and premises which are subject to the Leases;

“License” means any license, permit approval, right, privilege, concession or franchise issued, granted, conferred or otherwise created by a Governmental Authority;

“Order” means any order, judgment, injunction, decree, award or writ of any court, tribunal, arbitrator, Governmental Authority, or other Person having jurisdiction;

“ordinary course” when used *in re*lation to the conduct of the Business means any transaction which constitutes an ordinary day to day business activity of [COMPANY NAME] and the Subsidiaries conducted in a commercially reasonable and business-like manner consistent with [COMPANY NAME]’s past practices;

“Permitted Encumbrances” means:

1. inchoate or statutory liens for Taxes or utility rates or charges not at the time overdue;
2. inchoate or statutory liens for overdue Taxes or utility rates or charges the validity of which [COMPANY NAME] or the Subsidiaries is contesting in good faith but only for so long as such contestation effectively postpones enforcement of any such liens Taxes or utility rates or charges;
3. statutory liens incurred or deposits made in the ordinary course of the Business in connection with worker’s compensation, unemployment insurance and similar legislation;
4. liens and privileges arising out of any judgement  with respect to which [COMPANY NAME] or the Subsidiaries intends to prosecute an appeal or proceedings for review but only for so long as there is a stay of execution pending the determination of such appeal or proceedings for review;
5. security given by [COMPANY NAME] or the Subsidiaries to a public utility or any Governmental Authority when required in the ordinary course of the Business; and
6. construction or repair or storage liens arising in the ordinary course of the Business which are not overdue or which are being contested in good faith;

“Person” shall be broadly interpreted and includes an individual, body corporate, partnership, Joint venture, trust, association, unincorporated organisation, the Crown, any Governmental Authority or any other entity recognised by [YOUR COUNTRY LAW];

“Prime Rate” for any day means the rate of interest expressed as a rate per annum that the [SPECIFY] Bank establishes at its head office in [STATE/PROVINCE], [STATE/PROVINCE] as the reference rate of interest that it shall charge on that day for [COUNTRY] currency demand loans to its customers in [COUNTRY] and which it at present refers to as its prime rate;

“Purchase Price” means the purchase price to be paid by [SECOND PARTY NAME] for the Shares as provided in Section 2.2;

“Release” includes releasing, spilling, leaking, pumping, pouring emitting, emptying, discharging, injecting, migrating, escaping, leaching, disposing, dumping, depositing spraying, burying, abandoning, incinerating, seeping or placing, or any similar action defined in any Environmental [YOUR COUNTRY LAW];

“Rights” means any options rights, warrants or subscription privileges issued or granted by a body corporate (whether or not currently exercisable or exercisable on conditions) to purchase Voting Securities, Convertible Securities or shares of such body corporate;

“Shareholders” means each of the registered holders of shares in the capital stock of [COMPANY NAME], including without limitation, [FIRST PARTY NAME].

“Shares” means all of the issued and outstanding shares in the share capital of [COMPANY NAME];

“Taxes” means all taxes and similar governmental charges, including

1. [COUNTRY] national, provincial, municipal and local, foreign or other income, franchise, capital, real property, personal property, withholding, payroll, employer health, transfer, sales, use, excise, consumption, antidumping, countervail and value added taxes, all other taxes of any kind for which [COMPANY NAME] or the Subsidiaries may have any liability imposed by [COUNTRY] or any province, municipality, country or foreign government or subdivision or agency thereof, whether disputed or not;
2. assessments, charges, duties, fees, imposts, levies or other governmental charges and interest, penalties or additions associated therewith, and
3. all [COUNTRY] Pension Plan contributions and unemployment insurance premiums;

“Tax Returns” means all reports, returns and other documents filed or required to be filed by [COMPANY NAME] and the Subsidiaries *in re*spect of Taxes or *in re*spect of or pursuant to any domestic or foreign national, provincial, state, municipal, territorial or other taxing statute; and

“Voting Securities” means the common shares of a body corporate and all other securities of such body corporate of any kind or class having power to vote for the election of directors either under all circumstances or in certain circumstances or in certain events (whether such circumstances or events exist or have occurred).

* 1. **Statutes**

Unless specified otherwise, reference in this Agreement to a statute refers to that statute as it may be amended, or to any restated or successor legislation of comparable effect.

* 1. **Generally Accepted Accounting Principles**

All accounting and financial terms used herein, unless specifically provided to the contrary, shall be interpreted and applied in accordance with Generally Accepted Accounting Principles.

* 1. **Headings**

The division of this Agreement into articles, sections, subsections and appendices and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The article, section, subsection and appendix headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and are not to be considered part of this Agreement. All uses of the words “hereto”, “herein”, “hereof”, “hereby” and “hereunder” and similar expressions refer to this Agreement and not to any particular section or portion of it. References to an Article, Section, Subsection or Appendix refer to the applicable article, section, subsection or appendix of this Agreement.

* 1. **Number and Gender**

In this Agreement, words in the singular include the plural and *vice versa* and words in one gender include all genders.

* 1. **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, negotiations, discussions and understandings, written or oral, between the Parties *in re*spect of the purchase and sale of the Shares. There are no representations, warranties, conditions, other agreements or acknowledgements, whether direct or collateral, express or implied, that form part of or affect this Agreement, or which induced any party to enter into this Agreement or on which reliance is placed by any party, except as specifically set forth in this Agreement or in the Closing Documents.

* 1. **Amendment**

This Agreement may be amended, modified or supplemented only by a written agreement signed by each party.

* 1. **Waiver of Rights**

Any waiver of, or consent to depart from the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

* 1. **Appendices**

The following Appendices form part of this Agreement:

 Description of Appendix

 Fixed Assets, Machinery etc.

 Leases

 Equipment Leases

 Contracts

 Financial Statements

 List of Accounts Receivable

List of Bank Accounts

 Intellectual Property

Litigation

List of Directors and Officers

List of Employees and Collective Agreements

Pension Plans and Benefit Plans

 Environmental Permits

 Insurance Policies

Licenses and Other Permits

List of Customers and Suppliers

* 1. **Applicable Law**

This Agreement shall be governed by, and interpreted and enforced in accordance with, the [YOUR COUNTRY LAW] in force in the [STATE/PROVINCE] of [STATE/PROVINCE] (excluding any conflict of laws, rule or principle which might refer such interpretation to the [YOUR COUNTRY LAW] of another jurisdiction). Each party irrevocably submits to the non-exclusive jurisdiction of the courts of [STATE/PROVINCE] with respect to any matter arising hereunder or related hereto.

* 1. **Currency**

Unless specified otherwise, all statements of or references to Rand amounts in this Agreement are to lawful money of [COUNTRY].

* 1. **Tender**

Any tender of documents or money hereunder may be made upon the Parties or their respective counsel and money shall be tendered by official bank draught drawn upon a [COUNTRY] chartered bank.

