

ASSET PURCHASE AGREEMENT

**HEWCLAN HOLDINGS LIMITED
AND ITS SUBSIDIARIES LISTED IN SCHEDULE A**

- and -

TOROMONT INDUSTRIES LTD.

August 28, 2017

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THIS AGREEMENT made the 28th day of August, 2017,

B E T W E E N:

HEWCLAN HOLDINGS LIMITED,
a corporation existing under the laws of
the Province of Ontario,

(hereinafter referred to as "**HHL**"),

- and -

**EACH OF THE SUBSIDIARIES OF HHL
LISTED IN SCHEDULE A,**

(hereinafter referred to collectively with HHL as
"**Sellers**", and each a "**Seller**"),

- and -

TOROMONT INDUSTRIES LTD.,
a corporation existing under the laws of
Canada,

(hereinafter referred to as "**Purchaser**").

WHEREAS each Seller separately carries on a business which, collectively, are referred to herein as the Purchased Business and Sellers wish to sell to Purchaser and Purchaser wishes to purchase from Sellers all of the operating assets used by each Seller in its conduct of the Purchased Business, on the terms and conditions hereinafter set forth;

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"**Adjustment Date**" means the first Business Day after the date on which the Closing Working Capital is finally determined in accordance with Section 3.7;

"**Affiliate**" means, in respect of any specified Person, any other Person which directly or indirectly controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, "control" is the power, directly or indirectly, to

direct the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise, and "controlled by" has a similar meaning;

"**Ancillary Agreements**" means the Licence Agreement, the Non-Competition Agreements, the Escrow Agreement and the Pension Plan Assignment Agreement;

"**Approvals**" means the Competition Act Approval and the TSX Approval;

"**ARC**" means an advance ruling certificate issued pursuant to section 102 of the Competition Act;

"**Associate**" has the meaning given to that term in the *Canada Business Corporations Act*;

"**Assumed Contracts**" has the meaning set out in Section 2.1(h);

"**Assumed Liabilities**" has the meaning set out in Section 2.3;

"**ATE**" means Atlantic Tractors & Equipment Limited, one of the Sellers;

"**Audited Financial Statements**" means the audited consolidated financial statements of HHL as at and for the financial years ended December 28, 2016 and 2015, including the notes thereto and the report of HHL's auditors thereon, a copy of which is annexed as Schedule 1.1(a) of the Disclosure Letter;

"**Authorization**" means, with respect to any Person, any order, permit, approval, consent, waiver, licence, certificate, registration or similar authorization of any Governmental Body having jurisdiction over such Person;

"**Building Systems**" means in respect of a building, the plumbing, heating, cooling, ventilation, elevating, water, gas, drainage and electrical systems of such building;

"**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario or Québec, on which commercial banks in Toronto, Ontario and Montréal, Québec are open for business;

"**Caterpillar Dealership Agreement**" means the dealer and related agreements between Caterpillar Inc. or any of its Affiliates, on the one hand, and any Seller, on the other hand, including the agreements listed in Schedule 1.1(b) of the Disclosure Letter;

"**Cap**" has the meaning set out in Section 9.5(c);

"**Change of Control Contracts**" means those certain change of control agreements entered into between HEL and several members of senior management of the Purchased Business, the form of which has been provided to Purchaser and which are listed in Schedule 1.1(c) of the Disclosure Letter, providing for certain payments to be made to such members in the circumstances described in such agreements;

"**Claim**" has the meaning set out in Section 9.6(a);

"**Closing**" means the closing of the transactions contemplated hereby;

"**Closing Balance Sheet**" has the meaning set out in Section 3.6(a)(i);

"**Closing Date**" means (a) the first Business Day of the week immediately following the date that is seven Business Days after the date on which the last of the conditions set forth in Article 7 (excluding conditions that, by their terms, cannot be satisfied until the date of Closing, but subject to the satisfaction or waiver of those conditions as of the Closing) is satisfied or waived, or (b) such other date as Sellers and Purchaser may mutually agree, provided that the Closing Date shall occur no later than the Outside Date;

"**Closing Date Payment**" has the meaning set out in Section 3.2(b);

"**Closing Debt**" means, at the time immediately prior to the Time of Closing, the aggregate amount (including in respect of principal, interest, costs, expenses, fees, termination costs, breakage costs, un-winding costs, and all other amounts) payable under the Credit Facilities, as set out in the pay-off letters to be delivered by Sellers pursuant to Section 3.4;

"**Closing Deliveries**" means the documents described in Sections 7.4 and 7.5 to be delivered by or on behalf of Sellers and Purchaser, respectively;

"**Closing Working Capital**" means the Working Capital as at the Closing Date;

"**Collective Agreements**" has the meaning set out in Section 4.30(a);

"**Commissioner**" means the Commissioner of Competition appointed under the Competition Act or any Person authorized to exercise his powers and perform his duties;

"**Common Shares**" means common shares in the capital of Purchaser;

"**Competition Act**" means the *Competition Act* (Canada);

"**Competition Act Approval**" means one of the following has occurred in respect of the transactions contemplated by this Agreement:

- (a) the Commissioner shall have issued an ARC; or
- (b) either (i) the requirement to notify the Commissioner and supply information shall have been waived pursuant to section 113(c) of the Competition Act or (ii) the applicable waiting period under section 123 of the Competition Act shall have expired or been terminated and, in the case of (i) or (ii), the Commissioner shall have issued a No-Action Letter, and such No-Action Letter remains in force and effect at the Time of Closing;

"**Confidential Information**" has the meaning set out in Section 6.10(a);

"**Consent**" means any consent, approval, waiver or other authorization required under a Contract, Lease or Third Party Lease;

"**Consideration Shares**" means 2,249,478 Common Shares to be issued by Purchaser to the Designated Seller in partial satisfaction of the Purchase Price;

"**Contract**" means any legally binding agreement, indenture, contract, lease, deed of trust, licence, option, instrument or other commitment, whether written or oral, but excludes the Leases and Third Party Leases;

"**Contract Rights**" has the meaning set out in Section 6.3;

"**Covered Individuals**" has the meaning set out in Section 6.9(b)(ii);

"**Credit Facilities**" means the credit facilities entered into between Sellers and their respective lenders, together with all Contracts between Sellers and any counterparty for any interest rate swap or currency swap or other hedging or derivative instrument relating thereto, in each case as listed in Schedule 1.1(d) of the Disclosure Letter;

"**Current Assets**" means the current assets of Sellers, other than any Excluded Assets, determined in accordance with the Working Capital Principles, which are prepared in accordance with GAAP, applying the same significant accounting policies and practices as applied to the Audited Financial Statements;

"**Current Liabilities**" means the current liabilities of Sellers, other than any Excluded Liabilities, determined in accordance with the Working Capital Principles, which are prepared in accordance with GAAP, applying the same significant accounting policies and practices as applied to the Audited Financial Statements;

"**Data Room**" means the Venue virtual data room of HHL for "Project North" maintained by Donnelly Financial Solutions, access to which was provided to Purchaser and its representatives for purposes of their due diligence investigations in connection with the transactions contemplated by this Agreement;

"**Deductible**" has the meaning set out in Section 9.5(a);

"**Defined Benefit Pension Plan**" means (a) a Pension Plan that contains a "defined benefit provision" within the meaning of Section 147.1 of the Tax Act, and (b) a supplemental pension plan that provides defined benefit pension benefits;

"**Designated Seller**" means the Seller or Sellers designated in writing by Sellers before Closing to be issued the Consideration Shares;

"**Designated Sites**" means the sites listed under the heading "Designated Sites" in Schedule 4.27 of the Disclosure Letter;

"**Disclosing Party**" has the meaning set out in Section 6.10(a);

"Disclosure Letter" means the disclosure letter delivered by Sellers to Purchaser contemporaneously with the execution and delivery of this Agreement;

"Domain Names" means domain names, web addresses, uniform resource locators, social media handles, user names, and account identifiers, and all goodwill associated with each of the foregoing;

"Employee Plans" means all compensation, bonus, deferred compensation, incentive compensation, share purchase, share appreciation, share option, severance or termination pay, vacation pay, hospitalization or other medical, health and welfare benefits, life or other insurance, dental, eye care, drug, disability, salary continuation, supplemental unemployment benefits, profit-sharing, mortgage assistance, employee loan, employee discount, employee assistance, counselling, pension, retirement or supplemental retirement benefit plans, arrangements or agreements, including defined benefit or defined contribution pension plans and group registered retirement savings plans, and all other similar employee benefit plans, arrangements or agreements, whether oral or written, formal or informal, funded or unfunded, including all policies and plans with respect to holidays, sick leave, short and long-term disability, vacations, expense reimbursements and automobile allowances and rights to company-provided automobiles, that are administered, sponsored or maintained or contributed to or required to be contributed to, by any Seller for the benefit of any of the Employees or former employees of the Purchased Business or their respective beneficiaries, whether or not insured and whether or not subject to any applicable Law, except that the term "Employee Plans" does not include any Statutory Plans or Multi-Employer Plans;

"Employees" has the meaning set out in Section 4.28;

"Encumbrance" means any encumbrance, lien, lease, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, purchase or lease option or restriction on voting (in the case of any voting or equity interest) or any contract to create any of the foregoing;

"Entity" means a Person other than an individual;

"Environmental Laws" has the meaning set out in Section 4.27(a);

"Environmental Permits" has the meaning set out in Section 4.27(b);

"Environmental Release" means the environmental release and waiver in the form of Exhibit 1.1(a) to be entered into by Purchaser and Sellers;

"Escrow Agent" has the meaning set out in Section 3.3(a)(ii);

"Escrow Amount" has the meaning set out in Section 3.3(a)(i)(B);

"Estimated Working Capital" has the meaning set out in Section 3.2(a);

"**ETA**" means Part IX of the *Excise Tax Act* (Canada);

"**Excluded Assets**" has the meaning set out in Section 2.2;

"**Excluded Employees**" has the meaning set out in Section 6.8(a);

"**Excluded Liabilities**" has the meaning set out in Section 2.4;

"**Financial Statements**" means the Audited Financial Statements and the Interim Financial Statements;

"**GAAP**" means Canadian generally accepted accounting principles applicable to private enterprises under Part II of the CPA Canada Handbook of the Chartered Professional Accountants of Canada;

"**Governmental Body**" means any (a) federal, provincial, state, territorial, municipal, local or other public department, agency, branch, court, commission, board, tribunal, bureau or instrumentality, domestic or foreign, (b) any subdivision or authority of any of the above, (c) any governmental or private body exercising any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power or (d) any stock exchange;

"**GST**" means all Taxes imposed under the ETA, including any interest and penalties charged thereon;

"**Hazardous Substances**" means any substance, material or waste defined or listed under Environmental Laws, the use, handling, intrusion, generation, storage, disposal or transport of which, or the release of which into the environment, is regulated or prohibited by any Governmental Body pursuant to Environmental Laws, including pollutants, contaminants, chemicals, deleterious substances, dangerous goods, hazardous or industrial toxic wastes or substances, radioactive materials, flammable substances, explosives, petroleum and petroleum products, polychlorinated biphenyls ("PCBs"), chlorinated solvents and asbestos;

"**HEL**" means Hewitt Equipment Limited, one of the Sellers;

"**HEQ**" means Hewquip Inc., one of the Sellers;

"**HEQ Assets**" means the Purchased Assets owned, used or held for use by HEQ, including the rights of HEQ under the Third Party Leases and the Intercompany Leases;

"**Hewitt Domain Names**" has the meaning set out in Section 2.2(g);

"**Hewitt Marks**" has the meaning set out in Section 2.2(f);

"**IFRS**" means the standards and interpretations adopted by the International Accounting Standards Board, as amended from time to time;

"Indemnified Party" has the meaning set out in Section 9.6;

"Indemnifying Party" has the meaning set out in Section 9.6;

"Indemnity Escrow Amount" has the meaning set out in Section 3.3(a)(i)(B);

"Independent Accountant" has the meaning set out in Section 3.7(b);

"Intellectual Property" means tangible or intangible property in whatever form in which Intellectual Property Rights subsist and/or that is subject to Intellectual Property Rights, including information and know-how, equipment and parts lists and descriptions, instruction manuals, inventions, inventors' notes, ideas, research data, blue prints, drawings and designs, formulae, processes and technology;

"Intellectual Property Rights" means all rights of the following types, in each case whether registered or unregistered: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, mask works, and moral rights; (ii) Trademark rights and similar rights; (iii) trade secret rights and similar rights; (iv) Patent and industrial property rights and similar rights; (v) database rights and similar rights; and (vi) rights in or relating to registrations, renewals, extensions, combinations, divisions and reissues of, and applications for, any of the rights referred to in clauses "(i)" through "(v)" above;

"Intercompany Lease" means any lease entered into between HEQ and any other Seller with respect to the leasing by HEQ of certain Owned Real Property owned by it to such Seller;

"Intercompany Loans" means the intercompany loans and shareholder advances described in Schedule 4.22 of the Disclosure Letter.

"Interim Financial Statements" means the unaudited consolidated financial statements of HHL as at July 28, 2017, and for the period from December 29, 2016 to July 28, 2017, a copy of which is annexed as Schedule 1.1(e) of the Disclosure Letter;

"Interim Period" has the meaning set out in Section 6.7;

"Laws" means, in respect of any Person, property, transaction or event, any and all applicable (i) domestic, foreign, federal, provincial, state, territorial, municipal or local laws, constitutions, treaties, statutes, codes, ordinances, orders, decrees, rules, regulations, by-laws, (ii) judgments, orders, writs, injunctions, decisions, awards and directives of any Governmental Body and (iii) policies, guidelines, standards, requirements, notices and protocols of any Governmental Body to the extent they have the force of law;

"Leased Real Property" means the lands described in Schedule 2.1(b) of the Disclosure Letter, and all buildings, structures, improvements and appurtenances situated thereon or thereunder;

"Leases" has the meaning set out in Section 4.6(c);

"Licence Agreement" means the licence agreement substantially in the form of Exhibit 1.1(b) to be entered into between HHL, the subsidiaries of HHL listed on Schedule A thereto and Purchaser pursuant to which Purchaser shall have the exclusive time-limited royalty-free right to use the Hewitt Marks and the Hewitt Domain Names in connection with the Purchased Business;

"Losses" means, in respect of any matter, all actual and documented losses, damages, liabilities, fines, costs and expenses (including reasonable legal fees and expenses) arising as a consequence of such matter;

"Major Supplier" means a supplier to the Purchased Business that in financial year 2016 or in 2017 has supplied or is expected to supply the Purchased Business with supplies having a cost to Sellers in excess of \$5,000,000 during any of such given financial year;

"MARCs" has the meaning set out in Section 4.16(a)(i);

"Material Adverse Effect" means any (i) change, event, state, facts, circumstance or effect that is, or would reasonably be expected to be, materially adverse to the business, results of operations, financial condition, properties, assets or liabilities (contingent or otherwise) of the Purchased Business taken as a whole or (ii) event that would, or would reasonably be expected to prohibit the consummation of the transactions contemplated herein, in either case, other than as a result of:

- (a) changes in conditions affecting the industries in which the Purchased Business operates;
- (b) the announcement, consummation or performance of this Agreement or transactions contemplated by this Agreement;
- (c) any change, development or condition in or relating to global, national or regional political conditions or in general economic, business, banking, regulatory, currency exchange, interest rate, rates of inflation or market conditions or in national or global financial or capital markets; or
- (d) changes in applicable Law after the date hereof affecting the Purchased Business,

provided, however, (A) if any foregoing effect has a materially disproportionate effect on the Purchased Business, taken as a whole, relative to other comparable companies and entities operating in the industries in which the Purchased Business operates, such effect may be taken into account in determining whether a Material Adverse Effect has occurred; 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 "Material Adverse Effect" has occurred;

"Multi-Employer Plan" means an Employee Plan to which a Seller is required to contribute that is not maintained or administered by Sellers or any of their Affiliates and which permits the participation of employers that are not Affiliates of Sellers;

"No-Action Letter" means written confirmation from the Commissioner confirming that the Commissioner does not, at that time, intend to make an application under section 92 of the Competition Act in respect of the transactions contemplated by this Agreement;

"Non-Assigned Contract" has the meaning set out in Section 6.3(a)(i);

"Non-Competition Agreements" means the non-competition agreements substantially in the form of Exhibit 1.1(c) to be entered into in favour of Purchaser by each Seller and each of James Hewitt and David Hewitt;

"Notice of Acceptance" has the meaning set out in Section 3.7(a);

"Notice of Objection" has the meaning set out in Section 3.7(a);

"Off-The-Shelf Software" has the meaning set out in Section 4.13(a);

"Ordinary Course" means, with respect to action taken by Sellers, that such action is consistent with the past practices of Sellers' conduct of the Purchased Business, as the case may be, and is taken in the ordinary course of Sellers' conduct of the Purchased Business;

"Outside Date" has the meaning set out in Section 8.1(a)(iii);

"Owned Real Property" means the lands described in Schedule 2.1(a) of the Disclosure Letter, and all buildings, structures, improvements and appurtenances situated thereon or thereunder;

"Parties" means Sellers and Purchaser, and **"Party"** means Sellers, collectively, or Purchaser;

"Patent" means patents (including utility, utility model, plant and design patents, and certificates of invention), patent applications (including additions, provisional, national, regional and international applications, as well as original, continuation, continuation-in-part, divisionals, continued prosecution applications, reissues, reviews, and re-examination applications), patent or invention disclosures, registrations, applications for registrations and any term extension or other action by a Governmental Body which provides rights beyond the original expiration date of any of the foregoing;

"Pension Plan" means an Employee Plan that is a "registered pension plan" within the meaning of Section 248(1) of the Tax Act;

"Pension Plan Assignment Agreement" means an agreement to be entered into between Sellers and Purchaser pursuant to which Purchaser shall assume and be responsible for all

obligations and liabilities under the Defined Benefit Pension Plans; in a form satisfactory to Sellers and Purchaser, each acting reasonably;

"Permitted Encumbrances" means:

- (a) liens for Taxes, assessments and governmental charges that are due but are being contested in good faith and diligently by appropriate proceedings and in respect of which adequate provision for the related monetary obligation has been made in the Financial Statements;
- (b) in respect of immovable (real) property, title defects, irregularities, reservations, servitudes, easements, restrictions, rights-of-way and other similar rights, provided that same are not of such nature as to materially adversely affect the use or value of the immovable (real) property subject thereto;
- (c) construction, mechanics', carriers', workers', repairers', storers' or other similar Encumbrances that (i) individually or in the aggregate, are not material, (ii) arose or were incurred in the Ordinary Course, (iii) are related to obligations not due or in arrears, and (iv) have not been registered or filed under applicable Law;
- (d) in respect of immovable (real) property, any subsisting restrictions, reservations, limitations, provisions, exceptions or conditions (including, without limitation, royalties, reservation of mines and mineral rights and similar rights) expressed in any original grants from the Crown of any immovable (real) property or interest therein, provided that same are not of such nature as to materially adversely affect the use or value of the immovable (real) property subject thereto;
- (e) inchoate liens claimed or held by any Governmental Body or a public utility in respect of the payment of Taxes or utilities not yet due and payable and in respect of which adequate provision for the related monetary obligation has been made in the Financial Statements;
- (f) in respect of immovable (real) property, any rights of expropriation, access, use or any other rights conferred or reserved by or in any statute(s) comprising applicable Law;
- (g) provisions of applicable Laws, including zoning by-laws and other by-laws, regulations, ordinances and similar instruments relating to development and zoning;
- (h) any security given by any Seller to a public utility or any Governmental Body when required in the Ordinary Course; and
- (i) the Encumbrances described in Schedule 1.1(f) of the Disclosure Letter;

"Person" shall be construed broadly and includes any individual, corporation, legal person, partnership, firm, joint venture, syndicate, association, trust, trustee, limited

liability company, unincorporated organization, trust company, Governmental Body or any other form of entity or organization;

"Personal Information" means any information in the possession or control of any Seller about an identifiable individual, other than the business address or telephone number of an Employee;

"Post-Retirement Benefit Plans" means an Employee Plan that provides post-retirement life insurance, medical benefits or dental benefits to any Employee or former employee of the Purchased Business or any beneficiary or dependent of any such Employee or former employee;

"Proceedings" means actions, suits, appeals, claims, applications, orders, investigations, proceedings, grievances, arbitrations or alternative dispute resolution processes;

"Property" means any immovable (real) property included in Owned Real Property or any immovable (real) property included in Leased Real Property, and **"Properties"** means any two or more of them;

"Purchase Price" has the meaning set out in Section 3.1;

"Purchased Assets" has the meaning set out in Section 2.1;

"Purchased Business" means the business carried on by HHL and the other Sellers consisting primarily of their heavy equipment, material handling, energy and truck divisions;

"Purchased IP" has the meaning set out in Section 2.1(j);

"Purchaser Disclosure Obligations" has the meaning set out in Section 6.12;

"Purchaser Disclosure Record" means collectively, all of the documents that have been filed by or on behalf of Purchaser at any time since January 1, 2016 with the relevant securities regulatory authorities pursuant to the requirements of applicable Securities Laws, including all such documents filed under Purchaser's SEDAR profile at www.sedar.com;

"Purchaser Indemnified Persons" means Purchaser and its directors, officers and employees;

"QST" means the Québec sales tax imposed under the QSTA and any penalties and interest charged thereon;

"QSTA" means *An Act respecting the Québec sales tax (Québec)*;

"Receiving Party" has the meaning set out in Section 6.10(a);

"Registered IP" means all Intellectual Property that is registered, filed, issued or granted under the authority of, with or by, any Governmental Body (or other registrar in the case of Domain Names), including all Patents, registered copyrights, registered mask works, registered Trademarks, registered designs, Domain Names and all applications for any of the foregoing;

"Registration Documents" has the meaning set out in Section 7.4(b);

"Release", when used as a verb, includes release, spill, leak, emit, deposit, discharge, migrate, pump, pour, inject, escape or dispose of into the environment or any other similar act, however defined in applicable Environmental Laws, and the term "Release" when used as a noun has a correlative meaning;

"Released Sites" means the sites listed under the heading "Released Sites" in Schedule 4.27 of the Disclosure Letter;

"Reorganization" has the meaning set out in Section 6.14;

"Replacement Group Benefit Plans" has the meaning set out in Section 6.9(d);

"Replacement Post-Retirement Benefit Plan" has the meaning set out in Section 6.9(c);

"Review Period" has the meaning set out in Section 3.6(c);

"Sales Taxes" means any GST, QST, harmonized sales Tax, provincial sales Tax or similar Tax imposed by the Canadian government or by any provincial or territorial government;

"Securities Laws" means, collectively, the *Securities Act* (Ontario), and all other applicable provincial securities laws, rules, regulations and public policies thereunder in Canada and the rules and policies of the TSX;

"Seller Indemnified Persons" means Sellers and their respective directors, officers and employees;

"Statutory Plans" means statutory benefit plans that any Seller is required to participate in or comply with, including the Canada and Québec Pension Plans and plans administered pursuant to applicable health tax, workplace safety and insurance and employment insurance legislation;

"Successor Taxes" means (a) any liability for Taxes of Sellers which, as a result of the transfer of the Purchased Assets to Purchaser, becomes (or also becomes) a liability of Purchaser, and (b) any Sales Taxes and payroll Taxes paid by Purchaser on behalf of Sellers pursuant to Section 6.17 which have not been provided for in the Closing Working Capital;

"Target Working Capital" means [*Redacted; Commercially sensitive information*];

"**Tax Act**" means the *Income Tax Act* (Canada);

"**Taxes**" means any federal, provincial, territorial, state or local income, goods and services, harmonized sales, value added, corporation, land transfer, licence, payroll, excise, sales, use, capital, withholding or other tax, levy, duty, assessment, reassessment or other charge of any kind whatsoever, whether direct or indirect, including any interest and penalty or other addition to or on any of the foregoing, whether disputed or not, imposed by a Governmental Body, and for greater certainty includes Canada Pension Plan, Québec Pension Plan and employment insurance premiums;

"**Third Party**" has the meaning set out in Section 9.8(c);

"**Third Party Leases**" has the meaning set out in Section 4.10;

"**Time of Closing**" means 10:00 a.m. (Eastern time) on the Closing Date, or such other time on the Closing Date as Sellers and Purchaser may agree;

"**Trademarks**" means trademarks, service marks, trade names, trade dress, logos, corporate names, rights in business and get-up and other source or business identifiers (in each case whether or not registered) and any registrations, applications, renewals and extensions of each of the foregoing and all goodwill associated with each of the foregoing;

"**Transferred Authorizations**" has the meaning set out in Section 2.1(i);

"**Transferred Employees**" has the meaning set out in Section 6.9(b)(i);

"**TSX**" means the Toronto Stock Exchange;

"**TSX Approval**" means receipt of the approval by the TSX of the listing of the Consideration Shares on the TSX;

"**Unadjusted Cash Consideration**" has the meaning set out in Section 3.1;

"**Working Capital**" means the value of Current Assets less Current Liabilities;

"**Working Capital Escrow Amount**" has the meaning set out in Section 3.3(a)(i)(A);

"**Working Capital Post-Closing Adjustment Amount**" has the meaning set out in Section 3.8(a); and

"**Working Capital Principles**" has the meaning set out in Section 3.6(a)(ii).

