

VIRTEK VISION INTERNATIONAL INC.

- and -

MITEK HOLDINGS, INC.

- and -

MITEK, INC.

ASSET PURCHASE AGREEMENT

DATED AUGUST 4, 2008

BLAKE, CASSELS & GRAYDON LLP

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ASSET PURCHASE AGREEMENT

This Agreement dated August 4, 2008 is made

B E T W E E N

Virtek Vision International Inc. (the “**Vendor**”)

- and -

MiTek Holdings, Inc. (the “**Purchaser**”)

- and -

MiTek, Inc. (“**Mitek US**”)

RECITALS

A. The board of directors of the Vendor has determined that it is in the best interests of the Vendor for the Vendor to sell the Purchased Assets to the Purchaser;

B. The Purchaser is willing to purchase the Purchased Assets and to assume the Assumed Liabilities on and subject to the terms and conditions contained in this Agreement;

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement:

“**Acquisition Agreement**” has the meaning set out in Section 7.2(5).

“**Additional Reimbursement**” has the meaning set out in Section 8.4.

“**Adverse Recommendation Change**” has the meaning set out in Section 7.2(5).

“**Adverse Recommendation Change Notice**” has the meaning set out in Section 7.2(5).

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to “**control**” another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term “**controlled**” shall have a similar meaning.

“Agreement” means this asset purchase agreement and all the Exhibits and the Schedules attached hereto.

“Annual Financial Statements” means the annual audited financial statements of the Vendor for the fiscal years ended on January 31, 2008, January 31, 2007 and January 31, 2006, true and complete copies of which are attached as Schedule 3.1(6).

“Applicable Benefits Laws” means all Applicable Laws relating to the Employee Plans.

“Applicable Law” means, with respect to any Person, property, transaction, event or other matter, (i) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (ii) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, the **“Law”**) relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of the Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

“Assumed Liabilities” means only the following Liabilities of the Vendor which are Related to the Business:

- (a) Liabilities under (i) the Contracts (other than Excluded Contracts); (ii) the Licences; (iii) the Environmental Permits; and (iv) the Intellectual Property, in each case in respect of the period commencing at the Closing Time and not related to any matter, circumstance or default existing at, prior to or as a consequence of Closing;
- (b) Liabilities on account of outstanding purchase commitments, accrued liabilities for goods or services received but not yet invoiced by the supplier and other trade accounts payable, deferred revenue incurred in the Ordinary Course of Business before the Closing Time and warranty obligations in respect of products manufactured or distributed prior to the Closing Date, but only to the extent that the amount of such Liabilities are included in the Closing Working Capital Amount and reflected in the Closing Date Statements;
- (c) Liabilities respecting Transferred Employees which are specifically assumed by the Purchaser pursuant to Article 9;
- (d) the Closing Date Liabilities; and
- (e) the Liabilities listed on Schedule 1.1(A).

“Base Working Capital Amount” means the Working Capital as set out in the Reference Balance Sheet, namely \$3,902,480.

“Benefits Transition Date” has the meaning set out in Section 9.3(2).

“Board” means the board of directors of the Vendor.

“Books and Records” means the Financial Records and all other books, records, files and papers Related to the Business (other than those relating to the Excluded Assets) including drawings, engineering information, manuals and data, sales and advertising materials, sales and purchase correspondence, trade association files, research and development records, lists of present and former customers and suppliers, personnel, employment and other records, and all records, data and information stored electronically, digitally or on computer-related media; provided that to the extent any of the Books and Records also relate to any of the other businesses of the Vendor, the Vendor shall be entitled to retain copies thereof.

“Business” means the business carried on by the Vendor through its Imaging & Templating division which involves the production of hardware and software for the inspection of two-dimensional components and the projection of customer specific files and images onto various work surfaces.

“Business Day” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Toronto, Ontario.

“Canadian Dollars” means the lawful currency of Canada.

“Circular” means the notice of meeting and management information circular of the Vendor to be prepared and sent to Shareholders in connection with the Meeting, including exhibits thereto.

“Clearance Certificate” has the meaning set out in Section 7.11.

“Claims” means any and all actions, causes of action, suits, proceedings, debts, guarantees, accounts, bonds, covenants, contracts, claims (including, without limitation, any claims for any damages, losses, costs, expenses of any kind whatsoever), liabilities, grievances, executions, judgements and demands of any kind whatsoever, both in law and in equity, whether implied or expressed.

“Closing” means the completion of the purchase and sale of the Purchased Assets and the assignment and assumption of the Assumed Liabilities in accordance with the provisions of this Agreement.

“Closing Date” means September 12, 2008 or such earlier or later date as may be agreed to in writing by the Parties.