* 1. **Performance on Holidays**

If any action is required to be taken pursuant to this Agreement on or by a specified date that is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

* 1. **Calculation of Time**

In this Agreement, a period of days shall be deemed to begin on the first day after the event, which began the period, and to end at [HOUR] ([STATE/PROVINCE] time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall terminate at [HOUR] ([STATE/PROVINCE] time) on the next Business Day.

* 1. **Third Party Beneficiaries**

Nothing in this Agreement or in any Closing Document is intended expressly or by implication to, or shall, confer upon any Person other than the Parties, any rights or remedies of any kind.

# PURCHASE AND SALE OF SHARES

* 1. **Purchase and Sale of Shares**

[SECOND PARTY NAME] agrees to purchase the Shares and [FIRST PARTY NAME] agrees to sell and transfer its Shares, and to cause the other Shareholders to sell and transfer their Shares, to [SECOND PARTY NAME] on the Closing Time and subject to the terms and conditions of this Agreement.

* 1. **Purchase Price**

The Purchase Price for the Shares is [AMOUNT], payable in full by bank draught or wire transfer of funds on Closing.

# REPRESENTATIONS AND WARRANTIES OF COMPANY NAME

[FIRST PARTY NAME] represents and warrants to [SECOND PARTY NAME] as set out in the following Subsections of this Section and acknowledges that [SECOND PARTY NAME] is relying upon such representations and warranties in entering into this Agreement. [SECOND PARTY NAME] acknowledges that the representations and warranties of [FIRST PARTY NAME] set forth in this Article [NUMBER] are qualified by the information disclosed in or referred to in this Agreement.

* 1. **Corporate Matters**
		1. [COMPANY NAME] is a company amalgamated and existing under the laws of [STATE/PROVINCE], and no proceedings have been taken or authorised by [COMPANY NAME] with respect to (i) the bankruptcy, insolvency, liquidation, dissolution or winding up of [COMPANY NAME] or any of the Subsidiaries, or (ii) with respect to any amalgamation, merger, consolidation, arrangement or reorganisation relating to [COMPANY NAME] or any of the Subsidiaries.
		2. [COMPANY NAME] has no subsidiaries other than [COMPANY NAME], [COMPANY NAME] and [COMPANY NAME], each being a company incorporated under the [COUNTRY] Business Companys [ACT/LAW/RULE], and each wholly-owned by [COMPANY NAME] (collectively, the “Subsidiaries”). All of the issued and outstanding shares of the Subsidiaries are held by [COMPANY NAME], except for [NUMBER] preferred share of [COMPANY NAME] held by [COMPANY NAME], in each case by good and marketable title, free and clear of all Encumbrances.
		3. Each of [COMPANY NAME] and its Subsidiaries has the company power and authority to own or lease its Assets and to carry on its business as at present carried on. Each of [COMPANY NAME] and the Subsidiaries possesses all licences material to the conduct of its business and such licences are listed on Appendix [SPECIFY]. Neither the nature of the Business nor the location or character of any of the Assets requires [COMPANY NAME] or the Subsidiaries to be registered, licenced or otherwise qualified as an extra provincial or foreign company or to be in good standing in any jurisdiction other than jurisdictions where it is duly registered, licenced or otherwise qualified and in good standing for such purpose.
		4. This Agreement has been duly executed and delivered by [FIRST PARTY NAME] and constitutes a valid and binding obligation of [FIRST PARTY NAME] enforceable against [FIRST PARTY NAME] in accordance with its terms.
		5. A true copy of the Articles and all by-laws of each of [COMPANY NAME] and the Subsidiaries, which constitute all of their respective constating documents and by-laws, shall have been delivered to [SECOND PARTY NAME] by [FIRST PARTY NAME] not less than [NUMBER] Business Days prior to Closing Date.
		6. The company records of each of [COMPANY NAME] and the Subsidiaries contain complete and accurate:
1. minutes of all meetings of the directors, any committee thereof and the shareholders of each of [COMPANY NAME] and the Subsidiaries since their respect dates of incorporation;
2. originals of all resolutions of the directors, any committee thereof and the shareholders of each of [COMPANY NAME] and the Subsidiaries passed by signature in writing since their respective incorporation; and
3. all waivers, notices and other documents required by [YOUR COUNTRY LAW] to be contained therein; and reflect all actions taken and resolutions passed by the directors and shareholders of each of [COMPANY NAME] and the Subsidiaries since their respective incorporation. All resolutions contained in such records have been duly passed and all such meetings have been duly called and held.
4. The share certificate books, register of shareholders, register of transfer and registers of directors of each of [COMPANY NAME] and the Subsidiaries are complete and accurate.
	* 1. The list of officers and directors in Appendix [SPECIFY] constitutes a complete and accurate list of all officers and directors of the members of each of [COMPANY NAME] and the Subsidiaries on the Closing Date.
	1. **Authorised and Issued Capital of [COMPANY NAME] and the Subsidiaries**

The authorised capital and the issued and outstanding shares of each of [COMPANY NAME] and the Subsidiaries immediately prior to the Closing are as described in the preamble hereto, all of which shares have been validly issued and are outstanding as fully paid and non-assessable shares.

* 1. **Title to Shares**

Each of the Shareholders shall have and shall have had good and marketable title to the Shares registered in his, her or its name (as the case may be), free and clear of all Encumbrances. The Shares shall constitute all of the issued and outstanding shares of [COMPANY NAME]. There shall be no restrictions on the transfer of the Shares except those set forth in [COMPANY NAME]’s Articles.

* 1. **No Options**

No Person, other than [SECOND PARTY NAME], has any oral or written agreement, option, warrant right, privilege or any other right capable of becoming any of the foregoing (whether legal, equitable, contractual or otherwise), for the purchase, subscription or issuance of any unissued shares, Voting Securities, Convertible Securities or Rights of [COMPANY NAME] or any of the Subsidiaries.

* 1. **Absence of Conflicting Agreements**

None of the execution and delivery of, or the observance and performance by [FIRST PARTY NAME] of, any covenant or obligation under this Agreement or pursuant to or in connection with the Closing:

* + 1. contravenes or results in, or will contravene or result in, a violation of or a default under (with or without the giving of notice or lapse of time, or both) or in the acceleration of any obligation under:
1. the articles, by-laws, directors or shareholders resolutions of [COMPANY NAME] or the Subsidiaries; or
2. the provisions of any agreement, Lease, mortgage, security document, obligation or instrument to which [COMPANY NAME] or any of the Subsidiaries is a party, or by which it or its Assets may be bound or affected;
	* 1. results in the creation or imposition of any Encumbrance on [COMPANY NAME] or any of the Subsidiaries, the Shares or any of the Assets.
	1. **Consents, Approvals**

No consent, approval, authorisation, registration, declaration or filing with any Governmental Authority is required by the Sellers or [COMPANY NAME] in connection with the execution and delivery by [FIRST PARTY NAME] of this Agreement, or the observance and performance by [FIRST PARTY NAME] of its obligations under this Agreement.