1.2 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;
- (b) references to an "Article", "Section" or "Exhibit" followed by a number or letter refer to the specified Article or Section of or Exhibit to this Agreement;
- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and *vice versa* and words importing the use of any gender shall include all genders;
- (e) the word "including" is deemed to mean including without limitation;
- (f) any reference to this Agreement means this Agreement as amended, modified, replaced or supplemented from time to time;
- (g) all dollar amounts refer to Canadian dollars;
- (h) any reference in this Agreement to any statute includes all regulations and subordinate legislation made under or in connection with that statute, in any case as the same may be amended, modified, replaced or supplemented from time to time;
- (i) any time period within which a payment is to be made or other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and
- (j) whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Business Day, such payment shall be made, action shall be taken or period shall expire on the next following Business Day.

1.3 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided herein.

1.4 Time of Essence

Time shall be of the essence of this Agreement.

1.5 Governing Law and Submission to Jurisdiction

(a) This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the Laws of the Province of Québec and the federal Laws of Canada applicable therein, except insofar as it relates to conveyancing of immovable (real) property and other matters of local law, in which case, the laws of the Province in which such immovable (real) property is located shall govern.

(b) Except as may be required to effect or address matters relating to any interests in any immovable (real) property located in another province or other matters of local law, each of the Parties irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction of the courts of the Province of Québec over any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection that it might otherwise be entitled to assert to the jurisdiction of such courts, and (iii) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.

1.6 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to a Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

1.7 Knowledge

(a) References in this Agreement to the "knowledge or awareness of Sellers" or "Sellers' knowledge or awareness" or similar phrases mean the actual knowledge or awareness of any one or more of the individuals listed on Schedule 1.7(a) of the Disclosure Letter, in each case that such individual has, or would reasonably be expected to have, after making diligent inquiry of their direct reports who would reasonably be expected to have knowledge or awareness relevant to the representation and warranty in question.

(b) References in this Agreement to "knowledge or awareness of Purchaser" or "Purchaser's knowledge or awareness" or similar phrases mean the actual knowledge or awareness of any one or more of the individuals on the Purchaser's deal team, namely Scott Medhurst, Paul Jewer, David Wetherald, Larry Moffatt, Mike Cuddy, Glenn Keenan, Randy Casson, Jennifer Cochrane and Linda Lee, in each case that such individual has, or would reasonably be expected to have, after reviewing the materials made available to Purchaser.

1.8 **Made Available**

References in this Agreement to "made available" or "provided" mean that a document or other item of information was provided or made available to Purchaser and its representatives for viewing in the Data Room, as that site existed as of noon (Eastern time) on August 27, 2017.

1.9 **Joint and Several**

Sellers shall and shall be deemed to act on a solidary basis hereunder for all purposes. All obligations, undertakings, agreements, indemnities, covenants, representations, warranties, conditions and other provisions in this Agreement or the Closing Deliveries of, by, applicable to or binding upon any Seller shall be deemed to be of, by or binding upon all Sellers on a solidary (joint and several) basis.

1.10 **Exhibits**

The following Exhibits are attached to and form part of this Agreement:

- Exhibit 1.1(a) - Form of Environmental Release
- Exhibit 1.1(b) - Form of Licence Agreement
- Exhibit 1.1(c) - Form of Non-Competition Agreement
- Exhibit 3.3(a)(ii) - Form of Escrow Release Principles
- Exhibit 3.6(a)(ii) - Form of Working Capital Principles
- Exhibit 3.5 - Form and Principles of Purchase Price Allocation

ARTICLE 2 **PURCHASE AND SALE**

2.1 **Purchased Assets**

Subject to the terms and conditions of this Agreement, at the Time of Closing (or five minutes thereafter in the case of the HEQ Assets) Sellers shall sell, assign and transfer to Purchaser and Purchaser shall purchase from Sellers, as a going concern with all related goodwill, all of the property and assets used or held for use in connection with or relating to the Purchased Business (other than the Excluded Assets), whether real or personal, tangible or intangible, of every kind and description and wheresoever situate (collectively, the "**Purchased Assets**"), including:

- (a) **Owned Real Property**. All immovable (real) property used in the Purchased Business of which any Seller is the registered or beneficial fee owner, including the Owned Real Property;
- (b) **Leased Real Property**. All rights as lessee of immovable (real) property used in the Purchased Business in which any Seller has a leasehold interest (including the Leased Real Property), together with all leasehold improvements relating thereto, including all rights under the leases described in Schedule 2.1(b) of the Disclosure

Letter, and all rights as lessor of immovable (real) property used in the Purchased Business, including the Third Party Leases and Intercompany Leases;

- (c) Machinery, Equipment and Furniture. All machinery, equipment, fixtures, furniture, furnishings, parts, tooling molds, dies, jigs or patterns and other fixed assets used or held for use in the Purchased Business, including the machinery and equipment described in Schedule 2.1(c) of the Disclosure Letter;
- (d) Vehicles. All trucks, cars and other vehicles used or held for use in the Purchased Business, including the vehicles described in Schedule 2.1(d) of the Disclosure Letter;
- (e) Inventories. All inventories, including machines, parts and work-in-process;
- (f) Accounts Receivable. All accounts receivable, trade accounts, notes receivable, book debts and other debts due or accruing due to any Seller and related to the Purchased Business and the benefit of all security for such accounts, notes and debts;
- (g) Prepaid Expenses. All deposits and prepaid expenses and accounts;
- (h) Agreements. (i) All Contracts related to the Purchased Business (the "**Assumed Contracts**"), including the Material Contracts listed on Schedule 4.16 of the Disclosure Letter, and (ii) any Caterpillar Dealership Agreements in the event Caterpillar Inc. or any its Affiliates refuses to terminate such agreements with Sellers on Closing on terms and conditions acceptable to Sellers, but excluding any Contract forming part of the Excluded Assets;
- (i) Authorizations. All transferable Authorizations obtained, maintained, held or used in connection with the Purchased Business (the "**Transferred Authorizations**"), including those described in Schedule 4.17 of the Disclosure Letter and the Environmental Permits;
- (j) Intellectual Property. All Intellectual Property and Intellectual Property Rights used or held for use by any Seller in the Purchased Business (the "**Purchased IP**"), including the Registered IP, licences and Contracts described in Schedule 2.1(j) of the Disclosure Letter;
- (k) Computer Hardware and Software. All computer hardware and software used in the Purchased Business, including all rights under licences and other agreements or instruments relating thereto;
- (l) Books and Records. All books of accounts, Tax records, personnel records, customer lists, manuals, supply records, inventory records and all other documents, files, records, correspondence, and other information relating to the Purchased Business other than those required by Law to be retained by any Seller, copies of which will be made available to Purchaser) whether in written, printed, electronic or computer printout form, or stored electronically, digitally or on

computer related media (together with, in the case of any such information which is stored electronically, the media on which the same is stored), excluding any employee records relating to Excluded Employees except to the extent that such employee records are necessary to maintain and administer any Employee Plans;

- (m) Express Consents under Anti-Spam Law. All express consents obtained by Seller under applicable anti-spam Laws from any person to (i) send or cause to be sent an electronic message to such person, (ii) alter or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by such person, (iii) install or cause to be installed a computer program on such person's computer system or, having so installed or cause to be installed a computer program, to cause an electronic message to be sent from that computer system, or (iv) send information on customers' machines to third parties, including Caterpillar Inc. and its Affiliates;
- (n) Goodwill. All goodwill, together with the exclusive right for Purchaser to represent itself as carrying on the Purchased Business in succession to Sellers, subject to the exclusions provided in Sections 2.2(f) and 2.2(g);
- (o) Warranties. All third party warranties and guarantees with respect to assets used in the Purchased Business, to the extent the same are assignable or transferable by any Seller;
- (p) Purchase Cards. Credit cards and other purchase cards, and all Contracts related thereto, held by any Seller and used in connection with the Purchased Business, as disclosed in Schedule 2.1(p) of the Disclosure Letter;
- (q) Proceedings. All of Sellers' rights relating to and underlying the Proceedings disclosed in Schedule 4.24 of the Disclosure Letter; and
- (r) Insurance Policies. The insurance policies relating to the insurance policies disclosed in Schedule 4.14 of the Disclosure Letter under the heading "Assigned Insurance Policies" and all of Sellers' rights thereunder.

2.2 Excluded Assets

The Purchased Assets shall not include any of the following property and assets (collectively, the "**Excluded Assets**"):

- (a) cash on hand, cash equivalents, bank deposits and marketable securities of Sellers;
- (b) bank accounts of Sellers;
- (c) minute books, stock ledgers, corporate records and Tax records of Sellers;
- (d) indebtedness to any Seller or any Affiliate of any Seller;

- (e) the Intercompany Loans;
- (f) Trademark rights and similar rights related to the name "Hewitt", including the right to use the name and style "Hewitt" or any name or style that includes the name "Hewitt" used as part of the name or style under which the Purchased Business or any part thereof is carried on by Sellers (collectively, the "**Hewitt Marks**"). The Hewitt Marks shall include the Trademark rights described in Schedule 2.2(o) of the Disclosure Letter;
- (g) Domain Names that include the name "Hewitt", including "Hewitt.ca" and "Hewitt.com", or any variation thereof (collectively, the "**Hewitt Domain Names**"), including the Domain Names described in Schedule 2.2(o) of the Disclosure Letter;
- (h) the insurance policies disclosed in Schedule 4.14 of the Disclosure Letter under the heading "Excluded Insurance Policies" and, except as provided in Section 7.3, the rights thereunder;
- (i) personnel records or documents that any Seller is required by Law to retain in its possession (copies of which will be made available to Purchaser);
- (j) documents relating to the negotiation and execution of this Agreement and the performance of this Agreement by Sellers;
- (k) all shares or other securities issued to any Seller in any other Seller or any other subsidiary;
- (l) Sellers' rights under this Agreement;
- (m) income Tax instalments paid by any Seller and the right to receive any refund of income Taxes paid by any Seller;
- (n) any Contracts or Leases relating to Excluded Liabilities;
- (o) the assets, property, Contracts identified in Schedule 2.2(o) of the Disclosure Letter.

2.3 Assumption of Liabilities

Purchaser agrees to assume, pay, satisfy, discharge, perform and fulfil, from and after the Time of Closing (or five minutes thereafter in the case of Assumed Liabilities arising out of or relating to the HEQ Assets), all the obligations and liabilities of Sellers arising out of or relating to the Purchased Business and the Purchased Assets, other than the Excluded Liabilities, including the following (collectively, the "**Assumed Liabilities**"):

- (a) all obligations and liabilities of Sellers under the Assumed Contracts, Leases and/or Third Party Leases and the Intercompany Leases;

- (b) all obligations and liabilities of Sellers under the Transferred Authorizations;
- (c) all Current Liabilities reflected on the Closing Balance Sheet;
- (d) all obligations and liabilities of Sellers under the Pension Plans and the Post-Retirement Benefit Plans (including with respect to the Excluded Employees), as contemplated in Section 6.9, together with all obligations and liabilities of Sellers in respect of Transferred Employees; and
- (e) all obligations and liabilities of Sellers relating to the Proceedings disclosed in Schedule 4.24 of the Disclosure Letter.

2.4 Excluded Liabilities

Purchaser will not assume or be liable for, and Sellers shall retain and remain responsible for, the following liabilities and obligations (collectively, the "**Excluded Liabilities**"):

- (a) all obligations and liabilities of any Seller for or in respect of any indebtedness to any other Seller or any Affiliate of any Seller, including any accrued or unpaid principal, interest, fees or other amounts or obligations;
- (b) all obligations and liabilities of any Seller for or in respect of the Credit Facilities or any other indebtedness for borrowed money owed to third parties, including any accrued or unpaid principal, interest, fees, pre-payment, un-winding or breakage fees or similar costs or any interest swap, currency swap, foreign exchange hedging arrangement or other hedging or derivative arrangement related thereto;
- (c) all obligations and liabilities of any Seller for any income Taxes;
- (d) all obligations and liabilities in respect of any fees, costs or expenses incurred by or on behalf of any Sellers or any Affiliate of any Seller in connection with or arising from the negotiation, documentation and/or consummation of the transactions contemplated by this Agreement, including any fees or expenses of any financial, legal, accounting or other professional advisors and any structuring costs and retention bonuses, other than fees contemplated by Section 2.5;
- (e) all obligations and liabilities of any Seller existing prior to Closing in connection with the breach of any Assumed Contracts, Leases, Third Party Leases or Transferred Authorizations, other than those breaches disclosed in Schedule 4.16(c) of the Disclosure Letter;
- (f) except as contemplated by Section 2.3(d), all obligations and liabilities of any Seller related to the Excluded Employees, including any payments under the Change of Control Contracts, any severance payment to Excluded Employees and all obligations and liabilities under any Contract for vehicles leased for any Excluded Employees;

- (g) all obligations and liabilities of any Seller under the Change of Control Contracts; and
- (h) all obligations and liabilities of any Seller related to the Excluded Assets.

2.5 Transfer Fees

If there are any fees to be paid or expenses to be reimbursed to any third party in respect of obtaining the Consent of such third party to the transfer and assignment of any of the Purchased Assets by any Seller to Purchaser as contemplated hereunder, Purchaser shall be responsible for those amounts and pay such amounts to the applicable third party.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

The consideration payable by Purchaser to Sellers for the Purchased Assets exclusive of all applicable Sales Taxes and transfer Taxes is equal to the sum of \$917,700,000 ("**Unadjusted Cash Consideration**"), and the fair market value of the Consideration Shares as at the Time of Closing (such fair market value being the number of Consideration Shares multiplied by the volume weighted average trading price of the Common Shares on the TSX for the 10 trading days prior to the Closing Date), as adjusted in accordance with this Article 3, in addition to the assumption of the Assumed Liabilities (collectively, the "**Purchase Price**").

3.2 Calculation of Closing Date Payment

(a) As soon as practicable prior to the Closing Date, but in no event later than three Business Days prior to the Closing Date, Sellers, acting reasonably, shall provide to Purchaser an estimate of the Closing Working Capital, which will be based on a consolidated balance sheet of HHL prepared at Sellers' expense and dated as at the Closing Date and calculated in a manner consistent with the manner in which the Closing Working Capital is to be determined under Section 3.6(a)(ii) (the "**Estimated Working Capital**"). Sellers will provide Purchaser with detailed working papers evidencing its calculation and determination of the Estimated Working Capital.

(b) The cash consideration to be paid on the Closing Date (the "**Closing Date Payment**") will be equal to the Unadjusted Cash Consideration:

- (i) plus, the amount, if any, by which the Estimated Working Capital exceeds the Target Working Capital;
- (ii) minus, the amount, if any, by which the Target Working Capital exceeds the Estimated Working Capital.

3.3 Payment of Purchase Price

The Purchase Price will be paid and satisfied, subject to adjustment in accordance with this Article 3, as follows:

- (a) at the Time of Closing:
 - (i) Purchaser shall pay by wire transfer of immediately available funds to McCarthy Tetrault LLP, in trust for Sellers, an amount equal to the Closing Date Payment:
 - (A) minus, an amount equal to \$15,000,000 (the "**Working Capital Escrow Amount**");
 - (B) minus, an amount equal to \$50,000,000 (the "**Indemnity Escrow Amount**", and together with the Working Capital Escrow Amount, the "**Escrow Amount**"); and
 - (C) minus, an amount equal to the Closing Debt;
 - (ii) Purchaser shall pay the Escrow Amount by wire transfer of immediately available funds to or to the order of CIBC Mellon Trust Company or such other reputable trust company as the Parties may agree (the "**Escrow Agent**") in trust, to be held in escrow and distributed in accordance with the provisions of an escrow agreement acceptable to the Parties, acting reasonably, to be entered into by Purchaser, Sellers and the Escrow Agent on the Closing Date (the "**Escrow Agreement**"), such Escrow Agreement to contain release principles substantially in the form of Exhibit 3.3(a)(ii);
 - (iii) Purchaser shall pay by wire transfer of immediately available funds in the amount of the Closing Debt to or as directed by the creditors in the pay-off letters obtained pursuant to Section 3.4;
 - (iv) Purchaser shall issue the Consideration Shares to the Designated Seller and deliver the Consideration Shares registered in the name of the Designated Seller; and
 - (v) Purchaser shall assume the Assumed Liabilities;
- (b) on the Adjustment Date, Purchaser or Seller, as the case may be, shall pay the Working Capital Post-Closing Adjustment Amount, if any, in accordance with Section 3.8.

3.4 Pay-off Letters

As soon as practicable prior to the Closing Date, but in no event later than two Business Days prior to the Closing Date, Sellers shall deliver to Purchaser pay-off letters executed by the counterparties in respect of the Closing Debt specifying the amount of the

Closing Debt as of the Closing Date and authorizing, upon payment of such amount, the discharge of all security, if any, in respect of such debt.

3.5 Allocation of Purchase Price

Sellers and Purchaser agree to allocate the Purchase Price among Sellers and the Purchased Assets in accordance with Exhibit 3.5 and to report the sale and purchase of the Purchased Assets for all federal, provincial and local Tax purposes in a manner consistent with such allocation. If such allocation is disputed by any taxation or other Governmental Body, the Party receiving notice of such dispute will promptly notify the other Party and the Parties will use their commercially reasonable efforts to sustain the final allocation. The Parties will share information and cooperate to the extent reasonably necessary to permit the transactions contemplated by this Agreement to be properly, timely and consistently reported.

3.6 Preparation of Closing Balance Sheet and Determination of Closing Working Capital

(a) Within 60 days following the Closing Date, Purchaser shall prepare or cause to be prepared, at Purchaser's expense, and deliver to Sellers:

- (i) the closing balance sheet of the Purchased Business, as of 12:01 a.m. on the Closing Date, prepared in accordance with GAAP, applying the same significant accounting policies and practices as applied to the Audited Financial Statements (collectively the "**Closing Balance Sheet**"); and
- (ii) a calculation of Working Capital as at the Closing Date (as shown on the Closing Balance Sheet), prepared in accordance with the principles (the "**Working Capital Principles**") set out in Exhibit 3.6(a)(ii). For illustration purposes, an example of such Working Capital calculation is included in Exhibit 3.6(a)(ii).

(b) At any time between Closing and the determination of the final Closing Working Capital in accordance with Section 3.7, (i) Purchaser shall, and shall cause its employees, advisors and auditors to, (A) give access, on reasonable request, to Sellers and their representatives, to the books and records and all working papers of Purchaser related thereto in order to verify the accuracy, presentation and other matters relating to the preparation of the Closing Balance Sheet and the calculation of the Closing Working Capital and to enable Sellers to exercise their rights under Section 3.7, and (B) give a reasonable opportunity to Sellers and their advisors to request and attend meetings relating to the preparation of the Closing Balance Sheet and the calculation of the Closing Working Capital among the personnel, advisors or auditors of Purchaser and the personnel or auditors of the Purchased Business and use commercially reasonable efforts to cause such meetings to occur, (ii) Purchaser, Sellers and their respective representatives shall share with each other all material information and documentation (including in electronic format, but excluding any privileged information) discussed during such meetings, (iii) Purchaser, Sellers and their respective representatives shall discuss in good faith with each other any decision or determination made during such meetings or otherwise which may have an impact on the determination of the Closing Balance Sheet and the calculation of the

Closing Working Capital (or any item incorporated therein), and (iv) consider in good faith any reasonable request by Sellers and their respective representatives for modification to the Closing Balance Sheet and the calculation of the Closing Working Capital to be delivered by Purchaser pursuant to this Section 3.6.

(c) Following receipt of the Closing Balance Sheet and the calculation of the Closing Working Capital, Sellers will have 60 days to review them (the "**Review Period**").

(d) Each Party shall be responsible for its own fees and expenses, including the fees and expenses of its auditors, in preparing or reviewing, as the case may be, the Closing Balance Sheet and the calculation of the Closing Working Capital. If a dispute regarding the Closing Balance Sheet or the calculation of the Closing Working Capital is submitted for determination to the Independent Accountant under Section 3.7, the fees and expenses of the Parties and the Independent Accountant will be paid in accordance with Section 3.7.

3.7 Acceptance or Dispute of the Closing Balance Sheet and the Closing Working Capital

(a) Following receipt of the Closing Balance Sheet and calculation of the Closing Working Capital as contemplated by Section 3.6, if Sellers object in good faith to any item on the Closing Balance Sheet or the calculation of the Closing Working Capital, Sellers shall so notify Purchaser by delivering to Purchaser a written notice to that effect (the "**Notice of Objection**") prior to the end of the Review Period. The Notice of Objection must set out in reasonable detail the reasons for Sellers' objection, the amount in dispute and Sellers' calculation of that amount. If Sellers do not object to any item on the Closing Balance Sheet or the calculation of the Closing Working Capital, Sellers may so notify Purchaser by delivering a written notice to that effect (the "**Notice of Acceptance**"). If Sellers do not deliver a Notice of Objection or Notice of Acceptance to Purchaser prior to the end of the Review Period, Sellers will be deemed to have delivered a Notice of Acceptance to Purchaser on the last day of the Review Period and Purchaser's calculation of the Closing Working Capital will be deemed to be final and binding for purposes of the adjustments referred to in Section 3.8.

(b) If Sellers deliver a Notice of Objection in accordance with Section 3.7(a), Sellers and Purchaser shall work expeditiously and in good faith to resolve all of the items in dispute set out in the Notice of Objection within 30 days following delivery of the Notice of Objection. Any items in dispute that are not resolved by the end of that 30 day period will be submitted by Sellers and Purchaser for determination to Deloitte LLP or such other independent accounting firm mutually agreed to by Sellers and Purchaser (the "**Independent Accountant**"). In making its determination, the Independent Accountant will act as expert and not as arbitrator, must only consider the items in dispute submitted to it, and must make reasonable efforts to determine the items in dispute within 30 days following the date of appointment. In resolving each such item in dispute, the Independent Accountant (i) shall resolve such dispute in accordance with the provisions of this Agreement, (ii) shall make its determination based solely on the presentations and supporting material provided by Purchaser and Sellers and not pursuant to any independent review and (iii) may not assign a value to any item greater than the greatest value for such item claimed by either Purchaser or Sellers or less than the smallest value for such item claimed by either Purchaser or Sellers. Purchaser and Sellers shall make available to the Independent

Accountant the books and records and relevant personnel, as well as any documents or work papers used in the preparation of the items in Section 3.6(a) and the Notice of Objection, and all other items reasonably requested by the Independent Accountant.

(c) The determination of the Independent Accountant will be final and binding on the Parties and will not be subject to appeal, absent manifest error, and the Closing Working Capital as determined by the Independent Accountant will be final and binding for purposes of the adjustments referred to in Section 3.8. (For greater certainty, no Party may appeal a determination made by the Independent Accountant or attempt to dispute, recover, duplicate or adjust any amount which that Party is required to pay or entitled to receive as a result of that determination or the adjustments referred to in Section 3.8 by making a claim for Losses under Article 9.)

(d) The fees, costs and expenses of the Independent Accountant shall be borne by Purchaser in the proportion that the aggregate dollar amount of the items that are successfully disputed by Sellers (as finally determined by the Independent Accountant) bears to the aggregate dollar amount of the items submitted to the Independent Accountant and by Sellers in the proportion that the aggregate dollar amount of the disputed items that are unsuccessfully disputed by Sellers (as finally determined by the Independent Accountant) bears to the aggregate dollar amount of the items submitted to the Independent Accountant. Purchaser and Sellers shall each bear their own costs in presenting their respective cases to the Independent Accountant.

3.8 Working Capital Post-Closing Adjustment

(a) The amount by which the Closing Working Capital, as finally determined in accordance with Section 3.7, is more or less than the Estimated Working Capital is referred to as the "**Working Capital Post-Closing Adjustment Amount**".

(b) If the Closing Working Capital, as finally determined in accordance with Section 3.7, is more than the Estimated Working Capital, on the Adjustment Date, Purchaser shall (i) pay the Working Capital Post-Closing Adjustment Amount by wire transfer of immediately available funds to or to the order of Sellers or as they may direct and (ii) together with Sellers, deliver a joint written instruction to the Escrow Agent to release the Working Capital Escrow Amount to Sellers.