“Closing Date Liabilities” means those Liabilities of the Vendor which are Related to the Business as shown on the Closing Date Statements.

“Closing Date Statements” means (i) the balance sheet of the Business as of 12:01 a.m. on the Closing Date prepared in accordance with Section 2.5(1), and (ii) a statement setting forth the Closing Working Capital Amount as finally determined pursuant to Section 2.5 or 2.6, as the case may be.

“Closing Receivables” has the meaning set out in Section 7.13.

“Closing Time” means the time of Closing on the Closing Date provided for in Section 4.1.

“Closing Working Capital Amount” means the amount of the Working Capital as shown on the Closing Date Statements.

“Computer Systems” means all computer and telephone hardware, peripheral equipment, software and firmware, processed data, technology infrastructure and other computer and telephone systems and services that are used by or accessible to the Vendor to operate the Business and to receive, store, process or transmit data Related to the Business.

“Confidential Information” means, in relation to a Party (the **“Discloser”**):

- (a) all information, in whatever form communicated or maintained, whether orally, in writing, electronically, in computer readable form or otherwise, that the Discloser discloses to, or that is gathered by inspection by a Party (the **“Recipient”**) or any of the Recipient’s Representatives in the course of the Recipient’s review of the transactions contemplated by this Agreement, whether provided before or after the date of this Agreement, including information that contains or otherwise reflects information concerning the Discloser or its businesses, affairs, financial condition, assets, liabilities, operations, prospects or activities, and specifically includes financial information, budgets, business plans, ways of doing business, business results, prospects, customer lists, forecasts, engineering reports, environmental reports, evaluations, legal opinions, names of venture partners and contractual parties, and any information provided to the Discloser by third parties under circumstances in which the Discloser has an obligation to protect the confidentiality of such information;
- (b) all plans, proposals, reports, analyses, notes, studies, forecasts, compilations or other information, in any form, that are based on, contain or reflect any Confidential Information regardless of the identity of the Person preparing the same (**“Notes”**);
- (c) the existence and terms of this Agreement;
- (d) the fact that information has been disclosed or made available to the Recipient or the Recipient’s Representatives; and

- (e) the fact that discussions or negotiations are or may be taking place with respect to a possible transaction, the proposed terms of any such transaction and the status of any discussions or negotiations under this Agreement;

but does not include any information that:

- (f) is at the time of disclosure to the Recipient or thereafter becomes generally available to the public, other than as a result of a disclosure by the Recipient or any of the Recipient's Representatives in breach of this Agreement;
- (g) is or was received by the Recipient on a non-confidential basis from a source other than the Discloser or its Representatives if such source is not known to the Recipient to be prohibited from disclosing the information to the Recipient by a confidentiality agreement with, or a contractual, fiduciary or other legal confidentiality obligation to, the Discloser; or
- (h) was known by the Recipient prior to disclosure in connection with the transactions contemplated by this Agreement and was not subject to any contractual, fiduciary or other legal confidentiality obligation on the part of the Recipient.

“Consent” means any consent, approval, permit, waiver, ruling, exemption or acknowledgement from any Person (other than the Vendor) which is provided for or required: (i) in respect of or pursuant to the terms of any Contract; or (ii) under any Applicable Law, in either case in connection with the sale of the Purchased Assets to the Purchaser on the terms contemplated in this Agreement, to permit the Purchaser to use the Purchased Assets to carry on the Business after Closing, or which is otherwise necessary to permit the Parties to perform their obligations under this Agreement, but does not include a Regulatory Approval.

“Contracts” means all pending and executory contracts, agreements, leases and arrangements (whether oral or written) Related to the Business to which the Vendor is a party or by which the Vendor or any of the Purchased Assets is bound or under which the Vendor has rights, including Premises Leases, Personal Property Leases and Permitted Liens.

“control” has the meaning set out in the definition of “Affiliate” unless the context of its use suggests otherwise.

“Damages” means any loss, cost, liability, claim, interest, fine, penalty, assessment, damages available at law or in equity, expense (including reasonable costs, fees and expenses of legal counsel on a full indemnity basis, without reduction for tariff rates or similar reductions and reasonable costs, fees and expenses of investigation) or diminution in value; provided that, in respect of a Third Party Claim, **“Damages”** may include incidental, consequential, special, aggravated, exemplary or punitive damages, if applicable.

“Delayed Transfer Assets” has the meaning given in Section 4.5.

“Direct Claim” has the meaning set out in Section 6.4.

“Discloser” has the meaning set out in the definition of Confidential Information.