* 1. **Financial Statements**

The Financial Statements have been prepared in accordance with Generally Accepted Accounting Principles, applied on a basis consistent with that of the preceding periods, and present fairly the assets, liabilities (whether accrued, absolute, contingent or otherwise) and financial condition of [COMPANY NAME] and each of the Subsidiaries and the results of the operations of [COMPANY NAME] and each of the Subsidiaries, as at the dates thereof and for the periods covered thereby. No information has become available to [FIRST PARTY NAME] or [COMPANY NAME] that would render the Financial Statements materially and adversely incomplete or inaccurate.

* 1. **Accounts Receivable**

Appendix [SPECIFY] contains a true and accurate list of the Accounts Receivable, including without limitation the dates and the amounts thereof. None of the Accounts Receivable is more than [NUMBER] days old.

* 1. **Undisclosed Liabilities**

Neither [COMPANY NAME] nor any of the Subsidiaries has any material liabilities except liabilities disclosed or provided for in the Financial Statements and liabilities incurred in the ordinary course of business since [DATE], which are consistent with past practice, are not, in the aggregate, material and adverse to [COMPANY NAME] or the Shares, or to the Condition of the Business and do not materially violate any covenant contained in this Agreement or constitute a material breach of any representation or warranty made in or pursuant to this Agreement.

* 1. **Absence of Changes. Since [DATE]:**
		1. Each of [COMPANY NAME] and the Subsidiaries has conducted the Business in the ordinary course and has used its best efforts to preserve the Business and the Assets;
		2. there has not been any change in the Condition of the Business other than changes in the ordinary course of business and such changes have not, either individually or in the aggregate, been materially adverse and have not had a material adverse effect on the Condition of the Business;

3.10.3 there has not been any damage, destruction, loss, labour dispute or other event, development or condition of any character (whether or not covered by insurance), which has had a material adverse affect on [COMPANY NAME]. The Subsidiaries or the Condition of the Business; and

3.10.4 there has not been any change in the accounting principles, policies, practises or procedures of [COMPANY NAME] and the Subsidiaries or their application to [COMPANY NAME] and the Subsidiaries.

* 1. **Absence of Unusual Transactions**

Since [DATE], neither [COMPANY NAME] nor the Subsidiaries has, other than in the ordinary course of business:

* 1. transferred, assigned, sold or otherwise disposed of any of the Assets;
	2. incurred or assumed any obligation or liability (fixed or contingent);
	3. made any material change in the method of billing customers or the credit terms made available by the Business to customers;
	4. made any material change with respect to any method of management operation or accounting *in re*spect of the Business;
	5. increased the compensation paid or payable to the Employees or increased the benefits to which such employees are entitled under any Benefit Plan or created any new Benefit Plan for any such Employees;
	6. modified, amended or terminated any material Contract to which it is or was a party;
	7. incurred any debt, liability or obligation for borrowed money, or incurred any other debt, liability or obligation;
	8. issued or sold any of its shares or other securities or issued, granted or delivered any right, option or other commitment for the issuance of any such securities;
	9. declared or paid any dividend or other distribution *in re*spect of any shares in its capital or purchased or redeemed any such shares;
	10. entered into or become bound by any written contract, agreement or arrangement; or
	11. modified, amended or terminated any contract, agreement or arrangement to which it is or was a party, or waived or released any right which it has or had.
	12. **Tax Matters**

[COMPANY NAME] and each of the Subsidiaries has prepared and filed all its Tax Returns on time and with all appropriate Governmental Authorities for all fiscal periods ending prior to the date hereof. Each such Tax Return was correct and complete in all material respects. [COMPANY NAME] and each of the Subsidiaries has paid all Taxes due and payable by it as reflected on its Tax Returns and has paid all assessments and reassessments it has received *in re*spect of Taxes. The provisions for Taxes reflected in the Financial Statements are sufficient to cover all liabilities for Taxes that have been assessed against [COMPANY NAME] and each of the Subsidiaries or that are accruing due *in re*spect of the Business, its operations and property during the periods covered by the Financial Statements and all prior periods. Except to the extent provided for in the Financial Statements, none of [COMPANY NAME] or the Subsidiaries is liable for any Taxes at the date hereof or for the payment of any instalment *in re*spect of Taxes due *in re*spect of its current taxation year and, except as aforesaid, no such Taxes are required to be provided for.

There are no reassessments of Taxes that have been issued and are outstanding and [COMPANY NAME] is not aware of any pending or threatened assessment or reassessment for Taxes. None of [COMPANY NAME] or the Subsidiaries has executed or filed with any Governmental Authority any agreement extending the period for assessment, reassessment or collection of any Taxes. Assessments under the [COUNTRY] Income Tax [ACT/LAW/RULE] and the Tax [ACT/LAW/RULE] ([STATE/PROVINCE]) have been made with respect to [COMPANY NAME] and each of the Subsidiaries covering all past periods through the fiscal year ended.

[COMPANY NAME] and each of the Subsidiaries has withheld from each payment made to any of its present or former employees, officers and directors and to all persons who are non-residents of [COUNTRY] for the purposes of the [COUNTRY] Income Tax [ACT/LAW/RULE] all amounts required by [YOUR COUNTRY LAW] and has remitted such withheld amounts within the prescribed periods to the appropriate Governmental Authority. [COMPANY NAME] and each of the Subsidiaries has remitted all [COUNTRY] Pension Plan contributions, unemployment insurance premiums, employer health taxes and other Taxes payable by it *in re*spect of its employees and has or will have remitted such amounts to the proper Governmental Authority within the time required by Applicable [YOUR COUNTRY LAW]. [COMPANY NAME] and each of the Subsidiaries has charged, collected and remitted on a timely basis all Taxes as required by [YOUR COUNTRY LAW] Applicable Law on any sale, supply or delivery whatsoever, made by [COMPANY NAME] and each of the Subsidiaries.

[FIRST PARTY NAME] is not a non-resident of [COUNTRY], as defined in the [COUNTRY] Income Tax [ACT/LAW/RULE]. [COMPANY NAME] and each of the Subsidiaries is a [COUNTRY] controlled private company, as defined in the [COUNTRY] Income Tax [ACT/LAW/RULE], and is a registrant for the purposes of the goods and services tax provided for under the [YOUR COUNTRY ACT/LAW/RULE] and their registration numbers are: [NUMBER].

* 1. **Contracts**

Except for the Contracts, Leases and the Equipment Leases, neither [COMPANY NAME] nor the Subsidiaries is a party to or bound by any material contract, agreement, lease or commitment, whether oral or written. True and correct copies of the Contracts, Leases and Equipment Leases are appended hereto as Appendices [SPECIFY]. The Contracts are all in full force and effect with no amendments. Each of [COMPANY NAME] and the Subsidiaries has complied with all material terms thereof, has paid all amounts due thereunder, has not waived any material rights thereunder and no material default or breach exists *in re*spect thereof on the part of any of the parties thereto and no event has occurred which, after the giving of notice or the lapse of time or both, would constitute such a material default or breach.