(c) If the Closing Working Capital, as finally determined in accordance with Section 3.7, is less than the Estimated Working Capital, on the Adjustment Date:

- (i) if the Working Capital Escrow Amount equals or exceeds the Working Capital Post-Closing Adjustment Amount, Sellers shall, together with Purchaser, deliver a joint written instruction to the Escrow Agent to release (A) the Working Capital Post-Closing Adjustment Amount from the Working Capital Escrow Amount to Purchaser and (B) the balance of the Working Capital Escrow Amount, if any, to Sellers; and
- (ii) otherwise, Sellers shall (A) pay the amount by which the Working Capital Post-Closing Adjustment Amount exceeds the Working Capital Escrow Amount by wire transfer of immediately available funds to or to the order

of Purchaser and (B) together with Purchaser, deliver a joint written instruction to the Escrow Agent to release the Working Capital Escrow Amount to Purchaser.

3.9 ETA Election

On or before the Closing Date, if available, Purchaser and each relevant Seller shall elect jointly under subsection 167(1) of the ETA and section 75 of the QSTA, in the prescribed form and at the prescribed time, in respect of the sale and transfer of the Purchased Assets hereunder, and Purchaser shall file such election with Canada Revenue Agency and the Ministère du Revenu du Québec in the manner and within the time prescribed by the ETA and the QSTA and promptly provide proof of such filings to Sellers. Notwithstanding any election made pursuant to this Section 3.9, in the event it is determined by the Canada Revenue Agency and/or the Ministère du Revenu du Québec that there is a liability for Purchaser to pay GST and/or QST or any relevant Seller to collect GST and/or QST in respect of all or a part of the transaction hereunder, Purchaser shall indemnify and hold such Seller harmless in respect of any GST and/or QST and any penalties and interest which may be assessed against such Seller as a result of the transaction under this Agreement, not being eligible for the election(s) or the failure of Purchaser to file the election(s) in the manner and the time prescribed by the ETA or QSTA.

3.10 Transfer Taxes

Purchaser shall be liable for and shall pay directly to the appropriate Governmental Body or Sellers, as the case may be, all Sales Taxes, land transfer Taxes and all other duties, fees or other like charges of any jurisdiction properly payable by Purchaser in connection with the transfer of the Purchased Assets by Sellers to Purchaser. Any amounts paid by Purchaser to Sellers under this Section 3.10 shall be remitted by Sellers to the appropriate Governmental Body in accordance with applicable Laws after the receipt of such amount by Sellers. For purposes of determining the land transfer Taxes payable, the Parties have agreed on the allocation among the properties comprising the Owned Real Property of the portion of the Purchase Price attributed thereto, as reflected in Exhibit 3.5.

3.11 Section 22 Election

Purchaser and Sellers agree to elect jointly in the prescribed form under section 22 of the Tax Act and under any similar provision of any applicable provincial Laws as to the sale of the accounts receivable and other assets which are referred to in Section 2.1(f) and described in section 22 of the Tax Act (or the relevant provincial provision) and to designate in such election an amount equal to the portion of the Purchase Price allocated to such assets pursuant to Section 3.5 as the consideration paid by Purchaser therefor.

3.12 Section 20(24) Election

Sellers and Purchaser agree to jointly execute and file an election under subsection 20(24) of the Tax Act, in the manner required by subsection 20(25) of the Tax Act, and the equivalent provisions of any applicable provincial Laws, with respect to the amount paid by Sellers to Purchaser for assuming future obligations. Sellers and Purchaser acknowledge that a portion of the Purchased Assets transferred by Sellers to Purchaser pursuant hereto with a value

equal to the amount elected under subsection 20(24) of the Tax Act is being transferred by Sellers to Purchaser as a payment for the assumption by Purchaser of such future obligations.

3.13 Section 56.4 Election

Sellers and Purchaser agree that the Non-Competition Agreements are required in order for the Purchaser to maintain and preserve the value of the Purchased Assets. The Parties agree that no portion of the Purchase Price is paid or payable with respect to, or will be allocated to, the Non-Competition Agreements. The Parties intend that subsections 56.4(5) and (7) of the Tax Act and the equivalent provisions of any applicable provincial tax legislation apply to the Non-Competition Agreements entered into by each Seller and each of James Hewitt and David Hewitt. To the extent requested by the Sellers, Purchaser agrees to make such elections as may be necessary or desirable to ensure that subsections 56.4(5) and (7) of the Tax Act and the equivalent provisions of any applicable provincial tax legislation apply to the Non-Competition Agreements.

3.14 Section 85 Election

Purchaser and Sellers will discuss in good faith the possibility of making a joint election under subsection 85(1) of the Tax Act, and any corresponding provincial provision, with respect to the sale of any of the Purchased Assets. If applicable, such election will be filed by Sellers and Purchaser in the form and manner and within the time prescribed by the Tax Act and the regulations thereunder, and any corresponding provincial provision. The agreed amount for the purposes of paragraph 85(1)(a) of the Tax Act, and any corresponding provincial provision, in respect of each such property would be determined by Purchaser and Sellers within the limits provided for under the Tax Act. Purchaser and Sellers agree that Purchaser shall be under no obligation to implement any such joint election and that any joint election will be conditional upon Seller compensating Purchaser for its Tax costs arising from making such election.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLERS

Subject to those matters set out in the disclosures set forth in the Disclosure Letter (it being understood and agreed that any exceptions or qualifications set forth in the Disclosure Letter relating to a particular representation or warranty hereunder shall be construed as an exception to any other related or applicable representation or warranty only to the extent it is reasonably apparent from the text of the Disclosure Letter), Sellers represent and warrant to Purchaser as follows and acknowledge that Purchaser is relying on such representations and warranties in connection with its purchase of the Purchased Assets.

4.1 Organization

Each Seller is validly existing under the Laws of its jurisdiction of formation set out in Schedule 4.1 of the Disclosure Letter and has the corporate power to own or lease its property, including the Purchased Assets owned or leased by it, to carry on the Purchased Business as now being conducted by it and to enter into this Agreement and each of the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder. Each Seller is duly qualified as a corporation to do business in each jurisdiction in

which the nature of the Purchased Business or the Purchased Assets carried on by it, or owned or leased by it, makes such qualification necessary.

4.2 Authorization

This Agreement has been duly authorized, executed and delivered by each Seller and is a legal, valid and binding obligation of each Seller, enforceable against each Seller by Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other Laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

4.3 No Other Agreements to Purchase

Except as disclosed in Schedule 4.3 of the Disclosure Letter, no Person, other than Purchaser, has any written or oral agreement or option or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming an agreement or option or right or privilege for the purchase or acquisition from any Seller of any of the Purchased Assets, including any right of first offer or refusal or similar right, other than inventory to be sold in the Ordinary Course pursuant to Assumed Contracts (including any purchase order).

4.4 No Violation

Subject to obtaining the Approvals, Authorizations and Consents referred to in Sections 4.18(a) and 4.18(b) and except for the non-assignable rights contemplated in Section 6.3, neither the execution and delivery by any Seller of this Agreement and each of the Ancillary Agreements and other Closing Deliveries to which such Seller is a party nor the consummation of the transactions herein and therein provided for will result in: (a) the material breach or material violation of any of the provisions of, or constitute a material default under, or conflict materially with or cause the acceleration of any obligation of such Seller under: (i) any provision of the constating documents or by-laws or resolutions of the board of directors (or any committee thereof) or shareholders of such Seller; (ii) any judgment, decree, order or award of any Governmental Body or arbitrator having jurisdiction over such Seller; (iii) any Material Contract, Lease, Third Party Lease, or Authorization held by or binding upon such Seller or necessary to the operation of the Purchased Business at any of the Properties; or (iv) any applicable Laws; or (b) the creation or imposition of any Encumbrance on any of the Purchased Assets.

4.5 Sufficiency of Purchased Assets

The Purchased Assets constitute all of the property and assets necessary to carry on the Purchased Business in substantially the same manner as carried on prior to Closing, consistent with past practice. Except as disclosed in Schedule 4.5 of the Disclosure Letter, all tangible Purchased Assets owned and used by Sellers in connection with the Purchased Business are in good operating condition and are in a state of good repair and maintenance having regard to their use and age (ordinary wear and tear excepted). Except as disclosed in Schedule 4.5 of the Disclosure Letter and with the exceptions of inventory in transit, rental equipment in the possession of customers of the Purchased Business and certain equipment such as personal computers and vehicles that may be under the physical control of certain Employees, all of the

tangible assets of the Purchased Business are located at the Properties. The only Affiliate of any Seller that has any interest in the Purchased Assets is another Seller.

4.6 Title to Property

(a) Each Seller is the sole beneficial owner, or in the case of leases of equipment, lessee, of all of the Purchased Assets comprising of personal or movable property to be conveyed by it to Purchaser pursuant to this Agreement. Except as set out on Schedule 4.6(a) of the Disclosure Letter, each Seller has good and valid title to all of such Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) Each Seller is the sole registered and beneficial owner of, has the exclusive right to possess, use and occupy (and does so occupy), subject only to Third Party Leases and Intercompany Leases, and has good and valid title in fee simple (where applicable) to all the Owned Real Property to be conveyed by it to Purchaser pursuant to this Agreement, free and clear of all Encumbrances other than Permitted Encumbrances. A Seller (as set out on Schedule 2.1(a) of the Disclosure Letter) is the sole registered and beneficial owner of each of the properties comprising the Owned Real Property. No Seller is the beneficial or registered owner of or has agreed to acquire any immovable (real) property for use in the Purchased Business or any freehold interest (where applicable) or ownership in any such immovable (real) property other than its Owned Real Property.

(c) Each Seller is the sole tenant or registered and beneficial owner of, has the exclusive right to possess, use and occupy (and does so occupy) and has good and valid title to the leasehold interest in the Leased Real Property (in respect of the Leased Real Property located outside of the Province of Québec) or binding contractual rights (in respect of the Leased Real Property located in the Province of Québec), to be conveyed by it to Purchaser pursuant to this Agreement, free and clear of all Encumbrances other than Permitted Encumbrances. No Seller is a party, as lessee, to any lease or agreement to lease in respect of any immovable (real) property used or to be used in the Purchased Business, other than the leases described in Schedule 2.1(b) of the Disclosure Letter (such leases, as amended or supplemented by documents referred to in such Schedule 2.1(b), the "Leases").

4.7 Location of Owned Real Property and Leased Real Property

(a) Schedule 2.1(a) of the Disclosure Letter sets forth the municipal addresses and correct and complete legal descriptions of the Owned Real Property.

(b) Schedule 2.1(b) of the Disclosure Letter sets forth the municipal addresses of all of the Leased Real Property, and such schedule accurately sets out the parties to each of the Leases, their commencement and expiry dates, any options to renew, the locations of the leased lands and premises and the rent payable thereunder.

4.8 Owned Real Property

Except as disclosed in Schedule 4.8 of the Disclosure Letter:

- (a) to Sellers' knowledge, all buildings, structures, improvements and appurtenances situated on or forming part of the Owned Real Property are (i) in good operating condition and in a state of good maintenance and repair (including the underlying structure, roof and Building Systems thereof) having regard to their use and age (ordinary wear and tear excepted) and (ii) adequate and suitable for the purposes for which they are now being used, in each case, in all material respects, and the relevant Seller has adequate rights of ingress and egress for the operation of the Purchased Business in the Ordinary Course;
- (b) neither the Owned Real Property (including the buildings, structures, improvements and appurtenances situated thereon or forming part thereof and the equipment used thereon or therein) nor the operation or maintenance thereof materially violates any restrictive covenant, any Assumed Contract, any Third Party Lease or materially encroaches on any property owned by others;
- (c) to Sellers' knowledge, no property owned by others materially encroaches upon the Owned Real Property or any portion thereof;
- (d) to Sellers' knowledge, the Owned Real Property, the current uses thereof and the conduct of the Purchased Business thereon are in compliance, in all material respects, with all Laws and all Encumbrances, including those dealing with zoning, parking, access, loading facilities, landscaped areas, building construction, fire and public health and safety and Environmental Laws;
- (e) no Seller has received any written order, direction or request from any Governmental Body or utility company demanding that any major alteration, repair, improvement or other work be done or performed to or in respect of the Owned Real Property (including in respect of any Building Systems, fixtures or works), which alteration, repair, improvement or other work has not been completed, remedied or satisfied, in all material respects, and no Seller has received any written notification having been given to it of any such outstanding work being ordered, directed or requested, other than those that have been complied with;
- (f) all accounts for work and services performed and materials placed or furnished upon or in respect of the Owned Real Property at the request or responsibility of any Seller have been fully paid and satisfied, and no Person is entitled to register a legal hypothec under the *Civil Code of Québec* or claim a lien under the *Construction Lien Act* (Ontario) or similar legislation in other provinces against the Owned Real Property or any part thereof, other than for current accounts in respect of which the payment due date has not yet passed;
- (g) there is nothing owing in respect of the Owned Real Property by any Seller to any Governmental Body or to any utility company for water, gas, electrical power or

energy, steam or hot water, or for the use thereof, other than current accounts in respect of which the payment due date has not yet passed;

- (h) the Owned Real Property is serviced by all public utilities necessary for the occupation of such properties for their current uses in connection with the Purchased Business and has access to public roads, and there are no outstanding levies, charges or fees assessed against any of the Owned Real Property by any public authority (including development or improvement levies, charges or fees); and
- (i) none of the Owned Real Property is classified or otherwise protected under *an Act respecting the preservation of agricultural land and agricultural activities* (Québec); and
- (j) Sellers have provided to Purchaser complete copies of the material engineering or inspection reports in their possession relating to the condition of the property and buildings comprising the Owned Real Property prepared since December 28, 2014.

4.9 Leased Real Property

Except as disclosed in Schedule 4.9 of the Disclosure Letter:

- (a) each of the Leases is in good standing and in full force and effect, and no Seller nor, to Sellers' knowledge, any other party thereto is in material breach of any covenants, conditions or obligations contained therein. Each Seller has performed in all material respects all of the obligations required to be performed by it under the Leases. To Sellers' knowledge, no event, condition or occurrence exists which, after notice or lapse of time or both, would constitute a material default under any Lease. Sellers have provided to Purchaser a correct and complete copy of each Lease (including all amendments and supplements thereto);
- (b) to Sellers' knowledge, all buildings, structures, improvements and appurtenances forming part of the Leased Real Property are (i) in good operating condition and in a state of good maintenance and repair (including the underlying structure, roof and Building Systems thereof) having regard to their use and age (ordinary wear and tear excepted) and (ii) adequate and suitable for the purposes for which they are now being used, in each case, in all material respects, and the relevant Seller has adequate rights of ingress and egress for the operation of the Purchased Business in the Ordinary Course;
- (c) to Sellers' knowledge, neither the Leased Real Property (including the buildings, structures, improvements and appurtenances situated thereon or forming part thereof and the equipment used thereon or therein) nor the operation or maintenance thereof materially violates any restrictive covenant, any Assumed Contract or, to Sellers' knowledge, materially encroaches on any property owned by others;

- (d) to Sellers' knowledge, no property owned by others materially encroaches upon the Leased Real Property or any portion thereof;
- (e) to Sellers' knowledge, the Leased Real Property, the current uses thereof and the conduct of the Purchased Business thereon comply, in all material respects, with all Laws and all Encumbrances, including those dealing with zoning, parking, access, loading facilities, landscaped areas, building construction, fire and public health and safety and Environmental Laws;
- (f) no Seller has received any written order, direction or request from any Governmental Body or utility company demanding that any major alteration, repair, improvement or other work be done or performed to or in respect of the Leased Real Property (including in respect of any Building Systems, fixtures or works), which alteration, repair, improvement or other work has not been completed, remedied or satisfied, in all material respects, and no Seller has received any written notification having been given to it of any such outstanding work being ordered, directed or requested, other than those that have been complied with;
- (g) all accounts for work and services performed and materials placed or furnished upon or in respect of the Leased Real Property at the request or responsibility of any Seller have been fully paid and satisfied, and no Person is entitled to claim a lien under the *Construction Lien Act* (Ontario) or similar legislation in other provinces of Canada against the Leased Real Property or any part thereof, other than for current accounts in respect of which the payment due date has not yet passed;
- (h) there is nothing owing in respect of the Leased Real Property by any Seller to any Governmental Body or to any utility company for water, gas, electrical power or energy, steam or hot water, or for the use thereof, other than current accounts in respect of which the payment due date has not yet passed;
- (i) each of the Leased Real Properties is serviced by all public utilities necessary for the occupation of such properties for their current uses in connection with the Purchased Business and has access to public roads, and there are no outstanding levies, charges or fees assessed against any of the Leased Real Property by any public authority (including development or improvement levies, charges or fees); and
- (j) Sellers have provided to Purchaser complete copies of the material engineering or inspection reports in their possession relating to the condition of the property and buildings comprising Leased Real Property prepared since December 28, 2014.

4.10 Leases to Third Parties

No Seller is a party, as lessor or sublessor, to any lease or agreement to lease in respect of any immovable (real) property used or to be used in the Purchased Business, other than the leases described in Schedule 4.10 of the Disclosure Letter (such leases, as amended or

supplemented by documents referred to in such Schedule 4.10, the "**Third Party Leases**"). Schedule 4.10 of the Disclosure Letter sets out the parties to each of the Third Party Leases, their commencement and expiry dates, any options to renew, the locations of the leased lands and premises and the rent payable thereunder. Each of the Third Party Leases is in good standing and in full force and effect, and no Seller nor, to Sellers' knowledge, any other party thereto is in material breach of any covenants, conditions or obligations contained therein. Each Seller has performed in all material respects all of the obligations required to be performed by it under the Third Party Leases. To Sellers' knowledge, no event, condition or occurrence exists which, after notice or lapse of time or both, would constitute a material default under any Third Party Lease. Sellers have provided to Purchaser a correct and complete copy of each Third Party Lease (including all amendments and supplements thereto).

4.11 Inventories

The inventory reserves for equipment that is obsolete or of a quality or quantity not useable in the Ordinary Course, are in accordance with GAAP applying the same significant accounting policies and practices as applied to the Audited Financial Statements. Subject to availability from suppliers, the inventory levels of Sellers have been maintained at levels required and adequate for the operation of the Purchased Business in the Ordinary Course. Parts inventory is fairly recorded in the books of Sellers, is in accordance with GAAP applying the same significant accounting policies and practices as applied to the Audited Financial Statements.

4.12 Accounts Receivable

All accounts receivable and other debts due or accruing to any Seller in connection with the Purchased Business are *bona fide* debts created in the Ordinary Course and fairly recorded in the books of Sellers, are in accordance with GAAP applying the same significant accounting policies and practices as applied to the Audited Financial Statements. Such debts have been appropriately reduced to their estimated net realizable value, and none of the Sellers have received any written communication from any obligor asserting any right of set off or counterclaim.

4.13 Intellectual Property

(a) Schedule 2.1(j) of the Disclosure Letter accurately sets out all registered or pending Intellectual Property (including particulars of registrations or applications for registration), and all other material Intellectual Property, other than Intellectual Property part of the Excluded Assets, and all licences and other Contracts which comprise or relate to Purchased IP other than non-exclusive "off-the-shelf" licences or Contracts to proprietary third party software that is not material to the Purchased Business, and is generally available on standard terms for less than \$15,000 (such software, "**Off-The-Shelf Software**"). Sellers have provided to Purchaser a correct and complete copy of all Contracts and amendments thereto which comprise or relate to the Purchased IP.

(b) The Purchased IP comprises all Intellectual Property and Intellectual Property Rights used or held for use in or necessary to conduct the Purchased Business as currently

conducted. Each Seller is the owner free and clear of all Encumbrances of the owned Purchased IP to be conveyed by it to Purchaser. Each Seller has a valid and subsisting licence to use the licensed Purchased IP, including Off-The-Shelf Software, to be conveyed by it to Purchaser. Except as set out in Schedule 2.1(j) of the Disclosure Letter in respect of any licensed Purchased IP, the relevant Seller is not limited or impaired in its ability to sell, transfer, assign or convey such licensed Purchased IP. No Seller has granted to any Person any interest in or right to use all or any portion of the Purchased IP.

(c) To Sellers' knowledge, the conduct of the Purchased Business does and has not infringed upon, violated or misappropriated the Intellectual Property Rights, domestic or foreign, of any other Person, nor has any Seller received any written notice or claim that the conduct of the Purchased Business, including the use of the Purchased IP, infringes upon, violates or misappropriates any Intellectual Property Rights of any other Person, or the trade secrets, know-how or confidential or proprietary information of any other Person.

(d) No Seller has received any written notice or claim of any infringement, violation or misappropriation of any of the Purchased IP, and no Seller has knowledge of any such infringement, violation or misappropriation or any state of facts which casts doubt on the validity or enforceability of any of the Purchased IP.

(e) Except as set out in Schedule 4.13(e) of the Disclosure Letter, Sellers have secured from all current and former employees, directors, officers, independent contractors, service providers, consultants, advisors and shareholders of any Seller, who have in any way contributed to the creation or development of any of the Purchased IP owned by any Seller: (i) a legally binding assignment of all ownership interests and rights (other than inalienable moral rights) that Sellers do not already own by operation of law (true and complete copies of which have been made available to Purchaser) and (ii) a waiver of inalienable moral rights or *droits d'auteur* (such as the right to pseudonymity, attribution and integrity).

4.14 Insurance

(a) The Purchased Assets are insured against loss or damage with reputable insurers in amounts and against such losses and claims as are generally maintained for comparable businesses and properties and such insurance coverage is and will be continued in full force and effect to and including the Time of Closing. Schedule 4.14 of the Disclosure Letter sets out all insurance policies maintained by or on behalf of any Seller on, or covering, the Purchased Assets or personnel as of the date hereof (specifying insurer, amount of coverage, type of insurance, policy numbers, expiry dates, and any pending claims thereunder). Sellers have provided to Purchaser correct and complete copies of the most recent inspection reports, if any, received from insurance underwriters or others as to the condition of the Purchased Assets. No Seller is in default with respect to any such insurance policy or has failed to give any notice or present any material claim under any such insurance policy in a due and timely fashion. Sellers have delivered to Purchaser a correct and complete copy of each insurance policy referred to in Schedule 4.14 of the Disclosure Letter.

(b) Schedule 4.14 of the Disclosure Letter contains a correct and complete list and description of all outstanding claims under any of the insurance policies listed thereon.

(c) No notice of cancellation or non-renewal with respect to, nor disallowance of any material claim under, the insurance policies listed in Schedule 4.14 of the Disclosure Letter, has been received by any Seller. To Sellers' knowledge, there are no circumstances or occurrences which would or might form the basis of a material increase in premiums for the current insurance coverage maintained in respect of the Purchased Business.

4.15 No Expropriation

No part of the Owned Real Property or Leased Real Property has been taken, condemned or expropriated by any Governmental Body, nor has any notice or proceeding in respect thereof been given or commenced, nor does any Seller have any knowledge of any intention or proposal to give, or any contemplation of, any such notice or commence any such proceeding.