“EBITDA” means the consolidated earnings from operations of the Vendor before interest, taxes, depreciation and amortization, adjusted for non recurring expenses, pre revenue costs and unearned revenue, calculated in accordance with GAAP consistently applied with those principles used in the preparation of the Financial Statements, determined without regard to extraordinary items of gain or loss as that term is defined under GAAP, and not including any gains, losses or profits realized from the sale of any assets other than in the Ordinary Course of Business.

“Employee” means an individual who is employed by the Vendor in the Business, whether on a full-time or part-time basis.

“Employee Non-Retirement Benefit Plans” means Employee Plans which are health, welfare and other similar plans.

“Employee Plans” has the meaning set out in Section 3.1(24)(a).

“Environmental Law” means Applicable Law in respect of the natural environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Hazardous Substances.

“Environmental Permit” means any Licence issued or required pursuant to any Environmental Law.

“Escrow Agent” means Equity Transfer and Trust Company.

“Escrow Agreement” has the meaning set out in Section 2.4(b).

“Escrow Amount” has the meaning set out in Section 2.4(b).

“Excluded Assets” means the following property and assets of the Vendor:

- (a) all undertaking, property and assets of the Vendor that is not Related to the Business;
- (b) the minute books and other corporate records of the Vendor, provided that the Purchaser shall be entitled to review such minute books and other corporate records of the Vendor and, if the Parties shall determine acting reasonably that any portion thereof shall relate to the Business but not form part of the Books and Records, then the Purchaser shall be provided with duplicate copies of the relevant portions thereof and included as part of the Purchased Assets;

- (c) all rights and interests in and to the Employee Plans listed on Schedule 3.1(24) and any related assets or insurance policies;
- (d) the rights of the Vendor under this Agreement or any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (e) all Excluded Contracts;
- (f) income tax refunds and other Tax refunds receivable by the Vendor and all Tax Returns pertaining to Taxes payable by the Vendor;
- (g) Books and Records that the Vendor is required by Applicable Law to retain in its possession; and
- (h) the property and assets of the Vendor listed as "Excluded Assets" in Schedule 3.1(8).

"Excluded Contracts" means (a) all pending and executory contracts, agreements, leases and arrangements (whether oral or written) to which the Vendor is a party or by which the Vendor or any of its property or assets is bound, or under which the Vendor has rights, in each case not Related to the Business; and (b) the contracts and agreements expressly listed or identified by type in Schedule 3.1(13) under the heading "Excluded Contracts", unless expressly made a part of the Assumed Liabilities by being listed on Schedule 1.1(A).

"Expense Reimbursement" has the meaning set out in Section 8.4.

"Filed Public Disclosure Documents" has the meaning set out in Section 3.1(31).

"Financial Records" means all of the books of account and other financial data and information Related to the Business or related to the Purchased Assets, and includes all records, data and information stored electronically, digitally or on computer-related media.

"Financial Statements" means the Annual Financial Statements and the Interim Financial Statements.

"General Conveyance and Assumption of Liabilities Agreement" means the general conveyance and assumption of liabilities agreement to be executed and delivered by the Parties at Closing, in form satisfactory to the Parties, acting reasonably.

"Governmental Authority" means:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);

- (b) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;
- (c) any court, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

“GST” means the goods and services tax imposed under Part IX of the *Excise Tax Act* (Canada).

“Hazardous Substance” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or plant or animal life or harm or impair the health of any individual and includes any contaminant, waste, substance or material defined by Environmental Law as hazardous, toxic or dangerous or any other substance or material prohibited, regulated or reportable pursuant to any Environmental Law.

“Improvements” means all buildings, fixtures, sidings, parking lots, roadways, structures, erections, fixed machinery, fixed equipment and appurtenances situate on, in, under, over or forming part of, any Real Property.

“Income Tax Act” means the *Income Tax Act*, R.S.C. 1985, 5th Supplement and the regulations thereunder.

“Indemnifiable Tax” has the meaning set out in Section 6.14.

“Indemnified Party” means a Person whom the Vendor or the Purchaser, as the case may be, is required to indemnify under Article 6.

“Indemnifying Party” means, in relation to an Indemnified Party, the Party to this Agreement that is required to indemnify such Indemnified Party under Article 6.

“Independent Accountant” has the meaning set out in Section 2.6.