* 1. **Bank Accounts; Absence of Guarantees**

Attached as Appendix [SPECIFY] hereto is a list of all accounts maintained by [COMPANY NAME] and the Subsidiaries with any financial institution as well as the complete list of the names of persons exercising signing authority thereunder and details as to their respective signing authority thereunder. Neither [COMPANY NAME] nor the Subsidiaries has given or agreed to give, or is a party to or bound by, any guarantee of indebtedness or other obligations of third parties or any other commitment by which [COMPANY NAME] or any of the Subsidiaries is, or is contingently, responsible for such indebtedness or other obligations.

* 1. **Restrictions on Business**

Neither [COMPANY NAME] nor the Subsidiaries is a party to any agreement, lease, mortgage, security document, obligation or instrument, or subject to any restriction in the Articles, its by-laws or its directors’ or shareholders’ resolutions or subject to any restriction imposed by any Governmental Authority which could materially restrict or interfere with the conduct of the Business or the use of its Assets, other than statutory provisions and restrictions of general application to the Business.

* 1. **Compliance with Applicable Law**

Each of [COMPANY NAME] and the Subsidiaries has conducted and is conducting its business in compliance with all material Applicable [YOUR COUNTRY LAW], and not in breach of any material provision of any Applicable [YOUR COUNTRY LAW], except for breaches which in the aggregate are not material.

* 1. **Employees.**

Appendix [SPECIFY] contains:

* + 1. the names and titles of all Employees of each of [COMPANY NAME] and the Subsidiaries together with the name of their employer and the location of their employment;
		2. the date each Employee was hired;
		3. a list of all written employment contracts between each of [COMPANY NAME] and the Subsidiaries and the Employees; and
		4. the rate of annual remuneration of each Employee at the date hereof and any bonuses paid since the end of the last completed financial year.

No Employee is employed under a contract which cannot be terminated by [COMPANY NAME] or the Subsidiaries with or without notice, except for those Employees who are employed on indefinite hires requiring reasonable notice of termination by Applicable Law. Each of [COMPANY NAME] and the Subsidiaries is in compliance with all pay equity legislation applicable to the Business and the Employees.

* 1. **Collective Agreements**

Neither [COMPANY NAME] nor the Subsidiaries is a party, either directly or by operation of law, to any Collective Agreement. No trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, or successor rights. To the knowledge of [FIRST PARTY NAME], there are no threatened or pending union organising activities involving the Employees. Neither [COMPANY NAME] nor the Subsidiaries has any serious labour problems that might materially adversely affect the operations of the Business or lead to an interruption of operations.

* 1. **Benefit Plans**

All Benefit Plans are listed in Appendix [SPECIFY] together with all compensation policies and practises applicable to Employees or dependent or independent contractors of [COMPANY NAME] or the Subsidiaries. All the pension plans, retirement plans and supplementary retirement plans, which are part of the Benefit Plans, are and shall be on the Closing Date fully funded on a funding and on a solvency basis. Except in the ordinary course of business or as required by law and consistent with their past practices, there have been no material changes in the Benefit Plans of the Employees since [DATE] and neither [COMPANY NAME] nor the Subsidiaries has agreed or otherwise become committed to change any of the foregoing since that date. All of the Benefit Plans are duly registered where required (including registration with the relevant tax authorities where such registration is required to qualify for tax exemption or other beneficial tax status) and are in good standing under all applicable legislation and administrative guidelines issued by the regulatory authorities. Except as disclosed in Appendix [SPECIFY], there are no multi-employer pension plans or multi-employer benefit plans provided for the Employees to which [COMPANY NAME] or the Subsidiaries is required to contribute.

* 1. **Litigation**

There is no material claim, demand, suit, action, cause of action, litigation, investigation, grievance, arbitration or governmental proceeding, including appeals and applications for review, in progress against, by or relating to [COMPANY NAME] or the Subsidiaries, or adversely affecting the Shares, the Assets or the Business, nor to the best of the knowledge of [FIRST PARTY NAME] are any of the same pending or threatened. There is not at present outstanding against [COMPANY NAME] or the Subsidiaries, any Order that materially and adversely affects [COMPANY NAME], the Subsidiaries, the Business or the Assets.

* 1. **Insurance**

Each of [COMPANY NAME] and the Subsidiaries is 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 comparable businesses, properties and assets, and such insurance coverage will be continued in full force and effect to and including the Closing Date. Appendix [SPECIFY] is a true and complete list of all insurance policies (specifying the insured, the amount of coverage, the type of insurance, the policy number and any pending claims thereunder) maintained by [COMPANY NAME] or the Subsidiaries *in re*spect of the Assets and the Business as of the date hereof. Neither [COMPANY NAME] nor 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 [COMPANY NAME] nor 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 policies of insurance are in full force and effect and neither [COMPANY NAME] nor the Subsidiaries is in material default, whether as to the payment of premium or otherwise, under the terms of any such policy.

* 1. **Assets**

Except for Permitted Encumbrances and as disclosed in the Financial Statements or elsewhere in this Agreement, each of [COMPANY NAME] and the Subsidiaries has good and marketable title to all of its Assets free and clear of all Encumbrances. Those Assets listed in the Appendices are accurately described in the Appendices and constitute all of the Assets owned by or licenced to [COMPANY NAME] and the Subsidiaries which are material to the operation of the Business as it has been operated by [COMPANY NAME] and the Subsidiaries in the ordinary course in the past. All material tangible Assets are in working condition.

* 1. **Intellectual Property Rights**

Schedule [SPECIFY] sets forth a true and complete list of all Intellectual Property Rights. The Intellectual Property Rights are owned by or validly licenced to [COMPANY NAME] or the Subsidiaries. All registrations and filings necessary to preserve the rights of [COMPANY NAME] or the Subsidiaries in and to the Intellectual Property Rights have been made. [FIRST PARTY NAME] is not aware of any material infringement of, material passing-off related to, or other material interference with the Intellectual Property Rights by third parties or any claim by any Person that any of the Intellectual Property Rights are, or may be, invalid or unenforceable. Neither [COMPANY NAME] nor the Subsidiaries is a party to any claim, or subject to any liability, contingent or otherwise, for trademark, trade name, industrial design, patent or copyright infringements as to any products manufactured, produced, used or sold by [COMPANY NAME] or the Subsidiaries, either as plaintiff or as defendant or any other claims or liability relating to trademarks, trade names, industrial designs, patents or copyrights owned or licenced by [COMPANY NAME] or the Subsidiaries.