4.16 Agreements and Commitments

(a) Except as described on Schedule 4.16 of the Disclosure Letter, no Seller is a party to or bound by any material Contract relating to the Purchased Business or Purchased Assets (each, a "**Material Contract**") of the following types:

- (i) any maintenance and repair Contract or customer service or support Contract ("**MARCs**"), in each case having an estimated aggregate sales value over the life of the Contract in excess of \$1,000,000;
- (ii) any distribution, sales, advertising, agency or manufacturer's representative Contract;
- (iii) any purchase order or Contract for the supply to any Seller of materials, supplies, equipment or services in excess of \$1,000,000 in any one year in respect of any one such purchase order or Contract or any particular supplier, other than purchase orders with Major Suppliers;
- (iv) any purchase order or Contract for the sale, lease, rental or provision of services to any customer of the Purchased Business in excess of \$2,000,000 in any one year in respect of any one such purchase order or Contract or any particular customer;
- (v) any Contract for any currency swap, foreign exchange hedging arrangement or other hedging or derivative arrangement entered into by any Seller;
- (vi) any continuing Contract that involves the sale or delivery by any Seller of materials, supplies, equipment or services at a price below cost that could reasonably be expected to result in a loss of more than \$200,000 to such Seller, other than as a result of fluctuation in foreign exchange;
- (vii) any employment or consulting Contract or any other Contract with any officer, employee or consultant earning \$125,000 or greater on an annual

basis, other than Contracts of indeterminate term terminable by Seller without cause on reasonable notice in accordance with applicable Laws;

- (viii) any Collective Agreement;
- (ix) any trust indenture, hypothec, mortgage, promissory note representing a principal amount of indebtedness in excess of \$1,000,000, loan agreement, guarantee or other Contract for the borrowing of money or a leasing transaction of the type required to be capitalized in accordance with GAAP;
- (x) any Contract for capital expenditures in excess of \$3,000,000 in any one year;
- (xi) any Contract for the sale of any assets, other than sales of inventory to customers in the Ordinary Course;
- (xii) any Contract pursuant to which any Seller is a lessee of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property which provides for annual payment obligations in excess of \$1,000,000;
- (xiii) any confidentiality, secrecy or non-disclosure Contract entered into by any Seller other than in the Ordinary Course;
- (xiv) any non-competition Contract or similar Contract restricting the ability of Sellers to carry on the Purchased Business other than territory limits as currently provided in distribution, dealer or supply Contracts;
- (xv) any Contracts described in Schedule 2.1(j) of the Disclosure Letter;
- (xvi) any power of attorney relating to the Purchased Business in favour of any Person;
- (xvii) any Contract with a person who does not deal at arm's length with any Seller or the Purchased Business other than Intercompany Leases;
- (xviii) any Contract that would limit the freedom of Purchaser following the Closing Date to engage in the Purchased Business as currently conducted, to own, operate, sell, transfer, pledge or otherwise dispose of or encumber any of the Purchased Assets or to compete with any person or to engage in the Purchased Business as currently conducted in any geographic area;
- (xix) any joint venture, partnership, shareholder, buy-sell, stock restriction, voting or similar agreement, contract or commitment;
- (xx) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any other similar commitment with respect to, the

obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any Person other than Sellers, except for cheques endorsed for collection in the Ordinary Course;

- (xxi) any Contract involving "Controlled Goods" within the meaning of the Defence Production Act (Canada) or similar legislation, or other requiring any of Sellers (or will require Purchaser) to obtain or maintain security clearances;
- (xxii) any Contract with First Nations or other aboriginal groups;
- (xxiii) any Contract material to the Purchased Business or the Purchased Assets entered into by any Seller outside the Ordinary Course; or
- (xxiv) any Contract that, to the knowledge of Sellers, is otherwise material to the Purchased Business or the Purchased Assets.

(b) All standard form Contracts were made available to Purchaser.

(c) Except as described in Schedule 4.16 of the Disclosure Letter, each Seller has performed all of the obligations required to be performed by it in all material respects, and is not in material default or, to Sellers' knowledge, alleged to be in material default in respect of, any Assumed Contract to which it is a party or by which it is bound. All such Contracts are in good standing and in full force and effect, and, to Sellers' knowledge, no event, condition or occurrence exists which, after notice or lapse of time or both, would constitute a material default under any of the foregoing. Sellers have provided to Purchaser a correct and complete copy of each Contract listed on Schedule 4.16 of the Disclosure Letter, including all amendments thereto.

4.17 Compliance with Laws; Authorizations

(a) Each Seller has complied with all Laws applicable to the Purchased Business or the Purchased Assets in all material respects.

(b) Schedule 4.17 of the Disclosure Letter sets out a correct and complete list of all material Authorizations held by or granted to each Seller, and there are no other Authorizations necessary to carry on the Purchased Business as currently conducted or to own or lease any of the Purchased Assets. Each such Authorization is valid, subsisting and in good standing and no Seller is in default or breach of any such Authorization in any material respect and, to Sellers' knowledge, no proceeding is pending or threatened to revoke or limit any such Authorization. Sellers have provided to Purchaser a correct and complete copy of each such Authorization and all amendments thereto.

4.18 Consents and Approvals

(a) There is no requirement to make any filing with or give any notice to any Governmental Body or to obtain any Authorization as a condition to the lawful consummation of the transactions contemplated by this Agreement, except for the Approvals and the filings,

notifications and Authorizations described in Schedule 4.18(a) of the Disclosure Letter, or which relate solely to the identity of Purchaser or the nature of any business carried on by Purchaser.

(b) There is no requirement under any Material Contract, Lease or Third Party Lease relating to the Purchased Business or Purchased Assets to which any Seller is a party or by which it is bound to give any notice to, or to obtain the Consent of, any party to such Material Contract relating to the consummation of the transactions contemplated by this Agreement, except for the notifications and Consents described in Schedule 4.18(b) of the Disclosure Letter.

4.19 Financial Statements; Absence of Liabilities

(a) The Audited Financial Statements have been prepared in accordance with GAAP applied on a basis consistent with past practice (except as disclosed in the notes thereto), and present fairly in all material respects the assets, liabilities and financial position of Sellers on a consolidated basis as at December 28, 2016 and 2015 and the results of operations and cash flows of Sellers for the years ended on December 28, 2016 and 2015. Sellers have provided correct and complete copies of the Audited Financial Statements to Purchaser.

(b) The Interim Financial Statements have been prepared in accordance with GAAP (except for the absence of notes) applied on a basis consistent with past practice, and present fairly in all material respects the assets, liabilities and financial position of Sellers on a consolidated basis as at July 28, 2017 and the results of operations and cash flows for the period from December 29, 2016 to July 28, 2017 on a basis consistent with the Audited Financial Statements, except as disclosed in Section 4.21(m) as to Hewitt Rentals Inc. Sellers have provided correct and complete copies of the Interim Financial Statements to Purchaser.

(c) Except as disclosed in Schedule 4.19(c) of the Disclosure Letter, since the date of the most recent Financial Statements, Sellers have not incurred liabilities of the type required to be reflected on a balance sheet prepared in accordance with GAAP other than liabilities incurred in the Ordinary Course, and, to Sellers' knowledge, no Seller has any other liabilities that are not reflected on the Financial Statements (or in a note therein) other than liabilities incurred after the date of the most recent Financial Statements in the Ordinary Course.

(d) The Sellers maintain internal accounting controls that provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded to allow for the preparation of Financial Statements in conformity with GAAP and (iii) of the safeguarding of assets.

(e) Schedule 4.19(e) of the Disclosure Letter sets out the projected revenue and costs of completion of the MARCs set out in Schedule 4.16(a)(i) of the Disclosure Letter as at June 23, 2017 or as of another date if so specifically provided in such Schedule. Such projected revenue and costs are based on assumptions that management of Sellers considers reasonable and appropriate.

4.20 Books and Records

The books and records of Sellers provide reasonable assurance that all financial transactions relating to the Purchased Business are recorded in accordance with management's general or specific authorization and are in conformity with GAAP.

4.21 Absence of Changes

Except as disclosed in Schedule 4.21 of the Disclosure Letter, since the date of the Audited Financial Statements, the Purchased Business has been carried on only in the Ordinary Course and there has not been any:

- (a) declaration or payment of any dividends or other distributions by any Seller, or any other payment to any shareholder of any Seller (other than salary and other compensation paid to shareholders who are Employees in the Ordinary Course), or any capital reorganization or any equity adjustments, in each case, which have had or could adversely impact the Purchased Business or Purchased Assets;
- (b) licence, sale, assignment, transfer, disposition, pledge, mortgage or granting of a security interest or other Encumbrance on or over any Purchased Assets, other than sales, leases or rentals of inventory to customers in the Ordinary Course;
- (c) entry into, termination of, or receipt of notice of termination of any distributorship, dealer, third party sales representative contract having a term of more than one year, joint venture or similar agreement, or any credit agreement or similar agreement other than the Credit Facilities;
- (d) compromise or settlement of any legal proceeding other than in the Ordinary Course;
- (e) write-down of the value of inventory (other than general inventory reserves), cancellation of debts or claims or write-off as uncollectible accounts or notes receivable relating to the Purchased Business in amounts exceeding \$100,000 in each instance or \$500,000 in the aggregate;
- (f) other than in the Ordinary Course, grant or payment of any bonuses, whether monetary or otherwise, or any general wage or salary increases for Employees, or changes to the terms of employment for any Employee or entry into or amendment of any employment Contract;
- (g) entry into any severance, "golden parachute" or similar Contract with any Employee or hiring or termination of any Employees with a base salary in excess of \$125,000 per year;
- (h) entry into, adoption or amendment of the funding, payment or accrual practices of any Employee Plan, any material increase in any manner in the compensation or fringe benefits of any Employee or the payment of any benefit not required by any existing Benefit Plan or other such arrangement;

- (i) capital expenditures or commitments relating to the Purchased Business or Purchased Assets in excess of \$3,000,000 in the aggregate;
- (j) failure to make any capital expenditures which are reasonably necessary to maintain the Purchased Assets in good operating condition and in a good state of repair and maintenance;
- (k) forward purchase commitments in excess of the requirements of the Purchased Business for normal operating inventories or at prices higher than the current market prices;
- (l) forward sales commitments other than in the Ordinary Course or any failure to satisfy any accepted order for goods or services;
- (m) change in the accounting or Tax practices followed by any Seller (including its depreciation or amortization policies or rates); or
- (n) material change in the credit terms offered to customers of, or by suppliers to, the Purchased Business except in the Ordinary Course.

4.22 Non-Arm's Length Transactions

Except as set out on Schedule 4.22 of the Disclosure Letter, no Seller has since the date of the Audited Financial Statements made any payment or loan to, or borrowed any monies from or become otherwise indebted to, any officer, director, employee, shareholder or any other Person not dealing at arm's length with any Seller (within the meaning of the Tax Act) or any Affiliate or Associate of any of the foregoing and no Seller is indebted to any such Person, except for usual employee reimbursements, compensation paid in the Ordinary Course and Intercompany Loans. Except for Contracts of employment, no Seller is a party to any Contract with any officer, director, employee, shareholder or any other Person not dealing at arm's length with any Seller (within the meaning of the Tax Act) or any Affiliate or Associate of any of the foregoing. Except as set out on Schedule 4.22 of the Disclosure Letter, no officer, director or shareholder of any Seller and no Entity which is an Affiliate or Associate of one or more of such Persons:

- (a) owns, directly or indirectly, any interest in (except for shares representing less than 5% of the outstanding shares of any class or series of any publicly traded company), or is an officer, director, employee or consultant of, any Person which is, or is engaged in business as, a competitor of the Purchased Business or a landlord, tenant, lessor, lessee, supplier, distributor, sales agent or customer of the Purchased Business;
- (b) owns, directly or indirectly, in whole or in part, any property that any Seller uses in the operations of the Purchased Business; or
- (c) has any cause of action or other claim whatsoever against, or owes any amount to, any Seller in connection with the Purchased Business, except for liabilities reflected in the Audited Financial Statements, Intercompany Loans and for claims

in the Ordinary Course, such as for wages on a current basis, accrued vacation pay, accrued benefits under Employee Plans and reimbursement of ordinary business expenses.

4.23 **Taxes**

(a) Each Seller has duly filed on a timely basis all Tax returns required to be filed by it and has paid all Taxes that are due and payable, and all assessments, reassessments, governmental charges, penalties, interest and fines due and payable by it, in each case the non-payment of which could result in an Encumbrance on any of the Purchased Assets.

(b) There are no Proceedings pending or, to Sellers' knowledge, threatened against any Seller in respect of Taxes, governmental charges or assessments, nor are any material matters under discussion with any Governmental Body relating to Taxes, governmental charges or assessments asserted by any Governmental Body that could result in an Encumbrance on any of the Purchased Assets.

(c) Each Seller has duly and timely collected from its customers and remitted to the applicable Tax authorities all amounts on account of any Sales Taxes required to be collected and remitted by it.

(d) Each Seller has withheld from each payment made to any of its past or present employees, officers or directors, and to any non-resident of Canada, the amount of all Taxes and other deductions required to be withheld therefrom, and has paid the same to the proper Tax or other receiving officers within the time required under any applicable legislation.

(e) Purchaser will not be liable for any Successor Taxes of any Seller.

4.24 **Litigation**

Except as described in Schedule 4.24 of the Disclosure Letter, there are no material Proceedings in progress, pending or, to Sellers' knowledge, threatened by, against or affecting any Seller, the Purchased Assets, the Purchased Business or the ability of any Seller to enter into this Agreement or perform its obligations hereunder, in each case, before any Governmental Body, arbitrator, arbitration board or mediator. Except as described in Schedule 4.24 of the Disclosure Letter, all of the Proceedings described therein are covered by insurance policies described in Section 4.14. Except as described in Schedule 4.24 of the Disclosure Letter, no Seller has any knowledge of any facts, events or circumstances on which any material Proceeding might be commenced. No Seller is subject to any outstanding judgement, order or decree adversely affecting such Seller, the Purchased Assets or the Purchased Business.

4.25 **Residency**

No Seller is a non-resident of Canada for the purposes of the Tax Act.

4.26 **GST Registration**

Each Seller is registered for the purposes of subdivision d of Division V of Part IX of the ETA and Chapter VIII of the QSTA and its registration numbers are listed in Schedule 4.26 of the Disclosure Letter.

4.27 **Environmental**

(a) Except for any matters related in any way to subsurface conditions at the Released Sites and except as disclosed in Schedule 4.27, to the Sellers' knowledge, Sellers (in respect of the Purchased Business and the Purchased Assets) and all operations by the Sellers in respect of the Purchased Assets have been in the past five years and are in material compliance with all applicable Laws relating to the protection of human health, natural resources, the environment or Hazardous Substances ("Environmental Laws").

(b) Except as disclosed in Schedule 4.17 or 4.27 of the Disclosure Letter, to the Sellers' knowledge, Sellers hold all Authorizations required under Environmental Laws (the "Environmental Permits") to conduct the Purchased Business and to own, use and operate the Purchased Assets. Except as disclosed in Schedule 4.17 or 4.27 of the Disclosure Letter, to the Sellers' knowledge, each Environmental Permit is valid, subsisting and in good standing, and the relevant Seller is not in default or breach of any Environmental Permit in any material respect, and no proceeding is pending or, to Sellers' knowledge, threatened and no grounds exist to revoke or limit any Environmental Permit. Except as disclosed in Schedule 4.17 or 4.27 of the Disclosure Letter, to the Sellers' knowledge, Sellers have provided to Purchaser a correct and complete copy of each Environmental Permit and all amendments thereto.

(c) Except as disclosed in Schedule 4.27 of the Disclosure Letter, to the Sellers' knowledge, no building, structure or improvement located on the Owned Real Property or the Leased Real Property is insulated with urea formaldehyde insulation, and none of such buildings or structures contains friable asbestos, mould or PCBs;

(d) With respect to the Designated Sites, and except as disclosed in Schedule 4.27 of the Disclosure Letter, to the Sellers' knowledge:

- (i) no Seller has caused underground storage tanks to be, and to Sellers' knowledge, no underground storage tanks are or have been, located on the Designated Sites;
- (ii) no Seller has used or permitted to be used any of the Designated Sites to Release, generate, manufacture, process, distribute, use, treat, store, transport or handle any Hazardous Substance, except in material compliance with all Environmental Laws;
- (iii) there are no Hazardous Substances located on, in, under or migrating from or onto the Designated Sites, except in material compliance with all Environmental Laws; and

- (iv) all Hazardous Substances used by any Seller in connection with the Purchased Business or resulting from the Purchased Business have been disposed of, treated and stored in material compliance with all Environmental Laws.

(e) Except as disclosed in Schedule 4.27 of the Disclosure Letter, to the Sellers' knowledge, in the past five years, no Seller (in respect of the Purchased Business and the Purchased Assets) has received from any Governmental Body any notice of, or been prosecuted for, any actual or alleged non-compliance with any Environmental Laws, nor has any Seller settled any allegation of non-compliance prior to prosecution. Except as disclosed in Schedule 4.27 of the Disclosure Letter, to the Sellers' knowledge, there are no Proceedings, notices, orders, demands or directions from any Governmental Body, nor any actions, demands or claims by any other Person, relating to environmental matters requiring, or notifying any Seller that it is or may be responsible for, any investigation, containment, clean-up, remediation or other corrective action or any work, repairs, construction or capital expenditures to be made under Environmental Laws with respect to the Purchased Business or the Purchased Assets.

(f) To Sellers' knowledge, there are no pending or proposed changes to Environmental Laws that would render illegal or restrict the operations of the Purchased Business or the use of the Purchased Assets.

(g) Except as disclosed in Schedule 4.27 of the Disclosure Letter, to the Sellers' knowledge, Sellers have delivered to Purchaser correct and complete copies of all environmental reports, audits, evaluations, assessments, studies or tests relating to the Purchased Business, the Purchased Assets, the Owned Real Property or the Leased Real Property and their use that are under the possession or control of any Seller.

4.28 Employees

Schedule 4.28(a) of the Disclosure Letter sets forth, on a no-name basis, all individuals who are full-time, part-time or casual employees or independent contractors or consultants of any Seller employed or engaged in the Purchased Business (collectively, the "**Employees**") as of the date of this Agreement specifying the employer name, length of hire, title or classification and rate of salary or hourly pay and commission, benefits or bonus entitlements (if any) for each such Employee. Schedule 4.28(b) of the Disclosure Letter lists on a no-name basis, those Employees on Schedule 4.28(a) of the Disclosure Letter who have been absent continually from work for a period in excess of one month, the type of absence, and the Employee's anticipated date of return (if known). Except as described in Schedules 4.24 and 4.28(c) of the Disclosure Letter, each Seller is in material compliance with all applicable employment Laws, and there are no material complaints, claims or charges outstanding, or to Sellers' knowledge, anticipated, nor are there any orders, decisions, directions or convictions currently registered or outstanding by any tribunal or agency against or in respect of any Seller under or in respect of any applicable employment Laws or the Employee Plans.

4.29 Employee Accruals

All accruals for unpaid vacation pay, premiums for Statutory Plans, accrued wages, salaries, bonuses, commissions and sick time and Employee Plan payments have been fairly reflected in the books and records of Sellers.

4.30 Collective Agreements

(a) Schedule 4.30(a) of the Disclosure Letter sets out a list of all collective agreements binding any Seller in respect of the Purchased Business and all related documents including letters of understanding, letters of intent and other written communications with bargaining agents for Employees which impose any obligations upon any Seller (the "**Collective Agreements**").

(b) Except as described in Schedule 4.30(b) of the Disclosure Letter, no Seller has made any Contracts with any labour union or employee association nor made commitments to or conducted negotiations with any labour union or employee association with respect to any future agreements and, to Sellers' knowledge, as of the date of this Agreement, there are no current attempts to organize or establish any labour union or employee association with respect to Employees nor is there any certification of any such union with regard to a bargaining unit. Other than grievances brought in the Ordinary Course, none of which could, individually or collectively with other such grievances, do or will materially impact the Purchased Business or the right or the ability of Sellers or Purchaser to carry on the Purchased Business substantially in the manner in which it has heretofore been carried on, there are no grievances against any Seller of which Seller has received written notice under any Collective Agreement.

(c) Schedule 4.30(c) of the Disclosure Letter contains a description of all work stoppages or slowdowns, labour disputes, lockouts and strikes (legal or otherwise) that the Purchased Business has experienced in the past three years, including the dates and length of each such occurrence.

4.31 Employee Plans

(a) Schedule 4.31(a) of the Disclosure Letter identifies each Employee Plan. Each Employee Plan has been established, maintained, funded, invested, registered (if applicable) and administered in material compliance with its terms and applicable Laws.

(b) Sellers have made available to Purchaser current and complete copies of all written Employee Plans as amended to date or, where oral, written summaries of the terms thereof, and all current booklets and descriptions describing the Employee Plans prepared for, and circulated to, the Employees and former Employees and their beneficiaries, together with current and complete copies of all documents relating to the Employee Plans, including, as applicable, all trust agreements, funding agreements, insurance contracts and policies, investment management agreements, participation agreements, benefit administration contracts, and any financial administration contracts, audited financial statements and the most recently filed annual information returns and actuarial valuation reports, professional legal and actuarial opinions with respect to each Employee Plan, all material internal memoranda concerning the Employee Plans and copies of material correspondence with all Governmental Bodies with respect to each

Employee Plan. The booklets, brochures, summaries, descriptions and manuals prepared for, and circulated to, the Employees and former Employees and their beneficiaries concerning each Employee Plan, together with all written communications of a general nature provided to such Employees and former Employees and their beneficiaries, accurately describe the benefits provided under such Employee Plan referred to therein. The booklets and descriptions describing the Employee Plans provided to such Employees and former Employees and their beneficiaries, accurately describe the benefits provided under such Employee Plan referred to therein.

(c) All Seller or employee payments, contributions and premiums required to be remitted, paid to or in respect of each Employee Plan have been paid or remitted in a timely fashion in accordance with the terms of such Employee Plan and all applicable Law.

(d) Schedule 4.31(d) of the Disclosure Letter identifies each Multi-Employer Plan. With respect to each Multi-Employer Plan, (i) the sole obligation of Sellers is to make contributions in accordance with the applicable Collective Agreement providing for participation in the Multi-Employer Plan, and (ii) Sellers have no liability pursuant to any participation or other agreement with respect to any costs, expenses, benefits or investments associated with the maintenance or administration of such Multi-Employer Plan, including any liability relating to any past or future withdrawals from any such Multi-Employer Plan.

(e) Schedule 4.31(e) of the Disclosure Letter identifies each Employee Plan that is a Defined Benefit Pension Plan or a Post-Retirement Benefit Plan, as well as all other Employee Plans that provide benefits beyond retirement or termination of service to any Employee or former Employee or any beneficiary or dependent of such Employee or former Employee.

(f) All data necessary to administer each Employee Plan has been provided by Sellers to Purchaser and is materially true and correct.

(g) Except as may otherwise be provided in any relevant Collective Agreement, Sellers may unilaterally amend, modify, vary, revise, revoke or terminate, in whole or in part, each Employee Plan, subject only to approvals required by applicable Law.

(h) All material obligations regarding the Employee Plans have been satisfied or accrued for on the books and records of Sellers, and there are no material outstanding defaults or violations by any party thereto and no taxes, penalties or fees are owing or, to the knowledge of Sellers, exigible under any of the Employee Plans.

(i) All contributions or premiums required to be made by Sellers under the terms of each Employee Plan, Collective Agreement or by applicable Law have been made in a timely fashion in accordance with applicable Law and the terms of the Employee Plan and the Collective Agreement. All liabilities of Sellers (whether accrued, absolute, contingent or otherwise) related to all Employee Plans have been fully and fairly disclosed in accordance with GAAP in the Financial Statements.

(j) No Employee Plan, nor any related trust or other funding medium thereunder, is subject to any pending, threatened or anticipated investigation, examination or other Proceedings, initiated by any Governmental Body or by any other Person (other than routine claims for benefits), and, to Sellers' knowledge, there exists no state of facts which after notice of

lapse of time or both could reasonably be expected to give rise to any such investigation, examination or other Proceedings or to affect the registration of any Employee Plan required to be registered.

(k) No event has occurred respecting any Pension Plan which would entitle any Person to cause the wind-up or termination of such Pension Plan, in whole or in part.

(l) There have been no withdrawals, applications or transfers of assets from any Employee Plan or the trusts or other funding media relating thereto except in accordance with the terms of such Employee Plan, applicable Law and all applicable agreements.

(m) Except as may be required under a Collective Agreement, no Seller has any formal plan or has made any promise or commitment, whether legally binding or not, to create any additional Employee Plan or to improve or change the benefits provided under any Employee Plan.

(n) Except as disclosed in Schedule 4.31(n) of the Disclosure Letter, neither the execution of this Agreement nor the completion of any of the transactions contemplated by this Agreement will:

- (i) result in any payment (including bonus, golden parachute, retirement, severance, unemployment compensation, or other benefit or enhanced benefit) becoming payable to any Employees;
- (ii) increase any benefits otherwise payable under any Employee Plan;
- (iii) entitle any Employee to any guarantee of employment for a particular time or similar benefit or any enhanced benefits;
- (iv) result in the acceleration of the time of payment or vesting of any benefits otherwise payable under any Employee Plan; or
- (v) result in any Employee Plan becoming terminable other than at the sole and unfettered discretion of the applicable employer.

4.32 Customers and Suppliers

Schedule 4.32 of the Disclosure Letter sets out the major customers (as defined below) of the Purchased Business for the period from January 1, 2015 to the date hereof and, during such period, there has been no termination or cancellation of the business relationship of the Purchased Business with any major customer or major supplier other than as a result of project completion in the Ordinary Course. Since January 1, 2015, none of such customers or suppliers has notified any Seller that it will cease doing business with such Seller or that it will materially adversely modify the levels of, or the terms and conditions of, its purchase from or supplies to, such Seller. No Seller has received any communication from any such major customer or major supplier that would reasonably be expected to indicate that such major customer or major supplier will cease doing business with the Purchased Business other than as a result of project completion in the Ordinary Course. For the purposes of this Section 4.32, a

"major customer" means a customer or a group of affiliated customers of the Purchased Business that accounts for more than 2% of sales on a consolidated basis for the period from January 1, 2015 to the date hereof, and a "major supplier" means a supplier or a group of affiliated suppliers of the Purchased Business accounting for more than 2% of purchases for the same period.