“Intellectual Property” means all rights to and interests of the Vendor in:

- (a) all business names, trade names, corporate names, telephone numbers, domain names, domain name registrations, website names and worldwide web addresses and other communications addresses Related to the Business;

- (b) all inventions, patents, patent rights, patent applications (including all provisional applications, utility applications, reissues, divisions, continuations, continuations-in-part and extensions of any patent or patent application) Related to the Business;
- (c) all industrial designs and applications for and registration of industrial designs, design patents and industrial design registrations Related to the Business;
- (d) all trade-marks (whether used with wares or services and including the goodwill attaching to such trade-marks) and registrations and applications for registration of trade-marks and all trade dress, logos, slogans and brand names Related to the Business;
- (e) all copyright in all works (including software programs and databases) and database rights and registrations and applications for registrations of copyright Related to the Business;
- (f) all rights and interests in and to processes, lab journals, notebooks, data, trade secrets, designs, know-how, product formulae and information, manufacturing, engineering and other drawings and manuals, technology, blue prints, research and development reports, agency agreements, technical information, technical assistance, engineering data, design and engineering specifications, and similar materials recording or evidencing expertise or information Related to the Business;
- (g) all of the intellectual property affected by the registrations and applications for registration listed in Schedule 3.1(16) and the permissions and licences listed in Schedule 3.1(16);
- (h) all other intellectual property rights throughout the world used in carrying on, or arising from the operation of, the Business;
- (i) all licences granted by the Vendor of the intellectual property listed in items (a) to (h) above;
- (j) all future income and proceeds from any of the intellectual property listed in items (a) to (h) above and the licences listed in item (i) above; and
- (k) all rights to damages and profits by reason of the infringement of any of the intellectual property listed in items (a) to (h) above and the licences listed in item (i) above.

“Interim Financial Statements” means the unaudited financial statements of the Vendor for the three month period ended on April 30, 2008, as well as the Monthly Financial Statements, true and complete copies of which are attached as Schedule 3.1(6).

“Interest Rate” means, for any Interest Period, the rate for U.S. Dollar borrowings appearing on page LIBOR01 of the Reuters Service (or on any successor or substitute

page of such service, or any successor to or substitute for such Service providing rate quotations comparable to those currently provided on such page of such service, as determined by the Purchaser, from time to time, for purposes of providing quotations of interest rates applicable to U.S. Dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for U.S. Dollar deposits with a maturity comparable to such Interest Period, plus 100 basis points.

“Interest Period” means the period commencing on the date of a borrowing and ending on the numerically corresponding day in the calendar month that is 365 days thereafter; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the immediately succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period.

“Interim Period” means the period from the date of execution of this Agreement to the Closing Time.

“Inventories” means all inventories of stock-in-trade and merchandise including materials, supplies, work-in-progress, finished goods, tooling, service parts and purchased finished goods Related to the Business, including those in possession of suppliers, customers and other third parties.

“Key Employees” means those Employees who the Purchaser has identified to the Vendor as being key to the operation of the Business following Closing.

“Law” has the meaning set out in the definition of “Applicable Law”.

“Leased Premises” means the Real Property that is leased, subleased, licensed to or otherwise occupied by, the Vendor and which is Related to the Business, including all Improvements situate on, in, under, over or forming part of such Real Property.

“Leases” means Personal Property Leases and Premises Leases.

“Legal Proceeding” means any litigation, action, application, suit, investigation, hearing, claim, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review.

“Liability” means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent,

accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Licence” means any licence, permit, authorization, approval or other evidence of authority Related to the Business issued or granted to, conferred upon, or otherwise created for, the Vendor by any Governmental Authority.

“Lien” means any lien, mortgage, charge, hypothec, pledge, security interest, prior assignment, option, warrant, lease, sublease, right to possession, encumbrance, claim, right or restriction which affects, by way of a conflicting ownership interest or otherwise, the right, title or interest in or to any particular property.

“Material Adverse Change” means any event, change or effect that, when taken individually or together with all other events, changes and effects, is materially adverse to the Business or the Purchased Assets, taken as a whole, or to the operations, affairs or condition (financial or otherwise) of the Business or the Purchased Assets, taken as a whole, including any event, change or effect in respect of, in connection with or as a result of the amendment or revocation of any Licence; but excluding any event, change or effect: (v) generally in the industry in which the Business operates; (w) in respect of, in connection with or as a result of any change in Applicable Law; (x) arising as a result of any natural disaster, outbreak, escalation of hostilities, declared or undeclared acts or war, or terrorism; (y) resulting from the announcement of the execution of this Agreement or the transactions contemplated hereby; and (z) relating to the North American economy or securities markets in general; provided, however, that any event, change or effect referred to in any of clauses (v) through (z) above does not primarily relate only to, or have the effect of primarily relating to, or have a disproportionate effect on, the Vendor and its Subsidiaries, taken as a whole, compared to other companies of similar size in the industry in which the Business operates.

“Material Contract” means any Contract (including any amendment, supplement or restatement thereof) which: (a) involves or may reasonably be expected to involve the payment to or by the Vendor of more than \$10,000 over the term thereof; (b) relates to borrowed money; (c) has an unexpired term of more than one year; (d) contains a non-competition or non-solicitation covenant or other provision that restricts the Business in any way; (e) contains a guarantee of an obligation of a third party; or (f) is otherwise material to the Business.