* 1. **Environmental Matters.**

Each of [COMPANY NAME] and the Subsidiaries possesses all Environmental Permits necessary or desirable to operate its business, all of which are listed on Schedule [SPECIFY], and all of which are in full force and effect, have been complied with in all material respects. There are no proceedings in progress, or to the knowledge of [FIRST PARTY NAME], [COMPANY NAME] or the Subsidiaries pending or threatened, which may result in the cancellation, revocation, suspension, or modification of any Environmental Permit. Neither the Subsidiaries nor [COMPANY NAME] has been charged with or convicted of an offence for non-compliance with or breach of any [YOUR COUNTRY] Environmental [ACT/LAW/RULE] nor have the Subsidiaries or [COMPANY NAME] been fined or otherwise sentenced for non-compliance with or breach of any [YOUR COUNTRY] Environmental [ACT/LAW/RULE], and neither the Subsidiaries nor [COMPANY NAME] is under investigation related to any breach or alleged breach of or non-compliance with any [YOUR COUNTRY] Environmental [ACT/LAW/RULE].

Each of [COMPANY NAME] and the Subsidiaries has maintained all documents and records concerning environmental matters in the manner and for the time periods required by applicable Environmental Laws, and copies thereof have been provided to [SECOND PARTY NAME]. Each of [COMPANY NAME] and the Subsidiaries has provided all material reports and information to the appropriate Governmental Authority as required by such Governmental Authority pursuant to all applicable Environmental Laws and the Environmental Permits.

Except as permitted by applicable Environmental Laws or the Environmental Permits, neither [COMPANY NAME] nor the Subsidiaries has caused or permitted any material Release or Disposal of any Hazardous Substance on, from, under or to the Premises or of any material Release or Disposal from a facility owned or operated by any other Person for which [COMPANY NAME] or the Subsidiaries may have liability. All Hazardous Substances generated, handled, stored, treated, processed, transported or disposed of by or on behalf of [COMPANY NAME] or the Subsidiaries have been generated, handled, stored, treated, processed, transported or disposed of in all material respects, in compliance with applicable Environmental Laws and the Environmental Permits. No polychlorinated biphenyls, asbestos, asbestos containing materials or radio-active substances is on or at the Land or forms part of the Assets.

* 1. **Occupational Health and Safety**

There are no outstanding inspection orders made under [YOUR COUNTRY] Occupational Health and Safety [ACT/LAW/RULE]. There are no materials on the Premises which are designated substances under the [YOUR COUNTRY] Occupational Health and Safety [ACT/LAW/RULE]. The Business complies with all occupational health and safety rules and regulations in all material respects and there are no outstanding material violations of such rules and regulations.

* 1. **Workers’ Compensation**

There are no notices of assessment, provisional assessment, reassessment, supplementary assessment, penalty assessment or increased assessment (collectively, “assessments”) or any other communications related thereto which [COMPANY NAME] or the Subsidiaries has received from any workers’ compensation board or similar authorities in any jurisdictions where the Business is carried on and there are no assessments which are unpaid on the date hereof or which will be unpaid at the Closing Time.

* 1. **Immovable Leases**

Appendix [SPECIFY] sets forth a true and complete list of the immovable leases and rights of occupancy used in connection with the Business. Each of the Leases is unamended and in full force and effect. All payments required to be paid by [COMPANY NAME] or the Subsidiaries pursuant to the Leases have been paid when due and neither [COMPANY NAME] nor the Subsidiaries is otherwise in material default in meeting its obligations under any of the Leases. No event exists which, but for the passing of time or the giving of notice, or both, would constitute a material default by any party to any of the Leases.

* 1. **No Expropriation**

Neither [COMPANY NAME] nor the Subsidiaries has received any notice of expropriation of all or any of the Assets and [FIRST PARTY NAME] is not aware of any expropriation proceeding pending or threatened against or affecting the Assets nor of any discussions or negotiations which could lead to any such expropriation.

* 1. **Major Suppliers and Customers**

[COMPANY NAME] and the Subsidiaries have disclosed to [SECOND PARTY NAME] on Appendix [SPECIFY], a complete list of their customers and suppliers, arranged in each case by value. To the knowledge of [FIRST PARTY NAME], no such supplier or customer has any intention to change its relationship or any material terms upon which it will conduct business with [COMPANY NAME] or the Subsidiaries. There has been no material interruption to or discontinuity in any customer or supplier arrangements or relationships referred to in this Section. No customers of [COMPANY NAME] or the Subsidiaries are entitled to or customarily receive discounts, allowances, volume rebates or similar reductions except those that are consistent with industry practice.

* 1. **Business in Compliance with Law**

The operations of [COMPANY NAME], the Subsidiaries and the Business are conducted in all material respects, in compliance with all Applicable Laws of each jurisdiction in which the Business has been and is carried on except for breaches which are in the aggregate immaterial, and none of [FIRST PARTY NAME], [COMPANY NAME] or the Subsidiaries have received any notice of any alleged material breach of any material Applicable Law.

* 1. **Equipment Leases**

Appendix [SPECIFY] sets forth a true and complete list of all Equipment Leases. All of the Equipment Leases are in full force and effect and no material default exists on the part of [COMPANY NAME] or the Subsidiaries, or, to the knowledge of [FIRST PARTY NAME], on the part of any of the other parties thereto. All payments due under the Equipment Leases have been duly and punctually paid and all material obligations to be discharged or performed under the Equipment Leases have been fully discharged and performed in accordance with the terms of the Equipment Leases.

* 1. **Licenses**

The only licences necessary or desirable for the operation of the Business and the ownership of the Assets are listed in Appendix [SPECIFY] and are in full force and effect unamended. Each of [COMPANY NAME] and the Subsidiaries is in compliance in all material respects with all provisions of the licences and there are no proceedings in progress, or to the best of the knowledge of [FIRST PARTY NAME], pending or threatened, which may result *in re*vocation, cancellation, suspension or any adverse modification of any of the Licenses.

# REPRESENTATIONS AND WARRANTIES OF [SECOND PARTY NAME]

[SECOND PARTY NAME] hereby represents and warrants to [FIRST PARTY NAME] as set out in the following Subsections of this Section and acknowledges that [FIRST PARTY NAME] is relying upon such representations and warranties in entering into this Agreement. [FIRST PARTY NAME] acknowledges that the representations and warranties of [SECOND PARTY NAME] set forth in this Article [SPECIFY] are qualified by the information disclosed in or referred to in this Agreement.

* 1. **Corporate Matters**

[SECOND PARTY NAME] is a company duly incorporated, organised, and validly existing in good standing under the [YOUR COUNTRY LAW] of its jurisdiction of incorporation. No proceedings have been taken or authorised by [SECOND PARTY NAME] or, to the best of [SECOND PARTY NAME]’s knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of [SECOND PARTY NAME].

* 1. **Company Power and Due Authorisation**

[SECOND PARTY NAME] has the company power and capacity to execute and deliver, and to observe and perform its covenants and obligations under, this Agreement. [SECOND PARTY NAME] has taken all corporate action necessary to authorise the execution and delivery of, and the observance and performance of its covenants and obligations under this Agreement.