4.33 Product Warranties

(a) Schedule 4.33 of the Disclosure Letter sets out a correct and complete list of the standard terms and conditions of sale or lease for each of the products or services of Sellers, complete and correct copies of which (containing applicable guarantee, warranty and indemnity provisions) have been furnished to Purchaser.

(b) Except as set out in Schedule 4.33 of the Disclosure Letter, to Sellers' knowledge, Sellers have no liability in respect of any product, component or other item sold prior to the Closing by, or service rendered prior to the Closing by or on behalf of, Sellers that is not adequately covered by policies of insurance or by indemnity, contribution, cost sharing or similar agreements or arrangements by or with other Persons.

(c) For the year ended December 28, 2016, Sellers have incurred, in aggregate, net expenses not exceeding \$500,000 in connection with claims for breach of warranty, defective products and damages in shipping in the aggregate.

4.34 Personal Information

(a) Except as disclosed in Schedule 4.34 of the Disclosure Letter, to Sellers' knowledge, within the three years preceding the date of this Agreement, no misuse or misappropriation of Personal Information has occurred in respect of the Purchased Business that would reasonably be expected to (i) require disclosure to or result in an investigation by a provincial or federal privacy commissioner or Governmental Body, or (ii) give rise to a material Proceeding being brought against any Seller.

(b) No Seller has received notice of any investigation by a provincial or federal privacy commissioner or similar Governmental Body relating to any misuse or misappropriation of Personal Information by any Seller within the three years preceding the date of this Agreement.

(c) Sellers have provided to Purchaser the results of any audit conducted by any Seller in the last three years of its IT and network security policies, systems or procedures.

(d) Except as disclosed in Schedule 4.34 of the Disclosure Letter, to Sellers' knowledge, (i) there have been no material breaches of or lapses in the security of any IT systems or facilities of Sellers or of any communications means or interface with Sellers' IT systems, and (ii) Sellers' IT systems have not experienced any material unpermitted intrusions or been materially adversely affected by any denial-of-service attacks.

4.35 **Brokers**

Except as disclosed in Schedule 4.35 of the Disclosure Letter, no broker, agent or other intermediary is entitled to any fee, commission or other remuneration in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Sellers.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as follows and acknowledges and confirms that Sellers are relying on such representations and warranties in connection with its sale of the Purchased Assets:

5.1 **Organization**

Purchaser is a corporation validly existing under the Laws of Canada and has the corporate power to enter into this Agreement and each of the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder.

5.2 **Authorization**

This Agreement has been duly authorized, executed and delivered by Purchaser and is a legal, valid and binding obligation of Purchaser, enforceable against Purchaser by Sellers in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other Laws affecting the enforcement of rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.

5.3 **No Violation**

Subject to obtaining the Approvals, neither the execution and delivery by Purchaser of this Agreement and each of the Ancillary Agreements to which Purchaser is a party nor the consummation of the transactions herein and therein provided for will result in the material violation of, or constitute a material default under, or materially conflict with or cause the acceleration of any obligation of Purchaser under: (a) any Contract to which Purchaser is a party or by which it is bound; (b) any provision of the constating documents or by-laws or resolutions of the board of directors (or any committee thereof) or shareholders of Purchaser; (c) any judgment, decree, order or award of any Governmental Body or arbitrator having jurisdiction over Purchaser; or (d) any applicable Law.

5.4 **Consents and Approvals**

Except for the Approvals, there is no requirement for Purchaser to make any filing with, give any notice to or obtain any Authorization of, any Governmental Body as a condition to the lawful consummation of the transactions contemplated by this Agreement.

5.5 Consideration Shares

(a) The Common Shares are listed and posted for trading on the TSX. Purchaser is not in default of any material requirements of any Securities Laws or the rules and regulations of the TSX.

(b) As of the date of this Agreement, Purchaser has not taken any action to cease to be a reporting issuer in any province or territory of Canada nor has Purchaser received notification from any Governmental Body seeking to revoke the reporting issuer status of Purchaser. As of the date of this Agreement, no delisting, suspension of trading or cease trade or other order or restriction with respect to any securities of Purchaser is pending or, to the knowledge of Purchaser, threatened.

(c) Purchaser has filed with the applicable securities authorities all material forms, reports, schedules, statements and other documents required to be filed under Securities Laws since December 31, 2015. The documents comprising the Purchaser Disclosure Record complied as filed in all material respects with Law and did not, as of the date filed (or, if amended or superseded by a subsequent filing prior to the date of this Agreement, on the date of such subsequent filing), contain any misrepresentation (within the meaning of the *Securities Act* (Ontario)). Purchaser has not filed any confidential material change report which at the date of this Agreement remains confidential. To the knowledge of Purchaser, neither Purchaser nor any of the Purchaser Disclosure Record is subject of an ongoing audit, review, comment or investigation by any Governmental Body or the TSX.

(d) Purchaser's audited consolidated financial statements (including any of the notes or schedules thereto and the auditor's report thereon) and the unaudited consolidated interim financial statements (including any of the notes or schedules thereto) included in the Purchaser Disclosure Record were prepared in accordance with IFRS, and fairly present in all material respects the consolidated statement of income, comprehensive income, financial position and cash flows of Purchaser and its subsidiaries as of their respective dates and for the respective periods covered by such financial statements (except as may be expressly indicated in the notes to such financial statements), subject to normal year-end adjustments and the absence of notes in the case of any interim financial statements. Purchaser does not intend to correct or restate, nor, to the knowledge of Purchaser is there any basis for any correction or restatement of, any aspect of any of Purchaser's financial statements included in the Purchaser Disclosure Record (other than any corrections or restatements required as a result of changes in IFRS that have retroactive application). There are no, nor are there any commitments to become a party to, any offbalance sheet transaction, arrangement, obligation (including contingent obligations) or other similar offbalance sheet relationships of Purchaser or of any of its subsidiaries with unconsolidated entities or other Persons.

(e) Purchaser has established and maintains a system of disclosure controls and procedures (as such term is defined in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*) that are designed to provide reasonable assurance that material information required to be disclosed by Purchaser in its reports filed or submitted under Securities Laws is recorded, processed, and reported on a timely basis and accumulated and

communicated to Purchaser's management, including its chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.

(f) Purchaser has established and maintains a system of internal control over financial reporting (as such term is defined in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*) that is designed to provide reasonable assurance regarding the reliability of Purchaser's financial reporting and the preparation of financial statements for external purposes in accordance with IFRS.

(g) Based on Purchaser's most recent evaluation of internal controls prior to the date hereof, there is no material weakness (as such term is defined in National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings*) relating to the design, implementation or maintenance of its internal control over financial reporting, or fraud (whether or not material) that involves management or other employees of Purchaser who have a significant role in the internal control over financial reporting of Purchaser. As of the date hereof, none of Purchaser, any of its subsidiaries or, to Purchaser's knowledge, any director, employee, auditor, accountant or representative of Purchaser or any of its subsidiaries has received or otherwise obtained knowledge of any complaint, allegation, assertion, or claim, whether written or oral, regarding accounting, internal accounting controls or auditing matters, including any complaint, allegation, assertion, or claim that Purchaser or any of its subsidiaries has engaged in questionable accounting or auditing practices, or any expression of concern from its employees regarding questionable accounting or auditing matters.

(h) When issued to the Designated Seller after receipt by Purchaser of consideration therefor, the Consideration Shares will be validly issued as fully paid Common Shares.

5.6 Financial Resources

Purchaser has the financial means to complete the transactions that form the subject matter hereof without resort to any external sources of financing not committed at the date hereof.

5.7 Litigation

There are no Proceedings in progress, pending, or to Purchaser's knowledge, threatened against Purchaser that could materially affect Purchaser or prohibit, restrict or seek to enjoin the transactions contemplated by this Agreement.

5.8 Caterpillar Consent

Purchaser has obtained from Caterpillar Inc. a written and final Consent with respect to the consummation of the transactions contemplated by this Agreement.

5.9 Brokers

No broker, agent or other intermediary is entitled to any fee, commission or other remuneration in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Purchaser.

5.10 GST Registration

Purchaser is a registrant for purposes of subdivision d of Division V of Part IX of the ETA and Chapter VIII of the QSTA whose registration numbers are [*Redacted; Commercially sensitive information*] and [*Redacted; Commercially sensitive information*], respectively.

5.11 No Breach

To Purchaser's knowledge, there is no fact, event or circumstance relating to the Purchased Business or to the Purchased Assets that would result in one or more of the representations and warranties provided by Sellers in this Agreement being inaccurate or in breach as of the date of this Agreement such that an indemnity claim could be brought by Purchaser and be payable by Sellers under Section 9.2(a).

ARTICLE 6
COVENANTS

6.1 Access to Purchased Business and Purchased Assets

(a) Subject to applicable Laws and any confidentiality restrictions to which any Seller may be subject, Sellers shall make available to Purchaser and its authorized representatives all title documents, Contracts, Leases, Third Party Leases, financial statements, policies, plans, reports, licences, orders, permits, books of account, accounting records and other documents, information and data relating to the Purchased Business. Sellers shall afford Purchaser and its authorized representatives every reasonable opportunity to have access to the Purchased Assets and Purchased Business. At Purchaser's reasonable request, Sellers shall execute such consents, authorizations and directions as may be necessary to enable Purchaser or its authorized representatives to obtain full access to all files and records relating to any of the Purchased Assets or the Purchased Business maintained by any Governmental Body. At Purchaser's reasonable request, Sellers shall co-operate with Purchaser in arranging any such meetings as Purchaser may reasonably request with employees employed in the Purchased Business and auditors, accountants, solicitors or any other Persons engaged to provide services to any Seller who have knowledge of matters relating to the Purchased Business or the Purchased Assets.

(b) The exercise of any rights by or on behalf of Purchaser under this Section 6.1 shall be carried out (i) strictly for purposes of transitional planning, (ii) during normal business hours in such manner as not to interfere unduly with the normal operation of the Purchased Business and upon the reasonable prior request to Sellers, (iii) under the supervision of Sellers' personnel, (iv) in compliance with Sellers' internal standards and policies and (v) not to mitigate or otherwise affect the representations and warranties of Sellers hereunder which shall continue in full force and effect as provided in Section 9.1. All requests by Purchaser for access pursuant to this Section 6.1 shall be submitted or directed exclusively to James Hewitt or Roni Farah or such other individuals as Sellers may designate in writing from time to time.

(c) Prior to the Closing, without the prior written Consent of Sellers, which may not be withheld unreasonably, Purchaser shall not initiate contact with any suppliers to or customers

of Sellers for purposes of matters directly related to the transactions contemplated by this Agreement.

(d) Purchaser shall notify Sellers in writing if prior to Closing Purchaser becomes aware of any fact, event or circumstance relating to the Purchased Business that, to Purchaser's knowledge, would result in one or more of the representations and warranties provided by Sellers in this Agreement or in the certificate of a senior officer of each Seller referenced to in Section 7.6(a) being or becoming inaccurate or in breach such that an indemnity claim could be brought by it and be payable by Sellers under Section 9.2(a).

6.2 Competition Act Approval and Cooperation

(a) The Parties shall cooperate and use their commercially reasonable efforts to file with the Commissioner, as soon as possible after the date of execution of this Agreement, but in any event no later than 5 days after the date of execution of this Agreement, an application for an ARC. The Parties shall also cooperate and use their commercially reasonable efforts to prepare and, if Purchaser or Sellers consider it advisable after consulting with the other Party, file with the Commissioner no later than 14 days after the filing of the ARC application, or such later date as the Parties may determine, pre-merger notification filings under Part IX of the Competition Act. The Parties will share equally the cost of the filing fee.

(b) Each Party shall use its commercially reasonable efforts and take such commercially reasonable actions and steps required or advisable to obtain the Competition Act Approval, including to avoid or address any concerns or impediments that may be asserted by the Commissioner with respect to the transactions contemplated herein, so as to allow the Closing to occur on or prior to the Outside Date, as the same may be extended pursuant to Section 8.1(c); provided, however, that notwithstanding anything to the contrary contained in this Agreement, Purchaser shall not be required to (i) divest or hold separate any businesses, assets, properties, operations or agreements of Purchaser or the Purchased Business (A) having in aggregate a fair market value in excess of [*Redacted; Commercially sensitive information*] or (B) that produced or contributed to the production of more than [*Redacted; Commercially sensitive information*] in aggregate gross revenues of Purchaser or Purchased Business in its last fiscal year or (ii) otherwise take or commit to take any other adverse action with respect to the Purchased Assets, the Purchased Business or the business or assets of Purchaser.

(c) Subject to applicable Laws, each Party shall provide the other Party (or its external counsel in respect of competitively-sensitive, privileged or confidential matters) with a reasonable opportunity to review and comment on all filings, applications and submissions with the Commissioner and the other Party shall use its commercially reasonable efforts to cooperate with and assist such Party in the preparation and making of all such filings, applications and submissions (including participating and appearing in any proceedings before the Commissioner). Each Party shall promptly notify the other Party of any material communication to such Party from the Commissioner in respect of the transactions contemplated herein (and provide a copy thereof if such communication is in writing) and, subject to applicable Laws, provide the other Party (or its external counsel in respect of competitively-sensitive, privileged or confidential matters) with reasonable opportunity to review and comment on any proposed written material communication to the Commissioner. Each Party shall consult with the other

Party (or its external counsel in respect of competitively-sensitive, privileged or confidential matters) prior to participating in any substantive meeting or discussion with the Commissioner in respect of the transactions contemplated herein and give the other Party (or its external counsel in respect of competitively-sensitive, privileged or confidential matters) the opportunity to attend and participate thereat.

6.3 Consent to Transfer Not Obtained Prior to Closing

(a) If any rights, benefits or remedies under any Assumed Contract or Lease (the "**Contract Rights**") are not assignable to Purchaser without the Consent of the other party or parties to that Assumed Contract or Lease (or a third party) and that Consent is not obtained by the Time of Closing and the Closing occurs, then for a period of 365 days following the Closing Date or such longer period as the Parties may agree:

- (i) each such Assumed Contract or Lease (a "**Non-Assigned Contract**") will be deemed not to have been assigned by any Seller party thereto to Purchaser under this Agreement;
- (ii) Sellers shall, at the request and expense and under the direction of Purchaser, acting reasonably, do all things or cause all things to be done that Purchaser, acting reasonably, considers necessary or desirable to perform the obligations of each Seller party thereto under the Non-Assigned Contracts so as to preserve the value of the Contract Rights for the benefit of Purchaser, subject to Sellers having access to the necessary assets and employees of Purchaser in order to perform such obligations;
- (iii) each Seller party thereto shall promptly pay over to Purchaser all amounts collected by such Seller under the Non-Assigned Contracts;
- (iv) Purchaser shall promptly pay all amounts payable under the Non-Assigned Contracts or, if any such amount is paid by any Seller party thereto, shall promptly reimburse such Seller for any amount so paid;
- (v) Sellers and Purchaser shall make reasonable efforts and cooperate with each other in good faith to obtain the necessary Consents under the Non-Assigned Contracts; and
- (vi) if any Seller party thereto obtains the necessary Consent under a Non-Assigned Contract in form satisfactory to Purchaser, acting reasonably, then, effective as of the date Purchaser receives a copy of that consent, that Non-Assigned Contract will be deemed to have been assigned and transferred by such Seller to Purchaser.

(b) On the first anniversary of the Closing Date, each Party shall be released from any further obligations under this Section 6.3.

(c) Nothing in this Section 6.3 will relieve any Seller of its obligations under Section 6.7(c).

6.4 Books and Records

(a) At the Time of Closing, Sellers shall deliver to Purchaser all the books and records described in Section 2.1(l). Purchaser covenants to use reasonable care to preserve the books and records so delivered to it for a period of six years from the Closing Date, or for such longer period as is required by any applicable Law, and will permit Sellers or their authorized representatives reasonable access thereto in connection with the affairs of Sellers relating to their matters. So long as any such books and records are retained by Purchaser pursuant to this Agreement, Sellers and their representatives may inspect and make copies (at their own expense) of them at any time during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchased Business.

(b) From Closing until the sixth anniversary of the Closing Date:

- (i) in the event that any Seller needs access to records in the possession or under the control of Purchaser relating to any of the Purchased Assets, the Assumed Liabilities or the Purchased Business for any period prior to the Closing for purposes of preparing financial statements or Tax returns, complying with any Tax audit request, subpoena or other investigative demand by any Governmental Body or to contest or defend against any third party claim against any Seller (the "**Covered Purposes**"), Purchaser shall provide to Sellers and their representatives access to such records at any time during normal business hours and upon reasonable notice; and
- (ii) at the reasonable request of Sellers, Purchaser shall make its employees available to Sellers and their representatives to provide additional information and explanations of any records accessed by Sellers and their representatives pursuant to Section 6.4(b)(i) and to assist Sellers and their representatives in connection with the Covered Purposes.

(c) From Closing until the first anniversary of the Closing Date, Purchaser shall provide to Sellers the following transition services in respect of matters related to any period prior to Closing:

- (i) provide reasonable assistance to Sellers and their accountants in their preparation of financial statements and maintenance of books and records (accruals and other journal entries), in each case, of any Seller with respect to the financial year 2017;
- (ii) provide reasonable assistance to Sellers and their accountants in their preparation of Tax returns of any Seller with respect to the financial year 2017, including the production of any report or information derived from the Purchased Business, the Purchased Assets or the Assumed Liabilities necessary therefor;
- (iii) provide reasonable assistance to Sellers and their accountants in their calculation of any Sales Tax or other Tax remittance to be made by any Seller with respect to the financial year 2017;

- (iv) assist Sellers in their preparation and filing with the appropriate Tax authority of all T4 slips and summaries, Relevés 1 and Sommaires 1 and US slips and summaries, and all accompanying documents for each Employee of any Seller with respect to the financial year 2017, including the calculation of taxable benefits and timely file all such slips, summaries and accompanying documents on behalf of each relevant Seller once confirmed and agreed to by such Seller or its duly authorized representative;
- (v) provide reasonable assistance to Sellers and their accountants in the preparation by Sellers of all annual reports and other statistical reports required by Canada Revenue Agency, the Ministère du Revenu du Québec or other Governmental Body; and
- (vi) provide such reasonable assistance ancillary or related to the foregoing.

(d) Sellers shall reimburse Purchaser for the reasonable out-of-pocket costs and expenses incurred by Purchaser pursuant to Section 6.4. If any Seller wishes to appeal or dispute any matter with a Governmental Body in respect of the matters contemplated by this Section 6.4, and the level of assistance it required from Purchaser in connection therewith is significantly more than the level of assistance involved in the activities referred to in Sections 6.4(c)(i) through (vi) , then in addition to reimbursing Purchaser for its reasonable out-of-pocket costs and expenses it shall also reimburse Purchaser at an agreed per diem rate for the time spent by its employees in providing such assistance.

(e) Sellers hereby release Purchaser and its representatives from any claim Sellers may have against Purchaser or its representatives and agree to indemnify and hold harmless Purchaser and its representatives from any claim by a third party against Purchaser or its representatives, in each case, arising from or relating to the information, explanations or services provided by Purchaser or its representatives pursuant to Section 6.4(b)(ii) or 6.4(c), except to the extent such claims arise from a breach by Purchaser of Section 6.4(b)(ii) or 6.4(c) or from the gross negligence or wilful misconduct of Purchaser or its representatives.

6.5 Change of Name

Each Seller shall within 10 days after the Closing Date change its name and the name of any of its Associates or Affiliates which include the words "Equipment", "Material Handling", "Rentals", "Montréal Hydraulique", "Sitech" or "Atlantic Tractors & Equipment" to a name which does not include the words "Equipment", "Material Handling", "Rentals", "Montréal Hydraulique", "Sitech" or "Atlantic Tractors & Equipment" or any part thereof or any similar words.

6.6 Discharge of Encumbrances

Sellers shall use their commercially reasonable efforts to discharge the Encumbrances designated on Schedule 6.6 of the Disclosure Letter as being subject to discharge on or prior to the Closing Date, and to the extent not discharged, after the Closing Date.

6.7 Conduct of Purchased Business Prior to Closing

Without in any way limiting any other obligations of Sellers hereunder, during the period from the date hereof to the Time of Closing (the "**Interim Period**"), Sellers shall:

- (a) conduct the Purchased Business only in the Ordinary Course and no Seller shall, without the prior written Consent of Purchaser, enter into any transaction or refrain from doing any action which, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation hereunder of such Seller;
- (b) continue to maintain in full force and effect all policies of insurance or renewals thereof now in effect, shall take out, at the expense of Purchaser, such additional insurance as may be reasonably requested by Purchaser and shall give all material notices and present all material claims under all policies of insurance in a due and timely fashion;
- (c) use all commercially reasonable efforts to give or obtain, at or prior to the Time of Closing, all notices, Consents and approvals required under the Assumed Contracts and Authorizations, including those described in Schedule 4.18(a) or Schedule 4.18(b) of the Disclosure Letter;
- (d) use all commercially reasonable efforts to preserve intact the Purchased Business and Purchased Assets and to carry on the Purchased Business as currently conducted and to promote and preserve for Purchaser the goodwill of suppliers, customers and others having business relations with Sellers;
- (e) use all commercially reasonable efforts to maintain in full force and effect Sellers' rights in their respective Intellectual Property;
- (f) comply with applicable Laws in all material respects;
- (g) pay and discharge the liabilities of Sellers in the Ordinary Course, except those contested in good faith by Sellers;
- (h) use all commercially reasonable efforts to retain the services of the present Employees, consultants and advisors of or to Sellers, except those Employees terminated for cause;
- (i) take or cause to be taken all necessary corporate action, steps and proceedings to approve or authorize the execution and delivery of this Agreement and the Ancillary Agreements and documents contemplated hereby and the transfer of the Purchased Assets to Purchaser and to cause all necessary meetings of directors and shareholders of Sellers to be held for such purpose;
- (j) use all commercially reasonable efforts to renew on a month-to-month basis the expired Lease for the Leased Real Property located at Summerside PEI on terms substantially similar to the existing terms;

- (k) promptly notify Purchaser of the Release of any Hazardous Substances into, onto, under or from the Purchased Assets or in connection with the operation of the Purchased Business of which any Seller becomes aware;
- (l) promptly notify Purchaser of, and, if in writing, provide Purchaser with true and complete copies of, any notice of actual or alleged non-compliance with or liability under any Environmental Laws as well as any orders, demands or directions relating to environmental matters requiring, or notifying any Seller that it is or may be responsible for, any investigation, containment, clean-up, remediation or other corrective action or any work, repairs, construction or capital expenditures to be made under Environmental Laws with respect to the Purchased Business or the Purchased Assets; and
- (m) not, without the prior written Consent of Purchaser, not to be unreasonably withheld or delayed:
 - (i) enter into any Contract that would be a Material Contract if in existence on the date hereof;
 - (ii) amend, modify, waive any rights under or terminate any Material Contract, Lease or Third Party Lease;
 - (iii) assign any Lease or sublease any Leased Real Property;
 - (iv) enter into any lease or agreement to lease any of the Owned Properties;
 - (v) make or agree to any capital expenditures in excess of \$300,000 or any series of capital expenditures in excess of \$1,000,000 in the aggregate during the Interim Period, other than as and to the extent already approved by Sellers in a budget attached as Schedule 6.7(m)(v) to the Disclosure Letter;
 - (vi) make or agree to make any forward inventory purchase commitments or purchases in excess of \$10,000,000 in the aggregate in any four week period during the Interim Period;
 - (vii) make any material changes to the credit terms offered to customers or suppliers to Sellers;
 - (viii) make any single forward sales commitment of inventory in excess of \$10,000,000 during the Interim Period, or make any single forward sales of inventory having a value in excess of \$500,000 at less than a 3% gross profit (excluding foreign exchange impact for purposes of calculation), or to unreasonably fail to satisfy any accepted orders for goods or services;
 - (ix) change the manner of billing of any of its customers other than in the Ordinary Course;

- (x) except as set out on Schedule 6.7(m)(x) of the Disclosure Letter, grant or pay any bonuses, whether monetary or otherwise, or announce, grant or implement any general wage or salary increases for Employees;
- (xi) enter into, amend any employment, severance, "golden parachute" or similar Contract with any Employee, or hire or terminate any Employees with a base salary in excess of \$125,000 per year;
- (xii) enter into, adopt or materially amend the funding, payment or accrual practices of any Employee Plan or (except for normal increases in the Ordinary Course) materially increase in any manner the compensation or fringe benefits of any Employee or pay any benefit not required by any existing Benefit Plan or other such arrangement;
- (xiii) take any step to dissolve, wind-up or otherwise affect any Seller's continuing corporate existence or amalgamate or merger with any other Person or amend such Seller's constating documents;
- (xiv) sell or lease or otherwise dispose of any rights in any of the Purchased Assets other than in the Ordinary Course;
- (xv) terminate or waive any material rights relating to the Purchased Business;
- (xvi) compromise or settle any Proceeding, other than any employment-related Proceeding under \$100,000 which compromise or settlement fully releases Sellers from further liability with respect to such Proceeding;
- (xvii) create or permit the creation of any Encumbrance on the Purchased Assets except for any Permitted Encumbrances; or
- (xviii) authorize or commit to take any of the foregoing actions.