“Matching Period” has the meaning set out in Section 7.2(5).

“Meeting” means the special meeting of the Shareholders (including any adjournments or postponements thereof) to be held to consider, among other things, the Shareholder Approval.

“Misrepresentation” has the meaning ascribed thereto in the Securities Act (Ontario), as now enacted or as the same may from time to time be amended, re-enacted or replaced.

“Monthly Financial Statements” means the Vendor’s monthly financial statements in respect of the Business for each completed month between April 30, 2008 and the date hereof.

“Non-Competition Agreement” has the meaning set out in Section 4.2(m).

“Notes” has the meaning set out in paragraph (b) of the definition of Confidential Information.

“Notice of Claim” has the meaning set out in Section 6.4.

“Offer Price” has the meaning set out in the definition of “StockerYale Takeover Bid”.

“Order” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“Ordinary Course of Business”, when used in relation to the taking of action by the Vendor in relation to the Business means that the action:

- (a) is consistent in nature, scope and magnitude with the past practices of the Vendor in relation to the Business and is taken in the ordinary course of the normal day-to-day operations of the Business; and
- (b) does not require authorization of the directors or shareholders of the Vendor or any other separate or special authorization of any nature.

“Party” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **“Parties”** means every Party.

“Pension Authority” means, with respect to each Pension Plan and any pension plans maintained or created by the Purchaser in which Transferred Employees will participate as contemplated in this Agreement, the Governmental Authority having regulatory jurisdiction with respect to that pension plan.

“Permitted Liens” means the Liens listed in Schedule 1.1(B).

“Person” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

“Personal Information” means information about an identifiable individual as defined in Privacy Law.

“Personal Property” means all machinery, equipment, furniture, motor vehicles and other chattels owned by the Vendor or which the Vendor is legally entitled to use in carrying on the Business, including those in possession of suppliers, customers and other third parties, including the Computer Systems.

“Personal Property Lease” means a chattel lease, equipment lease, conditional sales contract and other similar agreement used in carrying on the Business to which the Vendor is a party or under which it has rights to use Personal Property.

“Pre-Closing Period” has the meaning set out in Section 7.14.

“Premises Lease” means a lease, an agreement to lease, a sublease, a licence agreement and an occupancy or other agreement under which the Vendor has the right, or the Vendor has granted to another Person the right, to use or occupy any Leased Premises.

“Prepaid Amounts” means all prepayments, prepaid charges, deposits, sums and fees Related to the Business or held in respect of the Purchased Assets, other than those relating to any Excluded Assets or any Taxes which are personal to the Vendor.

“Privacy Law” means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Freedom of Information and Protection of Privacy Act* (Ontario) and any comparable Law of any other province or territory of Canada.

“Property Documents” means all documents in the possession or control of the Vendor relating to the Real Property, or any part thereof, including, the following:

- (a) the municipal address of each Real Property;
- (b) copies of all agreements with, and permits and licences from, Governmental Authorities or owners of adjoining lands relating to the Real Property;
- (c) copies of the Premises Leases;
- (d) a list of all major or extraordinary repairs made by the Vendor of which the Vendor is aware with respect to the Real Property;
- (e) copies of any Contracts relating to the Real Property;
- (f) all documents pertaining to the environmental status of the Real Property, including all permits, test reports or certificates of approval in respect of the storage or release of any Hazardous Substance on, above or below the surface of the Real Property;
- (g) copies of all warranties, guarantees or contractual obligations that entitle the Vendor to any rights against a contractor or supplier engaged in the construction or maintenance of the Real Property or any part of the Real Property; and

- (h) a list of the Personal Property, together with a list of any equipment used in connection with the Real Property that is the subject of a lease or subject to a conditional sale or other similar agreement.

“Public Disclosure Documents” has the meaning set out in Section 3.1(31).

“Purchase Price” has the meaning set out in Section 2.3.

“Purchased Assets” means all the properties, assets, interests and rights of the Vendor which are Related to the Business, other than the Excluded Assets, including the following:

- (a) \$500,000 in cash;
- (b) all rights and interests in and to the Leased Premises and under the Premises Leases, including prepaid rents, security deposits and options to renew or purchase, rights of first refusal under the Premises Leases and all leasehold improvements owned by the Vendor and forming part of such Leased Premises;
- (c) the Personal Property;
- (d) the Inventories;
- (e) the Receivables;
- (f) all rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or the Assumed Liabilities or otherwise arising from the operation of the Business;
- (g) the Intellectual Property;
- (h) the Contracts;
- (i) the Licences;
- (j) the Books and Records;
- (k) the Prepaid Amounts;
- (l) all goodwill Related to the Business;
- (m) the Shared Assets; and
- (n) all proceeds of any or all of the foregoing received or receivable after the Closing Time.