* 1. **Absence of Conflicting Agreements**

None of the execution and delivery of, or the observance and performance by [SECOND PARTY NAME] of, any covenant or obligation under this Agreement contravenes or results in (with or without the giving of notice or lapse of time, or both) or will contravene or violate in any material respect or result in any material breach or default of, or acceleration of any obligation under the articles, by-laws, directors’ or shareholders’ resolutions of [SECOND PARTY NAME], or any agreement, lease, mortgage, security document, obligation or instrument to which [SECOND PARTY NAME] is a party or by which [SECOND PARTY NAME] or its assets is affected or bound.

* 1. **Enforceability of Obligations**

This Agreement has been duly executed and delivered by [SECOND PARTY NAME], and this Agreement constitutes a valid and binding obligation of [SECOND PARTY NAME] enforceable against [SECOND PARTY NAME] in accordance with its terms.

* 1. **Consents and Approvals**

[Except for the notice to Investment [COUNTRY] to be filed by [SECOND PARTY NAME] no consent, approval, authorisation, registration, declaration or filing with any Governmental Authority is required by [SECOND PARTY NAME] in connection with the execution and delivery by [SECOND PARTY NAME] of this Agreement, or the observance and performance by [SECOND PARTY NAME] of its obligations under this Agreement.

# SURVIVAL OF REPRESENTATIONS AND WARRANTIES

* 1. **Survival of Representations and Warranties of Sellers**

All representations and warranties made by [FIRST PARTY NAME] in this Agreement shall survive the Closing for a period of [NUMBER] years after the Closing Date except for

* + 1. the representations and warranties set forth in each of Sections 3.1, 3.2 and 3.3, which shall survive without time limit;
		2. the environmental representation and warranty set forth in Section 3.24, which shall survive for a period of [NUMBER] years after the Closing Date; and
		3. the tax representation and warranty set forth in Section 3.12, which shall survive until the expiry of the last day upon which any Governmental Authority may, in the absence of fraud or any misrepresentation that is attributable to neglect, carelessness or wilful default, issue an assessment for Taxes owing by [COMPANY NAME] *in re*spect of a period ending on or prior to the Effective Time.

After the expiration of such time periods, [FIRST PARTY NAME] shall have no further liability hereunder with respect to such representations and warranties except with respect to claims properly made within such time periods.

* 1. **Survival of Representations and Warranties of Buyer**

All representations and warranties made by [SECOND PARTY NAME] in this Agreement shall survive the Closing for a period of [NUMBER] years after the Closing Date. After such period, [SECOND PARTY NAME] shall have no further liability hereunder with respect to such representations and warranties except with respect to claims properly made within such period.

# INDEMNIFICATION

* 1. **Indemnification for Breaches of Representations and Warranties**

[FIRST PARTY NAME] agrees with [SECOND PARTY NAME] and [SECOND PARTY NAME] agrees with [FIRST PARTY NAME] (the party agreeing to indemnify another party being called the “Indemnifying Party” and the party to be indemnified being called the “Indemnified Party”) to indemnify and save harmless the Indemnified Party, effective as and from the Closing Time, from and against any Claims which may be made or brought against the Indemnified Party or which it may suffer or incur as a result of, *in re*spect of, or arising out of any non-fulfilment of any covenant or agreement on the part of the Indemnifying Party under this Agreement or any closing document or any incorrectness in or breach of any representation or warranty of the Indemnifying Party contained herein or in any closing document.

Any amount which an Indemnifying Party is liable to pay to an Indemnified Party pursuant to this Section 6.1 shall bear interest at a rate per annum equal to the Prime Rate, calculated and payable monthly, both before and after judgment, with interest on overdue interest at the same rate, from the date the Indemnified Party disbursed funds, suffered damages or losses or incurred a loss, liability or expense *in re*spect of a Claim, to the date of payment by the Indemnifying Party to the Indemnified Party. Any amount which an Indemnifying Party is required to pay to an Indemnified Party pursuant to this Section 6.1 (including interest thereon) is called an “Indemnified Loss”. The foregoing obligation of indemnification *in re*spect of such Claims shall be subject to the time limitation set forth in Sections 5.1 and 5.2 hereof respecting the survival of the representations and warranties of the parties.

* 1. **Third Party Claims**

If a Claim is made against an Indemnified Party by a third party for which the Indemnified Party may be entitled to indemnification under Section 6.1, the Indemnified Party shall give notice (the “Indemnity Notice”) to the Indemnifying Party specifying the particulars of such claim within [NUMBER] days after it receives notification of the Claim. Failure to give such notice within such time period shall not prejudice the rights of an Indemnified Party except to the extent that the failure to give such notice materially adversely affects the ability of the Indemnifying Party to defend the Claim or to cure the breach or incorrectness of the representation, warranty, covenant or agreement giving rise to the Claim. The Indemnifying Party shall have the right to participate in any negotiations or proceedings with respect to such Claim at its own expense. The Indemnified Party shall not settle or compromise any such Claim without the prior written consent of the Indemnifying Party, unless the Indemnifying Party has not, within seven Business Days after the giving of the Indemnity Notice, given notice to the Indemnified Party that it wishes to dispute such Claim.

If the Indemnifying Party does give such a notice, it shall have the right at its own cost and expense to assume the defence of such Claim and to defend such Claim in the name of the Indemnified Party. The Indemnified Party shall provide to the Indemnifying Party access to all files, books, records and other information in its possession or control, which may be relevant to the defence of such Claim. The Indemnified Party shall co-operate in all reasonable respects in the defence of such Claim but at the expense of the Indemnifying Party. If the Indemnifying Party fails, after the giving of such notice, diligently and reasonably to defend such Claim throughout the period that such Claim exists, its right to defend the Claim shall terminate and the Indemnified Party may assume the defence of such Claim at the sole expense of the Indemnifying Party. In such event, the Indemnified Party may compromise or settle such Claim, without the consent of the Indemnifying Party.