6.8 Employees

(a) Sellers shall provide to Purchaser an up-to-date list of the names of the Employees and the information included in Schedule 4.28 of the Disclosure Letter at least four and not more than ten Business Days prior to the Closing Date. Except for the Employees listed in on Schedule 6.8(a) of the Disclosure Letter (the "**Excluded Employees**"), Purchaser shall:

- (i) subject to Section 6.8(a)(iii), continue to employ, effective as at the Time of Closing, all non-unionized Québec Employees and all unionized Employees on the same terms and conditions of employment in the aggregate as are then applicable to such Employees and to be bound by the Collective Agreements;
- (ii) subject to Section 6.8(a)(iii), offer employment to all non-unionized non-Québec Employees and those Québec senior executive Employees listed in Schedule 6.8(f) of the Disclosure Letter, effective as at the Time of

Closing, on substantially the same terms and conditions of employment as are applicable to such Employees immediately prior to the Time of Closing, including recognizing such Employees' years of service with the applicable Seller; and

- (iii) offer employment to all non-unionized non-Québec Employees on long-term disability leave at the Time of Closing, effective as at the date such Employee is able to return to active employment with Purchaser and provided that the Employee is able to return to active employment within one year of the Closing Date, on substantially the same terms and conditions of employment as are applicable to such Employees immediately prior to the Time of Closing, including recognizing such Employees' years of service with the applicable Seller.

(b) No employee of the Purchased Business shall be entitled to any rights under this Section 6.8(a) or under any other provisions of this Agreement.

(c) Sellers shall employ all of the Employees set out in Schedule 4.28(a) until the Time of Closing except for any employees who prior to the Time of Closing: (i) are terminated for cause; (ii) are terminated with Purchaser's Consent, which Consent shall not be unreasonably withheld or delayed; (iii) voluntarily resign; or (iv) retire. Seller shall not attempt in any way to discourage any of the Employees from being employed by Purchaser or accepting any offer of employment to be made by Purchaser, as applicable.

(d) Sellers shall be solely responsible for paying any severance entitlements of the Excluded Employees, whether arising out of or in connection with the transactions contemplated in this Agreement or otherwise.

(e) Sellers shall be solely responsible for any required payment to Transferred Employees or Excluded Employees under the Change of Control Contracts, whether or not that payment is triggered upon or after Closing, and for greater certainty, Sellers shall not be responsible for any severance payments, payment or indemnity in lieu of notice or other cessation of employment payments or benefits to which a Transferred Employee may otherwise be entitled to, otherwise than pursuant to the Change of Control Contracts, upon or after Closing.

(f) Sellers shall collaborate and assist Purchaser in securing the employment of all Employees (other than Excluded Employees), including making available to Purchaser at all reasonable times during the Interim Period the senior executive Employees listed on Schedule 6.8(f) of the Disclosure Letter (including for transition planning purposes), and encouraging such senior executive Employees to remain as employees of Purchaser.

6.9 Employee Plans

(a) At the Time of Closing and pursuant to the Pension Plan Assignment Agreement, Sellers shall assign or shall cause the applicable plan sponsor to assign to Purchaser the Defined Benefit Pension Plans and related agreements, and Purchaser shall assume and be responsible for all obligations and liabilities under the Defined Benefit Pension Plans and related agreements.

(b) At the Time of Closing, Purchaser shall assume all the obligations under the Post-Retirement Benefit Plan in respect of:

- (i) Employees whose employment continues with Purchaser from and after the Time of Closing or who accept the offers of employment to be made by Purchaser pursuant to Section 6.8(a)(ii) in respect of their employment by Purchaser from and after the Time of Closing (the "**Transferred Employees**");
- (ii) former Employees who are in receipt of benefits under the Post-Retirement Benefit Plan or who are covered (or their dependents who are in receipt of benefits or covered) thereunder (the "**Covered Individuals**"); and
- (iii) Excluded Employees.

(c) Purchaser agrees that it will establish a plan to provide post-retirement benefits to Transferred Employees, Covered Individuals and Excluded Employees, which is substantially similar to the Post-Retirement Benefit Plan (the "**Replacement Post-Retirement Benefit Plan**"). Transferred Employees, Covered Individuals and Excluded Employees shall:

- (i) be eligible to participate in the Replacement Post-Retirement Benefit Plan without regard to any eligibility or waiting period, evidence of insurability requirements or pre-existing condition limitations, except to the extent that a Transferred Employee or Excluded Employee, as applicable, does not participate in the Post-Retirement Benefit Plan as of the Time of Closing because the Transferred Employee or Excluded Employee, as applicable, has not met any such eligibility or waiting period, evidence of insurability requirements or pre-existing condition limitations under such Employee Plan;
- (ii) have their service and compensation under the Post-Retirement Benefit Plan recognized for purposes of determining eligibility and benefit entitlement under the Replacement Post-Retirement Benefit Plan; and
- (iii) be given credit under the Replacement Post-Retirement Benefit Plan for amounts paid under the Post-Retirement Benefit Plan for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the Post-Retirement Benefit Plan. Purchaser shall take into account all benefits claimed and paid under the Post-Retirement Benefit Plan for the purposes of determining the maximum periodic or lifetime benefits payable under the Replacement Post-Retirement Benefit Plan.

The Parties shall jointly notify Covered Individuals and Excluded Employees of the assumption by Purchaser of the obligations under the Post-Retirement Benefit Plan and of its replacement with the Replacement Post-Retirement Benefit Plan, and Excluded Employees of their continued participation in and accrual of benefits under the Replacement Post-Retirement Benefit Plan.

Sellers shall advise Purchaser or cause Purchaser to be advised of the termination of employment of Excluded Employees for purposes of eligibility and receipt of post-retirement benefits under the Replacement Post-Retirement Benefit Plan.

For certainty, those Excluded Employees who are not eligible as of the Closing Date to receive benefits under the Post-Retirement Benefit Plan on termination of employment from the relevant Seller shall not be entitled to participate in, or receive benefits under, the Replacement Post-Retirement Benefit Plan.

(d) Purchaser agrees that it will establish a plan to provide employee life insurance, medical, disability, and other group insurance benefits for Transferred Employees which are substantially similar to the applicable Employee Plans (the "**Replacement Group Benefit Plans**"). Transferred Employees shall:

- (i) be eligible to participate in the Replacement Group Benefit Plans without regard to any eligibility or waiting period, evidence of insurability requirements or pre-existing condition limitations, except to the extent that a Transferred Employee does not participate in the corresponding Employee Plan as of the Time of Closing because the Transferred Employee has not met any such eligibility or waiting period, evidence of insurability requirements or pre-existing condition limitations under such Employee Plan;
- (ii) have their service and compensation under the relevant Employee Plan recognized for purposes of determining eligibility and benefit entitlement under the Replacement Group Benefit Plan; and
- (iii) be given credit under the Replacement Group Benefit Plans for amounts paid under the corresponding Employee Plan for purposes of applying deductibles, co-payments and out-of-pocket maximums as though such amounts had been paid in accordance with the terms and conditions of the corresponding Employee Plan. Purchaser shall take into account all benefits claimed and paid under the relevant Employee Plan for the purposes of determining the maximum periodic or lifetime benefits payable under the corresponding Replacement Group Benefit Plan.

6.10 Confidential Information

(a) Each Party acknowledges having received Confidential Information belonging to the other Party in the course of negotiating this Agreement. As used herein, the term "**Confidential Information**" includes any and all of the following information of the Parties that has been or may hereafter be disclosed by either Party or its representatives (collectively, a "**Disclosing Party**") to the other Party or its representatives (collectively, a "**Receiving Party**") by any means, whether written, oral, electronic or visual:

- (i) all information that is a trade secret under applicable trade secret or other Law;

- (ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures and architectures;
- (iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, Tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and
- (iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

Information is not, however, "Confidential Information" if it (x) was known to the Receiving Party, prior to its disclosure to the Receiving Party by the Disclosing Party, from a source not known by the Receiving Party to be under an obligation of confidentiality to the Disclosing Party or (y) becomes known generally otherwise than through breach of this Agreement.

(b) Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret Law and other applicable Law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Agreement, such information shall still be considered Confidential Information of that Disclosing Party to the extent included within the definition of that term.

(c) Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to evaluate and consummate the transactions contemplated by this Agreement; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written Consent of an authorized representative of Sellers with respect to their Confidential Information or an authorized representative of Purchaser with respect to its Confidential Information. Each Party shall disclose the Confidential Information of the other Party only to its representatives who require such material for the purpose of evaluating the transactions contemplated by this Agreement and are informed by such Party of the

confidentiality obligations herein. Each Party shall (iv) enforce the terms of this Section 6.10 as to its respective representatives; (v) take such action to the extent necessary to cause its representatives to comply with the terms and conditions of this Section 6.10; and (vi) be responsible and liable for any breach herein of by its representatives.

(d) If a Receiving Party is required to disclose any Confidential Information of the Disclosing Party under applicable Law, legal process or any court of competent jurisdiction, or by a competent regulatory authority, the Receiving Party shall promptly advise the Disclosing Party of any such requirement. Should the Disclosing Party seek a protective order or other appropriate remedy in response thereto, the Receiving Party agrees not to oppose any such action by the Disclosing Party and to reasonably cooperate with the Disclosing Party in seeking to obtain such protective order. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the terms of this Agreement, the Receiving Party agrees to only disclose, and direct its representatives to only disclose, that portion of the Confidential Information which, on the advice of the Receiving Party's counsel, the Receiving Party or its representatives are required to disclose and provide the Disclosing Party, as soon as reasonably practicable and legally permitted, advance written notice of the Confidential Information to be disclosed.

(e) Unless and until this Agreement is terminated, Sellers shall maintain as confidential any Confidential Information of Sellers relating to any of the Purchased Assets, the Purchased Business and the Assumed Liabilities. Notwithstanding the preceding sentence, Sellers may use any Confidential Information of Sellers before the Closing in the Ordinary Course.

(f) From and after the Closing, the provisions of Sections 6.10(a) and (b) above shall not apply to or restrict in any manner (i) Purchaser's use of any Confidential Information of Sellers relating solely to the Purchased Assets, the Purchased Business or the Assumed Liabilities or (ii) Seller's use of any Confidential Information of Sellers relating solely to Section 6.4.

(g) The Parties shall consult with each other before issuing any press release or making any other public announcement with respect to this Agreement or the transactions contemplated hereby and, except as required by any applicable Law or regulatory requirement, neither of them shall issue any such press release or make any such public announcement without the prior written Consent of the other, which Consent shall not be unreasonably withheld or delayed.

(h) Prior to any public announcement of the transactions contemplated hereby pursuant to Section 10.7, neither Party shall disclose this Agreement or any aspects of such transaction except to its board of directors, its senior management, its shareholders, its legal, accounting, financial or other professional advisors, any financial institution contacted by it with respect to any financing required in connection with such transaction and counsel to such institution, or as may be required by any applicable Law or any regulatory authority or stock exchange having jurisdiction. Sellers acknowledge and agree that Purchaser shall be permitted to file a publicly available copy of this Agreement in accordance with its continuous disclosure or other obligations pursuant to applicable Securities Laws.

6.11 Consideration Shares

In connection with the issuance of the Consideration Shares, the Designated Seller acknowledges, covenants and agrees that:

- (a) no securities commission or Governmental Body or similar authority has reviewed or passed on the merits of the Consideration Shares nor have any such agencies or authorities made any recommendations or endorsement with respect to the Consideration Shares;
- (b) the Consideration Shares will be subject to statutory resale restrictions under applicable Securities Laws and that its ability to trade the Consideration Shares will be limited by, among other things, applicable Securities Laws, and that in particular unless permitted under applicable Securities Laws, it must not trade the Consideration Shares before the date which is four months and one day after the Closing Date;
- (c) Purchaser is relying on an exemption from the requirement to provide the Designated Seller with a prospectus under applicable Securities Laws and, as a consequence of acquiring the Consideration Shares pursuant to such exemption certain protections, rights and remedies provided by applicable Securities Laws, including statutory rights of rescission or damages and certain statutory remedies against an issuer, underwriters, auditors, directors and officers that are available to investors who acquire securities offered by a prospectus, will not be available to the Designated Seller; and
- (d) Purchaser will file a report or reports of an exempt distribution under applicable Securities Laws within 10 days of the Closing Date, if required under applicable Securities Laws.

6.12 Public Disclosure Requirements and TSX Approval

(a) Sellers shall cooperate with Purchaser and use commercially reasonable efforts, on a timely basis and at Purchaser's expense, to furnish, or cause to be furnished, documents and/or information reasonably requested by Purchaser to comply with continuous disclosure obligations and disclosure obligations for securities offerings (including prospectuses) under applicable Securities Laws and the rules of the Toronto Stock Exchange, including, if requested, the Financial Statements and assisting Purchaser in a reconciliation of the Financial Statements to IFRS in both the English and French languages (the "**Purchaser Disclosure Obligations**"), and provide reasonable cooperation with Purchaser in connection with the Purchaser Disclosure Obligations.

(b) Sellers shall use commercially reasonable efforts to obtain such consents and comfort letters from the auditors of Sellers letters in respect of the matters referred to in Section 6.12 or 6.13 as may be required by Purchaser, so long as Purchaser pays the fees and expenses of Sellers' auditors and the out-of-pocket expenses of Sellers, in each case, in connection therewith.

(c) Purchaser shall use its commercially reasonable efforts and take such commercially reasonable actions and steps required or advisable to obtain the TSX Approval.

6.13 Financing Cooperation

Between the date of this Agreement and the Time of Closing, Sellers shall provide to Purchaser all cooperation reasonably requested by Purchaser that is necessary, proper or advisable in connection with the financing obtained by Purchaser for purposes of completing the transactions contemplated by this Agreement, including: (a) participation in meetings, presentations and due diligence sessions; (b) providing detailed information and assisting with the preparation of documents, disclosures and other material in connection with such financing; (c) furnishing Purchaser with financial statements, assisting Purchaser in preparing a reconciliations to IFRS and related information for such periods as are required in connection with such financing and other financial and other pertinent information regarding Sellers as may be reasonably requested by Purchaser in connection therewith and at the expense of Purchaser; (d) obtaining, at the expense of Purchaser, accountants' comfort letters and legal opinions if and as reasonably requested by Purchaser; and (e) taking all actions reasonably necessary and appropriate to permit the lenders in such financing to complete customary pre-closing due diligence on the Purchased Assets and Purchased Business at the expense of Purchaser.

6.14 Reorganization

Sellers shall be permitted to effect prior to the Time of Closing a reorganization in accordance with any steps notified to Purchaser 10 Business Days before Closing Date (the "**Reorganization**"), provided that the Reorganization (A) is not prejudicial to Purchaser, (B) does not result in any breach by any Seller of any Law or any existing Material Contract, and (C) would not reasonably be expected to impede or delay Purchaser's ability to perform its obligations hereunder or the consummation of the transactions contemplated herein. Sellers shall keep Purchaser fully apprised as to all matters in connection with the Reorganization and provide Purchaser with all information reasonably requested in connection with the Reorganization. Sellers shall provide Purchaser with copies of all documentation to effect the Reorganization and shall provide Purchaser with a reasonable advance opportunity to review and comment upon all such documentation and consider in good faith any comments received from Purchaser.

6.15 Title Insurance

The Parties shall use commercially reasonable efforts to obtain in favour of Purchaser title insurance covering the Owned Real Property. Such insurance shall be obtained from reputable title insurer and be on terms and conditions satisfactory to Purchaser, acting reasonably. Purchaser shall be responsible for the cost and expenses of such insurance.

6.16 Actions to Satisfy Closing Conditions

Except as otherwise specified in Section 6.2, (a) Sellers will use commercially reasonable efforts to satisfy the conditions contained in Section 7.6 and (b) Purchaser will use commercially reasonable efforts to satisfy the conditions contained in Section 7.7.

6.17 Sales and Payroll Tax Remittances

Purchaser shall pay and remit to the appropriate Governmental Authority, on behalf of each Seller, as applicable, amounts equal to all Sales Taxes and payroll Taxes taken into account in the Closing Working Capital that each such Seller is otherwise liable to pay or remit after the Closing in connection with the operation of the Purchase Business prior to the Closing, including the net GST and QST that would otherwise need to be remitted by each such Seller after the Closing for any supply, purchases and expenses made by each such Seller in the context of the Purchased Business prior to the Closing and that was taken into account in the Closing Working Capital. Purchaser shall make such remittances within the time limit prescribed in the applicable Tax Legislation for each Seller using the Tax numbers or account numbers provided by each such Seller. Each Seller shall irrevocably appoint Purchaser as its duly authorized representative for purposes of paying and remitting the Sales Taxes and payroll Taxes referred to in this Section 6.17 and shall duly file with the appropriate Governmental Authorities all forms required to so appoint the Purchaser, including Canada Revenue Agency Form RC59 and Revenu Québec Form MR-69-V.

6.18 Removal of Excluded Assets

On or before the Closing Date, Sellers shall remove all Excluded Assets from all Owned Real Property and Leased Real Property. Such removal shall be done in such manner as to avoid any damage to the Owned Real Property and Leased Real Property and any disruption of the business operations to be conducted by Purchaser after the Closing. Any material damage to the assets or property of the Purchased Business resulting from such removal shall be paid by Sellers at the Closing. Should Sellers fail to remove the Excluded Assets as required by this Section 6.18, Purchaser shall have the right, but not the obligation, to (a) remove or dispose of the Excluded Assets at Sellers' sole cost and expense, or (b) store the Excluded Assets and to charge Sellers all reasonable storage costs associated therewith. Sellers shall promptly reimburse Purchaser for all costs and expenses incurred by Purchaser in connection with any Excluded Assets not removed by Sellers on or before the Closing Date.

6.19 Exclusivity

During the period from the date of this Agreement until the earlier of the Closing Date and the date that this Agreement is terminated, no Seller nor any of its employees, directors, officers, shareholders, advisors or other representatives shall, nor shall any Seller cause or permit or countenance any of its employees, officers, directors, shareholders, advisors or other representatives to, solicit, directly or indirectly, discuss or otherwise communicate or otherwise entertain or deal with any offer for the purchase of or other investment in any or all of the Purchased Assets and Sellers their employees, directors, officers, shareholders, advisors or other representatives shall deal exclusively with Purchaser in good faith during such time period.

ARTICLE 7
CLOSING

7.1 **Transfer**

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets (other than the HEQ Assets) shall be deemed to take effect as at the Time of Closing, and the transfer of and possession of the HEQ Assets shall take effect five minutes thereafter. The Closing shall take place electronically. Unless otherwise agreed or except as contemplated by the foregoing, all closing transactions shall be deemed to have occurred simultaneously.

7.2 **Closing Mechanics**

A pre-closing shall take place at 9:00 a.m. on the Business Day immediately preceding the Closing Date, at which all Closing Deliveries shall be tabled or delivered into escrow with the applicable solicitors, to be held in accordance with the escrow arrangements to be agreed to by the Parties and their respective solicitors prior to the Closing Date. Such escrow arrangements shall provide for the registration of the Registration Documents and the release of the Closing Deliveries, all in a manner that recognizes and reconciles the customary practices in each of the provinces in which the Properties are located.

7.3 **Risk of Loss**

If, prior to Closing, all or any portion of the Purchased Assets are destroyed or damaged by fire or other casualty or are expropriated or seized by any Governmental Body and Purchaser does not elect to terminate this Agreement pursuant to Article 8 in connection therewith (if applicable):

- (a) the Purchase Price shall be reduced by the amount, if any, by which the proceeds under Sellers' insurance policies are insufficient to cover (or do not cover) the cost of repairs of such destruction or damage or replacement costs as applicable;
- (b) any claim Sellers may have against any Person in connection with such destruction or damage or expropriation or seizure shall be assigned to Purchaser at Closing;
- (c) all proceeds of insurance or compensation for such destruction, damage, expropriation or seizure received by Sellers will be payable to Purchaser and all rights and interests of Sellers to any such amounts not received by Seller prior to Closing will be assigned to Purchaser; and
- (d) Purchaser shall be responsible for the amount of any deductible that is payable under the insurance policies referred to in this Section 7.3.

7.4 Closing Deliveries by Sellers

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

- (a) the bring-down certificates referred to in Sections 7.6(a) and (b);
- (b) customary deeds, assignments, bills of sale and other conveyancing documents, in form and substance acceptable to Purchaser and Sellers, each acting reasonably, sufficient to transfer the various categories of Purchased Assets described in Section 2.1 free and clear of all Encumbrances other than Permitted Encumbrances including, registrable transfers of the Owned Real Property and registrable assignments of the leasehold interests in the Leased Real Property (where applicable) and ancillary documents that are customarily delivered with or as part of such transfers and assignments (such registrable documents, the "**Registration Documents**");
- (c) a counterpart of each of the Ancillary Agreements to which any Seller or its Affiliates is a party, executed by each of them;
- (d) a counterpart of the Environmental Release executed by each Seller;
- (e) a purchase certificate issued by the Workplace Safety and Insurance Board stating that no Seller owes any amounts or is in default under the *Workplace Safety and Insurance Act, 1997* (Ontario) or a similar certificate or statement of account in each other province in which Sellers carry on the Purchased Business;
- (f) a copy certified by a senior officer of each Seller of the articles of incorporation and by-laws of such Seller and of the resolution of such Seller's directors and shareholders approving the subject matter of this Agreement;
- (g) such statutory declarations and other documentation requested by the title insurance company for the purpose of issuing to Purchaser on Closing the title insurance policies referred to in Section 6.15;
- (h) a receipt for the Closing Date Payment and the Consideration Shares;
- (i) the Consents to the sale of the Purchased Business to Purchaser from each of the Contract and Lease parties listed in Schedule 7.4(i) of the Disclosure Letter;
- (j) documentation providing for the release and discharge of all Encumbrances affecting the Purchased Assets that are not Permitted Encumbrances or Encumbrances designated on Schedule 6.6 of the Disclosure Letter that have not been discharged by the Closing Date;
- (k) if applicable, notices and directions to the tenants under the Third Party Leases advising them of the assignment of the Third Party Leases to Purchaser and

directing them to pay rent and revise their insurance in accordance with the directions of Purchaser;

- (l) the pay-off letters described in Section 3.4;
- (m) a written direction to counsel of record for the Proceedings contemplated by Sections 2.1(q) and 2.3(e) to take instructions in respect of such Proceedings from Purchaser; and
- (n) all other documents required to be delivered by any Seller to Purchaser pursuant to this Agreement or reasonably necessary to give effect to the transactions contemplated hereby.

7.5 Closing Deliveries by Purchaser

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

- (a) the bring-down certificates referred to in Sections 7.7(a) and (b);
- (b) such of the documents referred to in Section 7.4(b) as a purchaser would customarily execute;
- (c) a counterpart of each of the Ancillary Agreements to which any of Purchaser or its Affiliates is a party, executed by each of Purchaser and its Affiliates that is a party thereto;
- (d) a counterpart of the Environmental Release executed by Purchaser;
- (e) a copy certified by a senior officer of Purchaser of the articles of incorporation and by-laws of Purchaser and of the resolution of Purchaser's directors approving the execution and delivery of this Agreement and the Ancillary Agreements to which Purchaser is a party;
- (f) the Closing Date Payment and the Consideration Shares, in each case in accordance with Section 3.3 (provided that if TSX Approval is not obtained such that the Consideration Shares cannot be issued, Purchaser shall pay to Sellers, in lieu of the Consideration Shares, the amount of \$100,000,000, being the amount equal to the number of Consideration Shares multiplied by the volume weighted average trading price of the Common Shares on the TSX for the 10 trading days prior to the date of this Agreement);
- (g) a receipt for the Purchased Assets acknowledging the purchase of the Purchased Assets pursuant to this Agreement;
- (h) an instrument of assumption of the Assumed Liabilities in the form agreed by Sellers and Purchasers, each acting reasonably; and

- (i) all other documents required to be delivered by Purchaser to any Seller pursuant to this Agreement or reasonably necessary to give effect to the transactions contemplated hereby.