“Purchaser” means MiTek Holdings, Inc., a corporation governed by the laws of Delaware.

“Purchaser’s Counsel” means Blake, Cassels & Graydon LLP.

“Purchaser’s Group RRSP” has the meaning set out in Section 9.3.

“Purchaser’s Indemnified Parties” means the Purchaser and the Purchaser’s Affiliates and their respective directors, officers, employees and agents.

“Real Property” means: (a) the Leased Premises; and (b) any ownership interest in any lands (together with all easements, rights-of-way and interests appurtenant to them) and the Improvements thereon.

“Receivables” means all accounts receivable, bills receivable, trade accounts, book debts and insurance claims Related to the Business, together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits.

“Recipient” has the meaning set out in the definition of “Confidential Information”.

“Reference Balance Sheet” means (i) the balance sheet of the Business as at April 30, 2008, prepared on a consistent basis and applying the same accounting principles, policies and practices as were used in preparing the Financial Statements (other than the Monthly Financial Statements), and (ii) a statement setting forth the Base Working Capital Amount, a true and complete copy of which is attached as Schedule 1.1(D).

“Regulatory Approval” means any approval, consent, ruling, authorization, notice, permit or acknowledgement that may be required from any Person pursuant to Applicable Law or under the terms of any Licence or the conditions of any Order in connection with the sale of the Purchased Assets to the Purchaser on the terms contemplated by this Agreement, or to permit the Purchaser to use the Purchased Assets to carry on the Business after Closing or which is otherwise necessary to permit the Parties to perform their obligations under this Agreement.

“Related Person” means, with respect to any Person, an Affiliate of such Person and any other Person with whom such Person does not deal at arms-length within the meaning of the Income Tax Act.

“Related to the Business” means used in, arising from or otherwise related to the Business.

“Release” includes an actual or potential discharge, deposit, spill, leak, pumping, pouring, emission, emptying, injection, escape, leaching, seepage or disposal of a Hazardous Substance which is or may be in breach of any Environmental Law.

“Representative” when used with respect to a Party means each director, officer, employee, agent, consultant, adviser and other representative of that Party who is involved in the transactions contemplated by this Agreement.

“Retained Liabilities” means all Liabilities of the Vendor other than the Assumed Liabilities, including:

- (a) any Liability arising out of or related to services provided prior to the Closing Date;
- (b) any Liability under any Contract arising after the Closing Date that arises out of or relates to a breach of, or default under, that Contract prior to the Closing Date;
- (c) any Liability for Taxes;
- (d) any Liability under any Excluded Contract;
- (e) any Liability under any Employee Plan except to the extent specifically assumed pursuant to Article 9;
- (f) any Liability to any Employee who is not a Transferred Employee;
- (g) any Liability to any Transferred Employee arising out of any employee grievance based upon facts or circumstances arising prior to the Closing Date;
- (h) any Liability to a Related Person of the Vendor;
- (i) any Liability to indemnify, reimburse or advance any amounts to any Employee or to any officer, director, or agent of the Vendor or an Affiliate thereof;
- (j) any Liability to distribute to any of the shareholders of the Vendor or otherwise apply all or any part of the consideration received by the Vendor under this Agreement;
- (k) any Liability in respect of, in connection with or relating to any debt owing by the Vendor to any Affiliate thereof;
- (l) any long-term debt (or current portion of long-term debt) of the Vendor;
- (m) any Liability arising out of or resulting from compliance or non-compliance with any Applicable Law; and
- (n) any Liability under this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement.

“Securities Laws” means (i) the *Securities Act* (Ontario) and all other applicable Canadian provincial securities laws, rules and regulations thereunder; and (ii) the regulations promulgated by the Toronto Stock Exchange.

“Shared Assets” means such portion of the Purchased Assets listed in Schedule 1.1(C).

“Shares” means the common shares in the capital of the Vendor.

“Shareholders” means the registered holders of all of the issued and outstanding Shares.

“Shareholder Approval” means approval of the Shareholder Resolution by not less than two-thirds of the votes cast by the Shareholders who are represented at the Meeting, in accordance with Applicable Laws.

“Shareholder Resolution” means the special resolution of the Shareholders approving the transactions contemplated by this Agreement and any amendments or variations thereto made in accordance with this Agreement and Applicable Laws.