# CONDITIONS PRECEDENT TO CLOSING

* 1. **Conditions for the benefit of [COMPANY NAME]**

The sale by the Shareholders and the purchase by [SECOND PARTY NAME] of the Shares is subject to the following conditions, which are for the exclusive benefit of [SECOND PARTY NAME] and which are to be performed or complied with at or prior to the Closing Time:

* + 1. [FIRST PARTY NAME] shall have performed or complied with all of the covenants contained in this Agreement to be performed or complied with by [FIRST PARTY NAME] at or prior to the Closing Time;
		2. [SECOND PARTY NAME] shall have completed its due diligence review of the Seller, [COMPANY NAME] and the Subsidiaries in accordance with Section 7.3 hereof and be satisfied with the results thereof. The representations, warranties, covenants and agreements set forth in this Agreement shall survive the closing notwithstanding any examination made by or on behalf of [SECOND PARTY NAME] or any knowledge of any of its agents or the acceptance by [SECOND PARTY NAME] of any certificate;
		3. the Shareholders, other than [FIRST PARTY NAME], shall have executed an agreement with [SECOND PARTY NAME] and [FIRST PARTY NAME] undertaking to sell their Shares to [SECOND PARTY NAME] upon the terms and conditions herein contained;
		4. the indebtedness of [COMPANY NAME] to [FIRST PARTY NAME] in the amount of [AMOUNT], as well as any other indebtedness owing to [COMPANY NAME] by any director, officer or shareholder of [COMPANY NAME] or any of the Subsidiaries or owing by [COMPANY NAME] to any such Person, shall be reimbursed in full, including without limitation as to principal, interest, fees and penalties (if any), at or before the Closing;
		5. no action or proceeding in [COUNTRY] will be pending or threatened by any person or Governmental Agency to enjoin, restrict or prohibit the sale and purchase of the Shares contemplated hereby;
		6. all consents, approvals, Orders and authorisations of any Person or Governmental Authorities (or registrations, declarations, filings or recordings with any of them), required for the Closing (other than routine post closing notifications or filings), shall have been obtained or made on or before the Closing Time;
		7. no material adverse change shall have occurred since [DATE] with respect to the Condition of the Business and [SECOND PARTY NAME] shall have received immediately prior to Closing a certificate from a senior officer of [FIRST PARTY NAME] certifying that this condition has been satisfied;
		8. no court order shall have been entered that prohibits or restricts the Closing. None of the Parties (including [SECOND PARTY NAME]), nor any of their respective directors, officers, employees or agents, shall be a defendant or third party to or threatened with any litigation or proceedings before any court or Governmental Authority which, in the opinion of [SECOND PARTY NAME], acting reasonably, could prevent or restrict that party from performing any of its obligations in any Closing Document;
		9. all documentation relating to the sale and purchase of the Shares including the Closing Documents relating to the due authorization and completion of such sale and purchase and all actions and proceedings taken on or prior to the Closing in connection with the performance by [FIRST PARTY NAME] of its obligations under this Agreement shall be satisfactory to [SECOND PARTY NAME] and its counsel, acting reasonably, and [SECOND PARTY NAME] shall have received copies of the Closing Documents and all such documentation or other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in form (as to certification and otherwise) and substance satisfactory to [SECOND PARTY NAME] and its counsel;
		10. at the Closing Time, all directors and officers of [COMPANY NAME] and each of the Subsidiaries shall submit a resignation from all positions with [COMPANY NAME] and each of the Subsidiaries, and a release by each of them as well as [FIRST PARTY NAME] of all claims against [COMPANY NAME] and each of the Subsidiaries up to the Closing Time except for (i) current unpaid remuneration and advances made to [COMPANY NAME] and (ii) any matters for which such director is entitled to indemnity under the by-laws of [COMPANY NAME] and each of the Subsidiaries and any insurance related thereto; at Closing, [FIRST PARTY NAME] shall deliver to [SECOND PARTY NAME] a favourable opinion of [FIRST PARTY NAME]’s counsel with respect to the transactions contemplated herein;
		11. at Closing, [FIRST PARTY NAME] shall deliver or cause to be delivered to [SECOND PARTY NAME] share certificates representing the Shares duly endorsed by the Shareholders in blank for transfer, or accompanied by irrevocable security transfer powers of attorney duly executed in blank, which shall be returned to [COMPANY NAME] against delivery of one or more new share certificates representing the Shares issued by [COMPANY NAME] to [SECOND PARTY NAME] and evidence that [SECOND PARTY NAME] has been entered on the books of [COMPANY NAME] as the holder of the Shares; and
		12. the representations and warranties contained in Article [NUMBER] shall be true and correct on and as of the Closing Date with the same effect as though made on and as of such date and [FIRST PARTY NAME] shall have delivered to [SECOND PARTY NAME] a solemn declaration to such effect, dated such date, provided that the receipt of such solemn declaration and the Closing herein provided for shall not be a waiver of the representations, warranties, covenants and agreements which shall continue in full force and effect as provided herein.

In case any condition to be performed or complied with for the benefit of [SECOND PARTY NAME] at or prior to the Closing Time has not been performed or complied with at or prior to the Closing Time, [SECOND PARTY NAME], without limiting any other right that [SECOND PARTY NAME] has, may at its sole option, either (i) rescind this Agreement by notice to [FIRST PARTY NAME], and in such event [SECOND PARTY NAME] shall be released from all obligations hereunder; or (ii) waive compliance with any such condition in whole or in part on such terms as may be agreed upon without prejudice to any of its rights of rescission in the event of non-performance or non-compliance with any other condition in whole or in part; and, if [SECOND PARTY NAME] rescinds this Agreement, [FIRST PARTY NAME] shall also be released from all obligations hereunder.

* 1. **Conditions for the benefit of the Sellers**

The sale by the Shareholders and the purchase by [SECOND PARTY NAME] of the Shares is subject to the following conditions, which are for the exclusive benefit of the Shareholders and which are to be performed or complied with at or prior to the Closing Time:

7.2.1 [SECOND PARTY NAME] shall have performed or complied with all of the terms, covenants and conditions of this Agreement to be performed or complied with by [SECOND PARTY NAME] at or prior to the Closing Time;

7.2.2 all documentation relating to the sale and purchase of the Shares including the Closing Documents relating to the due authorisation and completion of such sale and purchase and all actions and proceedings taken on or prior to the Closing in connection with the performance by [SECOND PARTY NAME] of its obligations under this Agreement shall be satisfactory to [FIRST PARTY NAME] and its counsel, acting reasonably, and the Shareholders shall have received copies of the Closing Documents and all such documentation or other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated hereby and the taking of all corporate proceedings in connection therewith in form (as to certification and otherwise) and substance satisfactory to [FIRST PARTY NAME] and its counsel;

7.2.3 at Closing, [SECOND PARTY NAME] shall deliver to [FIRST PARTY NAME] the certified checks or bank draughts issued by [SECOND PARTY NAME] to the order of [FIRST PARTY NAME] in accordance with Section 2.2 hereof; and

7.2.4 the representations and warranties contained in Article 4 shall be true and correct on and as of the Closing Date with the same effect as though made on and as of such date and [SECOND PARTY NAME] shall have delivered to [FIRST PARTY NAME] a solemn declaration to such effect, dated such date, provided that the receipt of such solemn declaration and the Closing herein provided for shall not be a waiver of the representations, warranties, covenants and agreements which shall continue in full force and effect as provided herein.

7.2.5 In case any condition to be performed or complied with for the benefit of the Shareholders at or prior to the Closing Time has not been performed or complied with at or prior to the Closing Time, the Shareholders, without limiting any other right that [FIRST PARTY NAME] has, may at its sole option, either (i) rescind this Agreement by notice to [SECOND PARTY NAME], and in such event [FIRST PARTY NAME] shall be released from all obligations hereunder; or (ii) waive compliance with any such condition in whole or in part on such terms as may be agreed upon without prejudice to any of its rights or rescission in the event of non-performance or non-compliance of any other condition in whole or in part; and, if [FIRST PARTY NAME] rescinds this Agreement, [SECOND PARTY NAME] shall also be released from all obligations hereunder.