7.6 Conditions of Closing in Favour of Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Purchaser, to be performed or fulfilled at or prior to the Time of Closing:

- (a) Representations and Warranties.
 - (i) The representations and warranties in Sections 4.1 through 4.4 (only with respect to (a)(i) of Section 4.4) and Section 4.25 will have been true, correct and complete in all respects on the date of this Agreement and will be true, correct and complete in all respects at the Time of Closing,
 - (ii) the representations and warranties in Section 4.6 will have been true, correct and complete in all material respects on the date of this Agreement and will be true, correct and complete in all material respects at the Time of Closing,
 - (iii) all other representations and warranties of any Seller contained in this Agreement (A) will have been true, correct and complete on the date of this Agreement and (B) will be true, correct and complete at the Time of Closing, in each of (A) and (B), except to the extent that all inaccuracies or incompleteness therein would not, in the aggregate, have or reasonably be expected to have a Material Adverse Effect (it being understood that for the purposes of such determination, all representations and warranties other than the representations and warranties in Sections 4.1 through 4.4 (only with respect to (a)(i) of Section 4.4), Section 4.6 and Section 4.25 that are qualified as to "material", "material respects", "Material Adverse Effect" or words of similar import or effect will be deemed to have been made without such qualification), and
 - (iv) a certificate of a senior officer of each Seller, dated the Closing Date, to that effect shall have been delivered to Purchaser. On the delivery of this certificate, the representations and warranties of Sellers in Article 4 will be deemed to have been made at and as of the Time of Closing with the same force and effect as if made at and as of that time;
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by each Seller at or before the Time of Closing shall have been complied with or performed in all material respects, and a certificate of a senior officer of each Seller, dated the Closing Date, to that effect shall have been delivered to Purchaser;

- (c) Competition Act Approval. The Competition Act Approval shall have been obtained;
- (d) Contractual Consents. Sellers shall have given or obtained the notices and Consents described in Schedule 7.4(i) of the Disclosure Letter;
- (e) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Body to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (f) Injunctions. There shall be in effect no injunction against Closing entered by a court of competent jurisdiction; and
- (g) No Material Adverse Effect. Since the date of this Agreement, no Material Adverse Effect should have occurred.

Any such condition may be waived in whole or in part by Purchaser without prejudice to any claims it may have for breach of covenant, representation or warranty hereunder.

7.7 Conditions of Closing in Favour of Sellers

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Sellers, to be performed or fulfilled at or prior to the Time of Closing:

- (a) Representations and Warranties. All representations and warranties of Purchaser contained in this Agreement will have been true and correct in all material respects on the date of this Agreement and will be true and correct in all material respects at the Time of Closing with the same force and effect as if those representations and warranties had been made at and as of that time (it being understood that for the purposes of such determination, all representations and warranties that are qualified as to "material", "material respects" or words of similar import or effect will be deemed to have been made without such qualification), and Purchaser will have executed and delivered a certificate of a senior officer of Purchaser to that effect. On the delivery of this certificate, the representations and warranties of Purchaser in Article 5 will be deemed to have been made at and as of the Time of Closing with the same force and effect as if made at and as of that time;
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser at or before the Time of Closing shall have been complied with or performed in all material respects, and a certificate of a senior officer of Purchaser, dated the Closing Date, to that effect shall have been delivered to Seller;
- (c) Competition Act Approval. The Competition Act Approval shall have been obtained;

- (d) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Body to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby; and
- (e) Injunctions. There shall be in effect no injunction against Closing entered by a court of competent jurisdiction.

Any such condition may be waived in whole or in part by Sellers without prejudice to any claims any of them may have for breach of covenant, representation or warranty.

ARTICLE 8 **TERMINATION**

8.1 **Termination Rights**

(a) Subject to Section 8.2, this Agreement may be terminated by notice in writing given at or prior to the Time of Closing:

- (i) by Purchaser if any of the conditions in Section 7.6 has not been satisfied at the time specified in Section 7.6 or it becomes apparent that any of the conditions in Section 7.6 is incapable of being satisfied by the Outside Date and such failure to so satisfy has not been waived by Purchaser in writing or satisfied by Sellers within 30 days following written notice thereof by Purchaser;
- (ii) by Sellers if any of the conditions in Section 7.7 has not been satisfied at the time specified in Section 7.7 or it becomes apparent that any of the conditions in Section 7.7 is incapable of being satisfied by the Outside Date and such failure to so satisfy has not been waived by Seller in writing or satisfied by Purchaser within 30 days following written notice thereof by Seller; or
- (iii) by either Purchaser or Sellers if the Closing has not occurred on or before October 31, 2017 (the "**Outside Date**") (or such later date as the Parties may agree),

except that the right to terminate this Agreement under this Section 8.1(a) shall not be available to a Party if the failure of the Party to fulfill any of its covenants or obligations or if the breach of any of its representations and warranties under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by the Outside Date.

(b) This Agreement may be terminated by mutual written agreement of Purchaser and Sellers.

(c) The right to terminate this Agreement under Section 8.1(a) is subject to the right of either Purchaser or Sellers to postpone the Outside Date by a period of not less than 30 days beyond the original Outside Date if the condition in Sections 7.6(c) and 7.7(c) has not been satisfied and such failure is not the result of a final and non-appealable decision of a

Governmental Body, by giving written notice to the other to such effect no later than 5:00 p.m. (Eastern time) on the date that is not less than two Business Days prior to the original Outside Date (and any subsequent Outside Date), or such later date as may be agreed to in writing by Purchaser and Sellers; provided that notwithstanding the foregoing, (i) neither Purchaser nor Sellers shall have the right to postpone the Outside Date if the failure to satisfy the applicable condition is materially the result of the failure to perform obligations under this Agreement by Purchaser (in the case of a postponement by Purchaser) or by Sellers (in the case of a postponement by Sellers), and (ii) all such postponements of the Outside Date may not exceed 90 days beyond the original Outside Date in the aggregate.

8.2 Effect of Exercise of Termination Rights

(a) If this Agreement is terminated under Section 8.1, the Parties will be discharged from any further obligations under this Agreement, except that each Party's respective obligations under Sections 6.10, 8.2, 10.5 and 10.6 will continue indefinitely.

(b) Notwithstanding Section 8.2(a), a Party will only be released from its obligations and liabilities under this Agreement (other than its obligations and liabilities under Sections 6.10, 8.2, 10.5 and 10.6 which will continue indefinitely) if the failed condition pursuant to which this Agreement was terminated was not caused by a willful breach of this Agreement by such Party. If the failed condition pursuant to which this Agreement was terminated was caused by a willful breach of this Agreement by such Party, the other Party's rights of termination pursuant to Section 8.1 is in addition to any other rights it may have under this Agreement (including to seek indemnification for breaches, defaults or violations of the representations, warranties or covenants) or otherwise, and the exercise of a right of termination will not be an election of remedies.

ARTICLE 9 SURVIVAL AND INDEMNIFICATION

9.1 Survival of Representations, Warranties and Covenants

All representations, indemnifications, warranties and covenants contained in this Agreement shall survive the Closing and shall not merge.

9.2 Indemnification by Sellers

Subject to the limitations set out elsewhere in this Article 9, and notwithstanding any investigations made, or knowledge acquired, by Purchaser prior to Closing, Sellers shall solidarily indemnify and save harmless the Purchaser Indemnified Persons from and against all Losses suffered or incurred by Purchaser as a result of, or arising out of, or in connection with:

- (a) any inaccuracy or breach by any Seller of any representation or warranty of any Seller contained in this Agreement or in the certificate of a senior officer of each Seller referred to in Section 7.6(a);
- (b) any breach or non-performance by any Seller of any covenant contained in this Agreement;

- (c) the Excluded Liabilities;
- (d) any Seller failing to file its Tax returns in accordance with Section 3.5 (such Losses to include any additional Taxes, interest, penalties and legal and accounting costs paid or incurred by Purchaser); and
- (e) any Successor Taxes of any Seller.

9.3 Indemnification by Purchaser

Subject to the limitations set out elsewhere in this Article 9, and notwithstanding any investigations made, or knowledge acquired, by Sellers prior to Closing Purchaser shall indemnify and save harmless the Seller Indemnified Persons from and against all Losses suffered or incurred by Sellers as a result of, or arising out of, or in connection with:

- (a) any inaccuracy or breach by Purchaser of any representation or warranty contained in this Agreement or in the certificate of a senior officer of Purchaser referred to in Section 7.7(a);
- (b) any breach or non-performance by Purchaser of any covenant contained in this Agreement (but excluding the subject matter of Section 9.3(c));
- (c) the Assumed Liabilities; and
- (d) Purchaser failing to file its Tax returns in accordance with Section 3.5 (such Losses to include any additional Taxes, interest, penalties and legal and accounting costs paid or incurred by Sellers).

9.4 Time Limits for Notice of Claim for Breach of Representations and Warranties

(a) Sellers shall not be required to indemnify or save harmless any Purchaser Indemnified Person pursuant to Section 9.2(a) unless such Purchaser Indemnified Person shall have provided to Sellers a Notice of Claim within the following time limits:

- (i) with respect to the representations and warranties set out in Sections 4.1 through 4.4 (only with respect to (a)(i) of Section 4.4) or Section 4.6, at any time after Closing;
- (ii) with respect to the representations and warranties set out in Section 4.23 or 4.25, not later than 90 days after the expiry of the last applicable limitation period under any applicable Tax legislation with respect to any taxation period to which these matters relate;
- (iii) with respect to the representations and warranties set out in Section 4.27, not later than four years after the Closing Date;

- (iv) with respect to a claim for breach of any of the representations and warranties contained in this Agreement involving fraud, at any time after Closing; and
- (v) with respect to all other representations and warranties contained in this Agreement, not later than 18 months after the Closing Date.

(b) Purchaser shall not be required to indemnify or save harmless any Seller Indemnified Person pursuant to Section 9.3(a) unless such Seller Indemnified Person shall have provided to Purchaser a Notice of Claim within the following time limits:

- (i) with respect to the election(s) in accordance with Section 3.9, no later than 60 days after the expiry of the statutory assessment period;
- (ii) with respect to the representations and warranties in Sections 5.1 through 5.2, at any time after Closing; and
- (iii) with respect to all other representations and warranties contained in this Agreement, not later than 18 months after the Closing Date.

9.5 Limitation of Liability; Effect of Materiality Qualifiers

(a) The Purchaser Indemnified Persons shall not be entitled to require payment of any amount by Seller on the indemnities contained in Section 9.2(a) (other than a Claim for a breach of a representation and warranty made in Sections 4.1 through 4.3, Sections 4.6, 4.23 and 4.25), until the aggregate of all such amounts for which the Purchaser Indemnified Persons would otherwise be entitled to require payment under such Sections exceeds \$6,250,000 (the "**Deductible**"), in which event the Purchaser Indemnified Persons shall be entitled to require payment on such indemnities for Losses in excess of the Deductible.

(b) The Purchaser Indemnified Persons shall not be entitled to require payment of any amount by Sellers on the indemnities contained in Section 9.2(a) for any Claim (or series of Claims arising from the same events or facts) where the Losses relating to such Claim are less than \$300,000, such Losses shall not be counted toward the Deductible.

(c) The Purchaser Indemnified Persons shall not be entitled to require payment of amounts, in aggregate, by Sellers on the indemnities contained in Section 9.2(a) (except insofar as such section provides a Claim for a breach of a representation and warranty made in Sections 4.1 through 4.3, Sections 4.6, 4.23 or 4.25) in excess of \$80,000,000 (the "**Cap**").

(d) The Seller Indemnified Persons shall not be entitled to require payment of any amount by Purchaser on the indemnities contained in Section 9.3(a) (other than a Claim for a breach of a representation and warranty made in Sections 5.1 through 5.2), until the aggregate of all such amounts for which the Seller Indemnified Persons would otherwise be entitled to require payment under such Sections exceeds the Deductible, in which event the Seller Indemnified Persons shall be entitled to require payment on such indemnities for Losses in excess of the Deductible.

(e) The Seller Indemnified Persons shall not be entitled to require payment of any amount by Purchaser on the indemnities contained in Section 9.3(a) for any Claim (or series of Claims arising from the same events or facts) where the Losses relating to such Claim are less than \$300,000, such Losses shall not be counted toward the Deductible.

(f) The Seller Indemnified Persons shall not be entitled to require payment of amounts, in aggregate, by Purchaser on the indemnities contained in Section 9.3(a) (except insofar as such section provides a Claim for a breach of a representation and warranty made in Sections 5.1 through 5.2) in excess of the Cap.

(g) For purposes of the indemnity provisions in this Article 9, where a Claim pursuant to Section 9.2(a) or Section 9.3(a) is predicated on an underlying representation and warranty that is qualified by a reference to "materiality" or "Material Adverse Effect", the underlying representation and warranty (other than a representation and warranty in Section 4.16(a), 4.19(a), 4.19(b), 4.21 or 4.32) shall be read as if it did not contain such qualifier.

(h) Notwithstanding any other provision of this Agreement, the limitations set forth in Sections 9.5(a) through 9.5(f) shall not apply to a Claim involving fraud or willful breach of this Agreement.

9.6 Notice of Claim

(a) A Purchaser Indemnified Person or Seller Indemnified Person that may be entitled to make a claim for indemnification (a "**Claim**") under this Agreement (the "**Indemnified Party**"), shall give written notification to the Party from which indemnification is sought (the "**Indemnifying Party**") of such Claim (a "**Notice of Claim**") promptly upon becoming aware of the Claim, but in no event later than the relevant date, if any, specified in Section 9.4. The Notice of Claim shall specify whether the Claim arises as a result of a claim by a Person against the Indemnified Party (a "**Third Party Claim**") or whether the Claim does not so arise (a "**Direct Claim**"), and shall also specify with reasonable particularity (to the extent that the information is available), the factual basis for the Claim, the amount of the Claim and the identity of the Person making the Claim if it is a Third Party Claim.

(b) If an Indemnified Party fails to provide the Indemnifying Party with a Notice of Claim promptly as required by Section 9.6(a), the Indemnifying Party shall be relieved of the obligation to pay damages to the extent it can show that it was prejudiced in its defence of the Claim or in proceeding against a third party who would have been liable to it by the fact of the delay, but the failure to provide such Notice of Claim promptly shall not otherwise release the Indemnifying Party from its obligations under this Article 9.

(c) If the date by which a Notice of Claim must be given as set out in Section 9.4 in respect of a breach of representation and warranty has passed without any Notice of Claim having been given to the Indemnifying Party, then the related Claim shall be forever extinguished, notwithstanding that by the date specified in Section 9.4 the Indemnified Party did not know, and in the exercise of reasonable care could not have known, of the existence of the Claim.

9.7 Direct Claims

(a) With respect to any Direct Claim, following receipt of notice from the Indemnified Party of the Claim, the Indemnifying Party shall have 60 days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information, books and records and access to employees 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 60-day period specified in Section 9.7(a). The dispute notice will describe in reasonable detail the nature of the Indemnifying Party's dispute. During the 60-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 60-day time period, the Indemnified Party is free to pursue all rights and remedies available to it, subject only to this Agreement. If the Indemnifying Party fails to respond in writing to the Direct Claim within the 60-day period specified in Section 9.7(a), the Indemnifying Party is deemed to have rejected the Direct Claim in which event the Indemnified Party is free to pursue all rights and remedies available to it, subject to this Agreement.

9.8 Third Party Claims

(a) After receipt of the Indemnified Party's notice pursuant to Section 9.6(a) relating to a Third Party Claim, the Indemnifying Party shall have the right, at its expense, to participate in the investigation and defense or to assume control of the negotiation, settlement or defence of any Third Party Claim.

(b) The Indemnifying Party may elect to assume control of the negotiation, settlement or defence the Third Party Claim at its own cost and expense with counsel of its own selection by giving notice to the Indemnified Party within not more than 15 Business Days of such receipt of the Indemnifying Party's notice pursuant to Section 9.6(a) relating to such Third Party Claim, provided that the Indemnified Party has at all times the right to participate in the defence at its own cost and expense unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and the Indemnified Party receives an opinion from outside legal counsel that representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to actual or potential differing interests between them, such as the availability of different defences (provided, however, that the Indemnifying Party reimburses to the Indemnified Party all defence costs and expenses of the Indemnified Party reasonably incurred before the date the Indemnifying Party validly exercises its right to elect to assume control of the Third Party Claim). If the Indemnifying Party, having elected to assume such control, thereafter fails to defend the Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control upon giving prior written notice to this effect to the Indemnifying Party and the Indemnifying Party having failed to defend the Third Party Claim promptly thereafter, and the

Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim.

(c) If the Indemnifying Party assumes the control of the Third Party Claim, the Indemnifying Party will not be permitted to compromise and settle or to cause a compromise and settlement of any Third Party Claim without the prior written Consent of the Indemnified Party, which Consent may not be unreasonably withheld or delayed unless:

- (i) the terms of the compromise and settlement require only the payment of money for which the Indemnified Party is entitled to indemnification under this Agreement;
- (ii) the terms of the compromise and settlement do not require the Indemnified Party to admit any wrongdoing or waive any rights that the Indemnified Party may have against such third 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, which is in form and substance satisfactory to the Indemnified Party, acting reasonably, from any and all obligations or liabilities it may have with respect to the Third Party Claim.

(d) If the Indemnified Party undertakes the defence of the Third Party Claim, the Indemnifying Party shall not be bound by any determination of the Third Party Claim or any compromise or settlement of the Third Party Claim effected without the Consent of the Indemnifying Party (which Consent may not be unreasonably withheld or delayed).

(e) If the Indemnifying Party participates in the defence or elects to assume the control of a Third Party Claim, then the Indemnified Party shall make available to the Indemnifying Party, on a reasonable basis, those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in evaluating, participating and defending, as applicable, such Claim; provided that the Indemnifying Party shall reimburse the Indemnified Party for out-of-pocket expenses.

(f) The Indemnified Party shall, at the request of the Indemnifying Party, make available to the Indemnifying Party or its representatives on a timely basis all documents, records and other materials in the possession of the Indemnified Party, reasonably required by the Indemnifying Party for its use in defending any Third Party Claim, the defence of which it has elected to participate in or assume, and the Indemnified Party shall otherwise reasonably cooperate on a timely basis with the Indemnifying Party in the defence of such Claim.

(g) The Indemnified Party and the Indemnifying Party agree to keep the other Party on a regular basis informed of the status of any Third Party Claim and related Proceedings.

9.9 **Duty to Mitigate**

Nothing in this Agreement in any way restricts or limits the general obligation at Law of an Indemnified Party to mitigate any Loss 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. For greater certainty, however, nothing in this Section 9.9 shall adversely impact an Indemnified Party's Claim against an Indemnifying Party which Claim is a Third Party Claim of a nature that the Indemnified Party is required by applicable Law or the order of any Governmental Body having jurisdiction, or it is necessary in the reasonable view of the Indemnified Party acting in good faith and in a commercially reasonable manner in order to avoid material damage to the relationship between the Indemnified Party and any of its customers, suppliers or employees or to preserve the rights of the Indemnified Party under any Contract, if the Indemnified Party makes a payment to any Person with respect such Claim before the completion of settlement negotiations or related legal proceedings. If any Claim can be reduced by any recovery, settlement 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, at the expense of the Indemnifying Party, take all appropriate and commercially reasonable steps to enforce such recovery, settlement or payment and the amount of any Losses of the Indemnified Party shall be reduced by the amount of insurance proceeds actually received by the Indemnified Party (net of any deductible or other costs or expenses of recovery including Taxes and any actual increase in insurance premiums as a result of such Claim). Any claim shall also be reduced by any Tax benefit actually realized by the Indemnified Party on account of such Losses in the taxable periods beginning on or prior to the first anniversary of the first day of the taxable period such Losses were incurred. If the Indemnified Party receives a Tax benefit after an indemnification payment is made to it, the Indemnified Party shall promptly pay to the Indemnifying Party, the amount of such Tax benefit at such time or times as and to the extent that such Tax benefit is realized by the Indemnified Party, less all costs, fees and expenses (including Taxes) incurred in seeking and collecting such recovery and realization.

9.10 **Exclusive Remedy**

Except as otherwise provided in this Agreement, from and after Closing, the indemnities provided in Section 9.2 and Section 9.3 will constitute the only remedy of the Purchaser's Indemnified Persons) or the Seller Indemnified Persons, respectively, against a Party in respect of a breach of any representation, warranty, covenant or agreement of that Party under this Agreement. However, if after Closing a Party makes a claim for indemnification in accordance with Section 9.2 or Section 9.3, as the case may be, and the other Party refuses to make payment for Losses or otherwise provide satisfaction in respect of that claim, then the Party making the claim for indemnification may bring a Proceeding to seek a remedy for that refusal. Nothing in this Agreement shall prevent any party from commencing litigation to compel specific performance or obtain other equitable remedies.

9.11 **One Recovery**

Any Indemnified Party is not entitled to double recovery for any Claim 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 Purchase Price in Section 3.8.

9.12 Adjustment to Purchase Price

Any payment made by any Seller pursuant to this Article 9 shall constitute a reduction in the Purchase Price and any payment made by Purchaser pursuant to this Article 9 shall constitute an increase in the Purchase Price. In either case, each Seller and Purchaser shall, within a reasonable time of payment and receipt of such payment, as applicable, and in any event within two months of such payment, request all amendments to its or current Tax returns as may be necessary to reflect the foregoing.

ARTICLE 10
MISCELLANEOUS

10.1 Notices

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by fax or e-mail or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(i) if to any Seller:

455 Fenelon boulevard suite 204
Dorval Quebec H9S 5T8
Canada

Attention: Roni Farah
E-mail : rfarah@hewitt.ca

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

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

Attention: Karl Tabbakh
Fax No.: 514.875.6246
E-mail: ktabbakh@mccarthy.ca

(ii) if to Purchaser:

Toromont Industries Ltd.
3131 Hwy. 7 West
Concord, ON L4K 5E1

Attention: Paul R. Jewer, Executive VP and CFO
Fax No.: 416.667.5555
E-mail: pjewer@toromont.com

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

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Attention: Cameron M. Rusaw
Fax No.: 416.863.0871
E-mail: crusaw@dwpv.com

(b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. at the place of receipt, then on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

(c) Either Party may at any time change its address for service from time to time by giving notice to the other Party in accordance with this Section 10.1.

10.2 Amendments and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on either Party unless Consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

10.3 Assignment

(a) No Party may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations, except with the prior written Consent of the other Party.

(b) Notwithstanding the foregoing, Purchaser may assign all of its rights, benefits, duties and obligations under this Agreement in their entirety, without the Consent of any Seller, to any Affiliate of Purchaser, whereupon the assignee shall be liable for all of the obligations of

Purchaser under this Agreement; provided, however, that any such assignment shall not relieve Purchaser from any of its obligations hereunder.

10.4 Successors and Assigns

This Agreement shall enure to the benefit of and shall be binding on and enforceable by and against the Parties and, where the context so permits, their respective successors and permitted assigns.

10.5 Expenses

Except as otherwise expressly set out in this Agreement, each Party shall pay for its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement, the Ancillary Agreements and other Closing Deliveries and the transactions contemplated herein and therein, including the fees and expenses of legal counsel, financial advisors, brokers, accountants and other professional advisors and fees payable to any Governmental Bodies. Purchaser shall be responsible for the fees and expenses charged by Golder Associates Ltd. for the environmental assessment work performed by it pursuant to the engagement letters dated May 11, 2017 and July 6, 2017, respectively, between Golder Associates Ltd. and counsel to Purchaser and Sellers. For greater certainty, Sellers shall be responsible for, and shall pay, all fees, commissions and other remuneration of the broker referred to in Schedule 4.35 of the Disclosure Letter in connection with the transactions contemplated by this Agreement.

10.6 Consultation

The Parties shall consult with each other before issuing any press release or making any other public announcement with respect to this Agreement or the transactions contemplated hereby and, except as required by applicable Law (including applicable Securities Law), the Parties shall not issue any such press release or make any such public announcement without the prior written Consent of the other Party, which Consent shall not be unreasonably withheld or delayed.

10.7 Further Assurances

Each of the Parties shall, at all times after the Closing Date and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered, at the expense of the requesting Party, all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement, including such other instruments of sale, transfer, conveyance, assignment, confirmation, certificates and other instruments as may be reasonably requested in order to more effectively transfer, convey and assign the Purchased Assets and to effectuate the transactions contemplated herein.

10.8 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts,

with the same effect as if all parties had signed and delivered the same document, and all counterparts shall together constitute one and the same original document.