“StockerYale Takeover Bid” means the offer by StockerYale, Inc., through its wholly-owned Subsidiary StockerYale Waterloo Acquisition Inc., to purchase all of the Shares and all rights exercisable or convertible into Shares for \$0.80 per Share (consisting of \$0.70 per Share in cash on closing of the StockerYale Takeover Bid plus a cash distribution of \$0.10 per Share within 60 days of it obtaining 100% of the Shares) (the **“Offer Price”**) which is open for acceptance until 11:59pm Toronto time on August 14, 2008, unless extended or withdrawn, without amendment to increase the Offer Price by way of cash or securities.

“Subsidiary”, a Person shall be deemed to be a Subsidiary of another Person if: (a) it is controlled by, (i) that other, or (ii) that other and one or more Persons each of which is controlled by that other, or (iii) two or more Persons each of which is controlled by that other; or (b) it is a subsidiary of a Person that is that other’s subsidiary.

“Superior Proposal” has the meaning set out in Section 7.2(4).

“Takeover Proposal” has the meaning set out in Section 7.2(3).

“Taxes” means all taxes including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, levies, imposts and other assessments or similar charges in the nature of a tax including Canada Pension Plan and provincial pension plan contributions, employment insurance and unemployment insurance payments and workers’ compensation premiums, together with any instalments with respect thereto, and any interest, fines and penalties, in all cases imposed by any Governmental Authority in respect thereof and whether disputed or not.

“Tax Returns” means all returns, information returns, reports, elections, agreements, declarations or other documents of any nature or kind required to be filed with any applicable Governmental Authority in respect of Taxes.

“Termination Fee” has the meaning set out in Section 8.3.

“Third Party Claim” has the meaning set out in Section 6.4.

“Threatened”, when used in relation to a Legal Proceeding or other matter, means that (a) a demand or statement (oral or written) has been made or a notice (oral or written) has been given that a Legal Proceeding or other matter is to be asserted, commenced, taken or otherwise pursued in the future; or (b) to the knowledge of the Vendor or the Purchaser, as the case may be, an event has occurred or circumstances exist that would lead a reasonable Person to conclude that a Legal Proceeding or other matter is likely to be asserted, commenced, taken or otherwise pursued in the future.

“Trademark Licensing Agreement” has the meaning set out in Section 4.2(p).

“Transaction Personal Information” means any Personal Information in respect of the Transferred Employees in the possession, custody or control of the Vendor at the Closing Time that is:

- (a) disclosed to the Purchaser or any Representative of the Purchaser prior to the Closing Time by the Vendor or its Representatives or otherwise; or
- (b) collected by the Purchaser or any Representative of the Purchaser prior to the Closing Time from the Vendor or its Representatives or otherwise,

in either case in connection with the transactions contemplated by the Agreement.

“Transferred Employee” means an Employee who, as of the Closing, has accepted the offer of employment from the Purchaser pursuant to Section 9.1(1).

“Transition Services Agreement” has the meaning set out in Section 4.2(o).

“Vendor” means Virtek Vision International Inc., a corporation governed by the laws of the Province of Ontario.

“Vendor’s Counsel” means McCarter Grespan Beynon Weir LLP.

“Vendor’s Group RRSP” means the Group Registered Retirement Savings Plan for the Employees of Virtek Vision International Inc.

“Vendor’s Indemnified Parties” means the Vendor and the Vendor’s Affiliates and their respective directors, officers, employees and agents.

“Working Capital” means, at any date, the amount calculated by subtracting the current liabilities of the Business included in the Assumed Liabilities as of that date from the current assets of the Business included in the Purchased Assets as of that date excluding cash.

1.2 Accounting Principles. Whenever in this Agreement reference is made to generally accepted accounting principles, or to GAAP, such reference shall be deemed to be to the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor entity thereto, applicable as at the date on which such principles are to be applied or on which any calculation or determination is required to be made in accordance with generally accepted accounting principles.

1.3 Actions on Non-Business Days. If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.4 Currency and Payment Obligations. Except as otherwise expressly provided in this Agreement:

- (a) all dollar amounts referred to in this Agreement are stated in Canadian Dollars;
- (b) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account specified by the payee, by cash, by certified cheque or by any other method that provides immediately available funds; and
- (c) except in the case of any payment due on the Closing Date, any payment due on a particular day must be received by and be available to the payee not later than 2:00 p.m. on the due date at the payee's address for notice under Section 10.3 or such other place as the payee may have specified in writing to the payor in respect of a particular payment and any payment made after that time shall be deemed to have been made and received on the next Business Day.

1.5 Calculation of Interest. In calculating interest payable under this Agreement for any period of time, the first day of such period shall be included and the last day of such period shall be excluded.