* 1. **Due Diligence**

Within [NUMBER] Business Days following the execution of this Agreement and of a Confidentiality Agreement in favour of [COMPANY NAME] and [FIRST PARTY NAME], [SECOND PARTY NAME] shall commence its due diligence and [FIRST PARTY NAME] shall cause [COMPANY NAME] to establish a data room and to assemble therein *in re*spect of itself and the Subsidiaries the following documents and information relating to the Assets and the Business: (i) all company records, including without limitation, minute books, (ii) all material contracts, including without limitation, all agreements for a term of [NUMBER]one ([NUMBER]) year or more with customers or suppliers, all banking documents, customer and suppliers lists, (iii) accounts receivable and payable in the forms contemplated as Schedules hereto, (iv) budgets for the last [NUMBER] years, and (v) generally all other documents and information referred to in the representations and warranties of [FIRST PARTY NAME] hereunder, the whole so as to provide [SECOND PARTY NAME] with the opportunity to verify same for a period of up to ([NUMBER]) days.

[FIRST PARTY NAME] shall also cause [COMPANY NAME] to make the following persons available to respond to [SECOND PARTY NAME]’s reasonable requests for additional information during normal business hours and upon reasonable prior notice from the [NUMBER] to the [NUMBER] day inclusively following the commencement of [SECOND PARTY NAME]’s due diligence: [INDIVIDUAL NAME] - President, [INDIVIDUAL NAME] - Vice-President Administration and [INDIVIDUAL NAME] - Vice-President Sales and [INDIVIDUAL NAME] and [[INDIVIDUAL NAME] of [FIRST PARTY NAME]; provided, however, that [SECOND PARTY NAME] shall not communicate with any other employee, director, officer or agent of [FIRST PARTY NAME], [COMPANY NAME] or the Subsidiaries without [FIRST PARTY NAME]’s prior written consent.

[SECOND PARTY NAME] shall advise [FIRST PARTY NAME] in writing not later than the [NUMBER] day following commencement of the due diligence process of its decision to proceed or not to Closing. Should [SECOND PARTY NAME] fail to so advise [FIRST PARTY NAME] within such delay, [SECOND PARTY NAME] shall be deemed to have advised [FIRST PARTY NAME] that [SECOND PARTY NAME] wishes to proceed to Closing.

# CLOSING AND CLOSING DOCUMENTS

* 1. **Closing**

The sale and purchase of the Shares shall be completed at the Closing Time at the offices of [INDIVIDUAL NAME], [FULL ADDRESS] [STATE/PROVINCE]. For greater clarity, it is specified that the Closing shall automatically take place on the Closing Date, unless [SECOND PARTY NAME] gives written notice to [FIRST PARTY NAME] at least [NUMBER] hours prior to the date and time set for the Closing that one or more of the conditions precedent set forth in Section 7.1 hereof has or have not been satisfied, giving details as to what is missing or unsatisfactory

# GENERAL

* 1. **Expenses**

Each party shall pay all expenses it incurs in authorising, preparing, executing and performing this Agreement and the transactions contemplated hereunder, whether or not the Closing occurs, including all fees and expenses of its legal counsel, bankers, investment bankers, brokers, accountants or other representatives or consultants.

* 1. **Commission**

Each party represents and warrants to the other party that such other party will not be liable for any brokerage commission, finder’s fee or other similar payment in connection with the transactions contemplated hereby because of any action taken by, or agreement or understanding reached by, the first party.

* 1. **Time**

Time is of the essence of each provision of this Agreement.

* 1. **Notices**

Any notice, demand or other communication (in this Section, a “notice”) required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:

* + 1. delivered in person during normal business hours on a Business Day and left with a receptionist or other responsible employee of the relevant party at the applicable address set forth below;
		2. sent by prepaid first class mail; or
		3. sent by any electronic means of sending messages, including telex or facsimile transmission, which produces a paper record (“Transmission”) during normal business hours on a Business Day charges prepaid and confirmed by prepaid first class mail; and

in the case of a notice to [FIRST PARTY NAME], addressed to it at:

[FIRST PARTY NAME]

[FULL ADDRESS]

[STATE/PROVINCE]

Attention: [INDIVIDUAL NAME] or [INDIVIDUAL NAME]

Telecopier No.: [FAX NUMBER]

with a copy to:

[INDIVIDUAL NAME] GENERAL PARTNERSHIP

[FULL ADDRESS]

[STATE/PROVINCE]

Attention: [INDIVIDUAL NAME]

Telecopier No.: [FAX NUMBER]

and in the case of a notice to COMPANY NAME, addressed to it at:

[SECOND PARTY NAME]

Attention: l

Telecopier No.: ( ) l

with a copy to:

Attention: l

Telecopier No.: ( ) l

Each notice sent in accordance with this Section shall be deemed to have been received, either on the day it was delivered, or on the [NUMBER] Business Day after it was mailed (excluding each Business Day during which there existed any general interruption of postal services due to strike, lockout or other cause), or on the same day that it was sent by Transmission, or on the [NUMBE] Business Day thereafter if the day on which it was sent by Transmission was not a Business Day, as the case may be. Any party may change its address for notice by giving notice to the other Parties in the manner set out above.

* 1. **Public Announcements**

Before the Closing Date, no party shall make any public statement or issue any press release concerning the transactions contemplated by this Agreement except as may be necessary, in the opinion of counsel to the party making such disclosure, to comply with the requirements of all Applicable laws. If any such public statement or release is so required, the party making such disclosure shall consult with the other Parties prior to making such statement or release, and the Parties shall use all reasonable efforts, acting in good faith, to agree upon a text for such statement or release which is satisfactory to all Parties.

* 1. **Assignment**

Neither party may assign any rights or benefits under this Agreement, including the benefit of any representation or warranty, to any Person. Each party agrees to perform its obligations under this Agreement itself, and not to arrange in any way for any other Person to perform those obligations. No assignment of benefits or arrangement for substituted performance by one party shall be of any effect against the other party except to the extent that other party has consented to it in writing. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors (including any successor by reason of amalgamation or statutory arrangement of any party).

* 1. **Further Assurances**

Each party shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of such acts and will cause the execution of such further documents as are within its power as any other party may in writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of each Closing Document.

* 1. **Counterparts**

This Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

* 1. **Facsimile Execution.**

To evidence the fact that it has executed this Agreement, a party may send a copy of its executed counterpart to all other Parties by facsimile transmission. That party shall be deemed to have executed this Agreement on the date it sent such facsimile transmission. In such event, such party shall forthwith deliver to the other party the counterpart of this Agreement executed by such party.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

## FIRST PARTY SECOND PARTY

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title