10.9 Third Party Beneficiaries

Except as otherwise provided in Sections 9.2 and 9.3, no Person that is not a Party shall be entitled to the benefit of any provisions of this Agreement or have any rights hereunder. Except for the Purchaser Indemnified Persons and the Seller Indemnified Persons, no Person that is not a Party shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. Purchaser accepts each indemnity made by Sellers under Section 9.2 in favour of each of the Purchaser Indemnified Persons as agent and trustee of that Purchaser Indemnified Person and may enforce an indemnity in favour of any of the Purchaser Indemnified Persons on behalf of that Purchaser Indemnified Person. HHL accept each indemnity made by Purchaser under Section 9.3 in favour of each of the Seller Indemnified Persons as agent and trustee of that Seller Indemnified Person and may enforce an indemnity in favour of any of Seller Indemnified Persons on behalf of that Seller Indemnified Person. Notwithstanding the foregoing, Sellers acknowledge to each of the Purchaser Indemnified Persons its direct rights against it under Section 9.2, and Purchaser acknowledges to each of the Seller Indemnified Persons its direct rights against it under Section 9.3. The Parties reserve their right to vary or rescind at any time and in any way whatsoever, the rights, if any, granted by or under this Agreement to any Person that is not a Party, without notice to or Consent of such Person.

10.10 Subdivision Control Legislation

This Agreement and the transactions contemplated herein are subject to compliance with section 50 of the *Planning Act* (Ontario) and any similar or corresponding provisions of any subdivision control legislation in any other province in which any of the Properties is located.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date first above written.

SELLERS:

HEWCLAN HOLDINGS LIMITED

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

**HEWITT EQUIPMENT LIMITED/
HEWITT ÉQUIPEMENT LIMITÉE**

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

**HEWITT RENTALS INC./
LOCATION HEWITT INC.**

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

**HEWITT MATERIAL HANDLING
INC.**

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

**MONTREAL HYDRAULIQUE 04
INC.**

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

**ATLANTIC TRACTORS &
EQUIPMENT LIMITED**

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

SITECH QM LIMITED

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

SITECH ATLANTIC LIMITED

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

HEWQUIP INC.

by (signed) James W. Hewitt
Name: James W. Hewitt
Title: Chief Executive Officer

(signed) Stephen David Hewitt
Name: Stephen David Hewitt
Title: Executive Vice President

PURCHASER:

TOROMONT INDUSTRIES LTD.

by (signed) Scott J. Medhurst
Name: Scott J. Medhurst
Title: President & Chief Executive
Officer

SCHEDULE A

SELLERS

**HEWITT EQUIPMENT LIMITED/
HEWITT ÉQUIPEMENT LIMITÉE,**
a corporation existing under the laws of
Canada

**HEWITT RENTALS INC./
LOCATION HEWITT INC.,**
a corporation existing under the laws of
Canada

**HEWITT MATERIAL HANDLING
INC.,**
a corporation existing under the laws of
Canada

MONTREAL HYDRAULIQUE 04 INC.,
a corporation existing under the laws of
Canada

**ATLANTIC TRACTORS &
EQUIPMENT LIMITED,**
a corporation existing under the laws of
the Province of Nova Scotia

SITECH QM LIMITED,
a corporation existing under the laws of
Canada

SITECH ATLANTIC LIMITED,
a corporation existing under the laws of
the Province of Nova Scotia

HEWQUIP INC.,
a corporation existing under the laws of
the Province of Ontario

ENVIRONMENTAL RELEASE AND WAIVER

[Redacted; Commercially sensitive information]

LICENCE AGREEMENT

THIS AGREEMENT made the ■ day of ■, 2017,

B E T W E E N:

HEWCLAN HOLDINGS LIMITED,
a corporation existing under the laws of
the Province of Ontario,

(hereinafter referred to as "**HHL**"),

- and -

**EACH OF THE SUBSIDIARIES OF HHL
LISTED IN SCHEDULE A,**
(hereinafter referred to collectively with HHL as
"**Licensors**", and each a "**Licensor**"),

- and -

TOROMONT INDUSTRIES LTD.,
a corporation existing under the laws of
Canada,

(hereinafter referred to as "**Licensee**").

WHEREAS pursuant to an asset purchase agreement dated ■, 2017 (the "**Purchase Agreement**") between, among others, Licensors and Licensee, Licensee agreed to purchase from Licensors all of the operating assets used by each Licensor in its conduct of Licensors' business consisting primarily of heavy equipment, material handling, energy and truck divisions (the "**Purchased Business**");

AND WHEREAS pursuant to the Purchase Agreement, Licensee did not acquire, and Licensors retained ownership of, the Licensed IP;

AND WHEREAS in order to ensure an orderly transition of the Purchased Business to Licensee (the "**Purpose**"), the parties have agreed to enter into this Agreement pursuant to which Licensors will license to Licensee the Licensed IP on the terms and conditions set forth herein;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Defined Terms**

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

"Domain Names" means domain names, web addresses, uniform resource locators, social media handles, user names, and account identifiers, and all goodwill associated with each of the foregoing;

"Excluded Employees" and **"Transferred Employees"** have the respective meanings set out in the Purchase Agreement;

"Hewitt Domain Names" means, collectively, Domain Names that include the name "Hewitt", including "Hewitt.ca" and "Hewitt.com", or any variation thereof, including the Domain Names described in Schedule B;

"Hewitt Marks" means, collectively, Trademark rights and similar rights related to the name "Hewitt", including the right to use the name and style "Hewitt" or any name or style that includes the name "Hewitt" used as part of the name or style under which the Purchased Business or any part thereof was carried on by Licensors immediately prior to the date hereof, and includes the Trademark rights described in Schedule B;

"Licence" has the meaning set out in Section 2.1(a);

"Licensed IP" means, collectively, the Hewitt Marks, the Hewitt Domain Names and such other intellectual property related to the foregoing owned or held for use by Licensors;

"Losses" means, in respect of any matter, all actual and documented losses, damages, liabilities, fines, costs and expenses (including reasonable legal fees and expenses) arising as a consequence of such matter;

"Materials" means advertising, stationery, letterhead, credit cards, cheques, application forms and take-one application holders, pre-printed or electronic agreements and other contracts, billing statements, invoices (including electronic invoices), product and sales literature, displays, labels, packaging and other printed materials existing or ordered as of the Closing Date on which any of the Licensed IP is displayed;

"Passwords" has the meaning set out in Section 2.3(a);

"Permitted Uses" means using the Licensed IP:

- (a) for the following uses (**"Transitional Matters"**): (i) on equipment destined for sale or rental on which the Licensed IP was affixed prior the Closing Date, (ii) on

trucks destined for transportation bearing the Licensed IP that are in use in Licensors' operation of the Purchased Business as of the Closing Date, (iii) on signage in Licensors' buildings bearing the Licensed IP as of the Closing Date, (iv) as displayed in or on any software comprised in the Purchased Assets in connection with the conduct of the Purchased Business, and (v) to carry out the website redirect and other activities contemplated in Section 2.3(b); and

- (b) for the following uses ("**Short Term Matters**"): (i) in connection with any advertising or marketing campaign launched prior to the Closing Date, and (ii) on any other Materials in connection with the conduct of the Purchased Business;

"**Purpose**" has the meaning set out in the recitals and in Schedule C;

"**Term**" has the meaning set out in Section 2.2; and

"**Trademarks**" means trademarks, service marks, trade names, trade dress, logos, corporate names, rights in business and get-up and other source or business identifiers (in each case whether or not registered) and any registrations, applications, renewals and extensions of each of the foregoing and all goodwill associated with each of the foregoing.

1.2 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;
- (b) references to an "Article", "Section" or "Schedule" followed by a number or letter refer to the specified Article or Section of or Schedule to this Agreement;
- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and *vice versa* and words importing the use of any gender shall include all genders;
- (e) the word "including" is deemed to mean including without limitation;
- (f) the terms "party" and "the parties" refer to a party or the parties to this Agreement;
- (g) any reference to this Agreement means this Agreement as amended, modified, replaced or supplemented from time to time; and

- (h) the term "person" shall be construed broadly and include any individual, corporation, legal person, partnership, firm, joint venture, syndicate, association, trust, trustee, limited liability company, unincorporated organization, trust company, governmental body or any other form of entity or organization.

1.3 Entire Agreement

This Agreement, the Purchase Agreement and the other agreements provided for in the Purchase Agreement constitute the entire agreement between the parties with respect to the subject-matter hereof and thereof and supersede all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to such subject matter except as provided herein or therein.

1.4 Time of Essence

Time shall be of the essence of this Agreement.

1.5 Governing Law and Submission to Jurisdiction

(a) This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Québec and the federal laws of Canada applicable therein.

(b) Each of the parties irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction of the courts of the Province of Québec over any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection that it might otherwise be entitled to assert to the jurisdiction of such courts and (iii) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.

1.6 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner materially adverse to a party.

1.7 Joint and Several

Licensors shall and shall be deemed to act on a solidary basis hereunder for all purposes. All obligations, agreements, covenants, and other provisions in this Agreement of, by, applicable to or binding upon any Licensor shall be deemed to be of, by or binding upon all Licensors on a solidary (joint and several) basis.

1.8 Schedules

The following Schedules are attached to and form part of this Agreement:

Schedule A	- Licensors
Schedule B	- Trademarks and Domain Names
Schedule C	- Purpose

ARTICLE 2
LICENSE, TERM AND SERVICES

2.1 **Licence**

(a) During the Term, Licensors hereby grant to Licensee an exclusive, royalty-free, irrevocable licence to use the Licensed IP in accordance with the terms hereof for the Purpose (the "**Licence**"). Licensors agree not to license or grant any right to use during the Term any Licensed IP to any other person for any purpose.

(b) Licensee agrees to use the Licensed IP only while the Licence is in effect, only for the Purpose and in association with the Permitted Uses. Licensee shall not have any right to use or display the Licensed IP other than as described in this Section 2.1.

(c) Licensee will use the Licensed IP in accordance with the standards of character and quality as maintained by Licensors immediately prior to the Closing Date and in a manner which will not cause harm to the goodwill attached to the Licensed IP.

(d) Licensee will not make any changes or alterations to the Licensed IP unless specified or approved in advance in writing by Licensors. Licensee will not create, develop, or otherwise use any new advertising, promotional, or other materials bearing the Licensed IP.

(e) Licensors represent and warrant to Licensee that Licensors are the owners of the Licensed IP and have the right to grant to Licensee the licence contemplated by this Section 2.1. Licensors covenant with Licensee that the foregoing shall remain true at all times during the Term. Licensors shall, at Licensor's expense, maintain the Licensed IP in good standing at all times during the Term.

(f) Licensee acknowledges and agrees that (i) the Licensed IP, and all of the goodwill associated therewith, is and shall at all times remain the exclusive property of Licensors and that the Licensee's use of the Hewitt Marks is done under licence and control from Licensors and strictly for the Purpose and (ii) the Licensee shall not acquire any right, title or interest in and to the Hewitt Marks, other than the licences granted pursuant to this Agreement.

(g) All rights not specifically granted to Licensee herein are reserved to Licensors.

2.2 **Term**

(a) The term of this Agreement (the "**Term**") shall commence on the date hereof and shall remain in effect until the first anniversary of the date hereof, and all rights granted to Licensee under this Agreement shall terminate on such date.

(b) Notwithstanding the Term:

- (i) in connection with Short Term Matters, Licensee shall cease to use the Licensed IP in the conduct of the Purchased Business on the 90th day following the Closing Date, and all rights granted to Licensee under this Agreement with respect to such matters shall terminate on such date; and
- (ii) in connection with Transitional Matters, Licensee shall cease to use the Licensed IP in the conduct of the Purchased Business on the first anniversary of the date hereof, and all rights granted to Licensee under this Agreement with respect to such matters shall terminate on such date.

(c) Immediately following the Term, Licensee shall cease to use, directly or indirectly, in any manner whatsoever, the Licensed IP and any name or mark confusingly similar to the Hewitt Mark.

2.3 Services

(a) Concurrently with the execution of this Agreement, Licensors shall deliver to Licensee the passwords that correspond to the Hewitt Domain Names (the "**Passwords**").

(b) During the Term, Licensee shall be entitled, from time to time, to use the Passwords to amend and modify records and other information relating to the Hewitt Domain Names, including DNS records, social media postings, and other electronic records in order to, among other things, direct or redirect electronic communications to, or disseminate electronic communications from, systems used by or for the benefit of Licensee, provided that Licensee shall be permitted to exercise its rights in this Section 2.3(b) only in furtherance of the Purpose. Licensee shall be entitled to change any Passwords in furtherance of the Purpose, including for security reasons, provided that it delivers advance written notice to Licensors of the Passwords to be changed and that it delivers to Licensors written notice of the then new Passwords. At the expiry of the Term, Licensee shall not be permitted to carry out any of the activities contemplated in Section 2.3(b).

(c) During the Term, Licensors shall not make any changes to the domain name services relating to the Hewitt Domain Names without Licensee's prior written consent, and Licensors shall not otherwise interfere with or impede Licensee's use of the Hewitt Domain Names provided that such use is permitted by the provisions of this Agreement.

(d) Licensee shall indemnify and hold harmless Licensors from and against all Losses suffered or incurred by Licensors as a result of (i) the use of the Licensed IP by Licensee or the exercise of its rights in Section 2.3(b) in violation of the terms and conditions set forth hereunder, or (ii) a claim by a third party against Licensors resulting from the use by Licensee of the Licensed IP hereunder or the exercise by Licensee of its rights in Section 2.3(b), except where such claim arises as a result of (x) an act, omission or circumstances existing prior to the date hereof, (y) the negligence, fraud or wilful misconduct of any Licensor or (z) a breach of this Agreement by any Licensor.

(e) From and after the Time of Closing, the Excluded Employees will have no further access to the IT network and systems used in the Purchased Business. **[Licensors and Licensee to discuss after the date of the Purchase Agreement and before the Time of Closing an**

appropriate rerouting system for emails sent to the Excluded Employees from and after the Time of Closing, such system to take into account privacy and confidentiality concerns as well as the needs of the Purchased Business.]

ARTICLE 3
COVENANT

3.1 Termination of Use

(a) Licensee hereby acknowledges and agrees that it shall take commercially reasonable efforts to complete promptly the transition of the Purchased Business and cease to use the Licensed IP as promptly as possible.

(b) Upon the termination of use of the Licensed IP by Licensee as required hereunder, Licensee shall send a written notice to Licensors confirming Licensee's termination of use of the Licensed IP.

ARTICLE 4
MISCELLANEOUS

4.1 Notices

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by fax or e-mail or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(i) if to any Licensor:

c/o ■

■
■
■

Attention: ■
Fax No.: ■
E-mail: ■

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

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

Attention: Karl Tabbakh
Fax No.: 514.875.6246
E-mail: ktabbakh@mccarthy.ca

(ii) if to Licensee:

Toromont Industries Ltd.
3131 Hwy. 7 West
Concord, ON L4K 5E1

Attention: Paul R. Jewer, Executive VP and CFO
Fax No.: 416.667.5555
E-mail: pjewer@toromont.com

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

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Attention: Cameron M. Rusaw
Fax No.: 416.863.0871
E-mail: crusaw@dwpv.com

(b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day or if delivery or transmission is made on a business day after 5:00 p.m. at the place of receipt, then on the next following business day) or, if mailed, on the third business day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

(c) Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this Section 4.1.

(d) In this Section 4.1, "business day" means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario or Québec, on which commercial banks in Toronto, Ontario and Montréal, Québec are open for business.

4.2 Amendments and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on either Party unless Consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

4.3 Successors and Assigns

This Agreement shall enure to the benefit of and shall be binding on and enforceable by and against the parties and, where the context so permits, their respective successors and assigns.

4.4 Expenses

Except as otherwise expressly set out in this Agreement, each party shall pay for its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the transactions contemplated herein.

4.5 Further Assurances

Each of the parties shall, at all times during the Term and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered, at the expense of the requesting party, all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement. Any action taken by any Licensor to protect the validity and the enforceability of the Licensed IP as a result of a breach of Licensee's obligations under this Agreement shall be at the expense of Licensee.

4.6 Counterparts

This Agreement may be executed and delivered, including by e-mail or similar means of recorded electronic communication, in any number of counterparts, with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

IN WITNESS WHEREOF this Agreement has been executed by the parties on the date first above written.

LICENSORS:

HEWCLAN HOLDINGS LIMITED

**HEWITT EQUIPMENT LIMITED/
HEWITT ÉQUIPEMENT LIMITÉE**

by _____
Name:
Title:

by _____
Name:
Title:

Name:
Title:

Name:
Title:

**HEWITT RENTALS INC./
LOCATION HEWITT INC.**

**HEWITT MATERIAL HANDLING
INC.**

by _____
Name:
Title:

by _____
Name:
Title:

Name:
Title:

Name:
Title:

LICENSEE:

TOROMONT INDUSTRIES LTD.

by _____

Name:

Title:

Name:

Title:

SCHEDULE A

LICENSORS

**HEWITT EQUIPMENT LIMITED/
HEWITT ÉQUIPEMENT LIMITÉE,**
a corporation existing under the laws of
Canada



**HEWITT RENTALS INC./
LOCATION HEWITT INC.,**
a corporation existing under the laws of
Canada

**HEWITT MATERIAL HANDLING
INC.,**
a corporation existing under the laws of
Canada

SCHEDULE B

TRADEMARKS AND DOMAIN NAMES

Trademarks

Trademark	Application/Registration no. and date	Current owner
HEWITT EXPRESS	App 1785918 App 07-JUN-2016 Advertised (Pending)	Hewitt Equipment Limited 5001 Trans-Canada Highway Pointe-Claire QUEBEC H9R 1B8
HEWITT & DESIGN 	App 1273583 App 27-SEP-2005 Reg 13-JUL-2007 Reg TMA692039 Registered	Hewitt Equipment Limited 5001 Trans-Canada Highway Pointe-Claire QUEBEC H9R 1B8
HEWITT & DESIGN 	App 635009 App 22-JUN-1989 Reg 14-SEP-1990 Reg TMA373436 Registered	Hewitt Equipment Limited P.O. Box 1200, Pointe-Claire, QUEBEC H9R 4R6

Domain Names

- hewittrentals.ca
- hewittcat.com
- hewitt-cat.com
- hewittcat.ca
- hewitt-cat.ca
- locationhewitt.ca
- hewittexpress.ca
- hewittexpress.com

- locationhewittrentals.ca
- hewittag.ca
- hewittusage.ca
- hewittused.ca
- hewittenergie.ca
- hewitt.ca
- hewitt-jungheinrich.ca
- hewittmh.ca
- hewittmaterialhandling.ca
- hewittcatlift.ca
- hewittcatlift.com
- formationhewitt.ca
- traininghewitt.ca
- LinkedIn Pages:
 - Hewitt Equipment Ltd / Hewitt Équipement Ltée
 - Location Hewitt Inc.
- Facebook Pages:
 - Hewitt Caterpillar
 - Concessionnaire Caterpillar – Hewitt Equipment Ltd.
 - Hewitt (Cat)
 - Hewitt Equipement Ltee

SCHEDULE C

PURPOSE

The following matters shall be deemed to be part of the Purpose during the Term:

- transitioning customers and suppliers from Licensors' systems to Licensee's systems;
- ensuring that email correspondence targeted to Transferred Employees on or after the date hereof is delivered to such Transferred Employees as employees of Licensee;
- ensuring that website content at the Hewitt Domain Names is updated from time to time to reflect the transactions contemplated by the Purchased Business;
- redirecting users websites at the Hewitt Domain Names to a Toromont website; and
- all other matters directly related to or directly in furtherance of the foregoing.

NON-COMPETITION AGREEMENT

[Redacted; Commercially sensitive information]

SCHEDULE A
DISBURSEMENT OF ESCROWED FUNDS

1. Defined Terms

In this Schedule, the following terms shall have the respective meanings set out below:

"**Claim Notice**" has the meaning set out in Section 3(a);

"**Escrow Balance**" means either of the Indemnity Escrow Balance or the Working Capital Escrow Balance, or both, as the context requires;

"**Indemnity Escrow Balance**" means, at any time, the Indemnity Escrow Deposit, as reduced by any disbursement made by Escrow Agent pursuant to Section 3 and as increased by any interest earned thereon during the term of this Agreement;

"**Indemnity Escrow Releasable Balance**" means, at any time on or after the Release Date, the amount, if any, by which the Indemnity Escrow Balance exceeds the sum of face amounts specified in all Claim Notices in respect and to the extent of Pending Claims;

"**Indemnity Escrow Deposit**" means an amount equal to \$50,000,000;

"**Joint Instruction**" means, in respect of an Escrow Balance, a written instruction signed by Sellers and Purchaser directing Escrow Agent to release from escrow and disburse all, a portion of, or none of, such Escrow Balance;

"**Pending Claim**" means any Claim or part of a Claim for which a Claim Notice has been delivered by Purchaser to Escrow Agent and Sellers in accordance with the Agreement other than a Claim or part of a Claim (i) that has been settled by Purchaser and Sellers to be evidenced by a Joint Instruction delivered to Escrow Agent or (ii) in respect of which a decision of a court of competent jurisdiction has been issued and is not appealable or in respect of which the time periods during which any appeal of such decision may be brought have expired;

"**Release Date**" means ■; [Note: Date to be 18 months after Closing Date.]

"**Working Capital Escrow Balance**" means, at any time, the Working Capital Escrow Deposit, as reduced by any disbursement made by Escrow Agent pursuant to Section 2 and as increased by any interest earned thereon during the term of this Agreement; and

"**Working Capital Escrow Deposit**" means an amount equal to \$15,000,000.

In addition, each of the following terms shall have respective meaning set out in the Purchase Agreement: "**Adjustment Date**", "**Claim**", "**Notice of Claim**" and "**Working Capital Post-Closing Adjustment Amount**".

2. Disbursement of Working Capital Escrow Balance

On the Adjustment Date, Purchaser and Sellers shall promptly execute and deliver to Escrow Agent a Joint Instruction directing Escrow Agent as follows:

- (a) if section 3.8(b) of the Purchase Agreement applies, to disburse to Sellers the Working Capital Escrow Balance;
- (b) if section 3.8(c)(i) of the Purchase Agreement applies, (A) to disburse to Purchaser from the Working Capital Escrow Balance the Working Capital Post-Closing Adjustment Amount and (B) to disburse to Sellers the remainder, if any, of the Working Capital Escrow Balance; or
- (c) if section 3.8(c)(ii) of the Purchase Agreement applies, to disburse to Purchaser the Working Capital Escrow Balance.

3. Disbursement of Indemnity Escrow Balance

- (a) Contemporaneously with the delivery by Purchaser to Sellers of a Notice of Claim pursuant to the Purchase Agreement, Purchaser may deliver written notice thereof to Escrow Agent and Sellers (each, a "**Claim Notice**"). Each Claim Notice shall specify a face amount, being Purchaser's good faith estimate of the amount of the potential Losses indemnifiable by Sellers under the Purchase Agreement that Purchaser expects to suffer as a result of the Claim.
- (b) The Indemnity Escrow Balance shall be disbursed from time to time as follows:
 - (i) prior to the Release Date, if and to the extent any Claim or part of a Claim ceases to be a Pending Claim, and, as a result, an amount is payable by Sellers to Purchaser pursuant to the Purchase Agreement (the "**Claim Amount**"), Purchaser and Sellers shall promptly execute and deliver to Escrow Agent a Joint Instruction directing Escrow Agent to disburse to Purchaser the lesser of (A) the Claim Amount and (B) the Indemnity Escrow Balance;
 - (ii) on the Release Date, Purchaser and Sellers shall promptly execute and deliver to Escrow Agent a Joint Instruction directing Escrow Agent to disburse to Sellers an amount equal to the Indemnity Escrow Releasable Balance, if any;
 - (iii) on the Release Date (after giving effect to Section 3(b)(ii)) or after the Release Date from time to time, if and to the extent any Claim or part of a Claim ceases to be a Pending Claim, Purchaser and Sellers shall promptly execute and deliver to Escrow Agent a Joint Instruction directing Escrow Agent as follows:

- (A) to disburse to Purchaser the lesser of (A) the amount payable by Sellers to Purchaser pursuant to the resolution of such Claim or part of such Claim and (B) the Indemnity Escrow Balance; and
- (B) to disburse to Sellers, after giving effect to Section 3(b)(iii)(A), the Indemnity Escrow Releasable Balance, if any.
- (c) Escrow Agent shall disburse all or any portion of the Escrow Balance in accordance with Joint Instructions executed by Purchaser and Sellers and delivered to Escrow Agent. Escrow Agent shall not disburse or otherwise pay the Escrow Balance to Sellers or Purchaser except in accordance with the foregoing.

4. No Limitation

Nothing contained herein shall limit the liability of Sellers to pay any amount owed to Purchaser pursuant to article 9 of the Purchase Agreement in excess of any amount disbursed to Purchaser hereunder.

ALLOCATION OF PURCHASE PRICE

[Redacted; Commercially sensitive information]

WORKING CAPITAL PRINCIPLES

[Redacted; Commercially sensitive information]