1.6 Calculation of Time. In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. Toronto, Ontario time on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. Toronto, Ontario time on the next succeeding Business Day.

1.7 Tender. Except as otherwise provided in Section 2.4(a), any tender of documents or money hereunder may be made upon the Parties or their respective counsel and money shall be tendered by official bank draft drawn upon a Canadian chartered bank or by negotiable cheque payable in Canadian funds and certified by a Canadian bank listed in Schedule 1 to the *Bank Act* (Canada).

1.8 Additional Rules of Interpretation.

(1) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.

(2) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(3) *Section References.* Unless the context requires otherwise, references in this Agreement to Sections, Schedules or Exhibits are to Sections, Schedules or Exhibits of this Agreement.

(4) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

(5) *References to this Agreement.* The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(6) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(7) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules and exhibits attached thereto.

1.9 Knowledge. Where any representation, warranty or other statement in this Agreement is expressed to be made to the knowledge of the Vendor, it shall mean such knowledge as is actually known to, or which would have or should have come to the attention of, the officers or

employees of the Vendor who have overall responsibility for, or knowledge of, the matters relevant to such statement.

1.10 Schedules and Exhibits. The following are the Schedules and Exhibits attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

EXHIBITS

<u>A</u>	Allocation of Purchase Price
<u>SCHEDULES</u>	
1.1(A)	Assumed Liabilities
1.1(B)	Permitted Liens
1.1(C)	Shared Assets
1.1(D)	Reference Balance Sheet
3.1(6)	Financial Statements
3.1(8)	Purchased Assets, Jurisdictions of Location and Excluded Assets
3.1 (9)	Real Property
3.1 (10)	Privacy Laws
3.1 (11)	Personal Property
3.1 (12)	Personal Property Leases
3.1 (13)	Contracts and Excluded Contracts
3.1 (14)	Receivables
3.1 (16)	Intellectual Property
3.1 (18)	Licences
3.1 (23)	Employees
3.1 (24)	Employee Plans
3.1 (25)	Customers and Suppliers
3.1 (27)	Insurance Policies
3.1 (31)	Securities Laws
3.1 (33)	Absence of Certain Changes or Events

ARTICLE 2
PURCHASE OF ASSETS

2.1 Purchase and Sale of Purchased Assets. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Vendor shall sell to the Purchaser (and/or its designated Affiliate), and the Purchaser (and/or its designated Affiliate) shall purchase from the Vendor, the Purchased Assets (other than the portion of the Purchased Assets used to pay the amount referred to in Section 2.10). For greater clarity, the Parties acknowledge and agree that the Purchased Assets shall include, in respect of each of the Transferred Employees, the assets currently used by each such Transferred Employee in carrying out his or her employment responsibilities and that, with respect to any assets of the Vendor which are commonly used by the Business and the other businesses of the Vendor (other than the Shared Assets), the Parties shall determine, acting reasonably, which of such assets shall form part of the Purchased Assets and which of such assets shall form part of the Excluded Assets.

2.2 Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser (and/or its designated Affiliate) shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not be liable for any Liability of the Vendor other than the Assumed Liabilities. Without limitation of the preceding sentence, the Retained Liabilities shall remain the sole responsibility of, and shall be retained, paid and performed solely by, the Vendor.

2.3 Purchase Price. The consideration payable by the Purchaser to the Vendor for the Purchased Assets (other than the portion of the Purchased Assets used to pay the amount referred to in Section 2.10) (the “**Purchase Price**”) shall be the aggregate of:

- (a) \$26,500,000, subject to the adjustment contemplated under Section 2.7; and
- (b) the amount of the Closing Date Liabilities.

2.4 Payment of Purchase Price. The Purchase Price shall be paid and satisfied as follows:

- (a) an amount equal to \$25,175,000 shall be paid by the Purchaser to the Vendor at Closing;
- (b) an amount equal to \$1,325,000 (the “**Escrow Amount**”) shall be deposited by the Purchaser with the Escrow Agent as security for the Vendor’s indemnification obligations hereunder, to be held and distributed in accordance with the provisions of an escrow agreement to be entered into among the Purchaser, the Vendor and the Escrow Agent at the Closing Time, in a form satisfactory to the parties thereto, acting reasonably, which escrow agreement shall provide that, among other things, (i) the Escrow Amount, less any portion thereof which has been released by the Escrow Agent to the Purchaser for Claims payable or which is subject to any pending Claims made by the Purchaser, in each case pursuant to Section 6.2, shall be released on the first calendar year anniversary of the Closing Date, (ii) the fees of the Escrow Agent shall be paid by the Vendor, and (iii) the Purchaser shall have no liability thereunder (the “**Escrow Agreement**”); and
- (c) an amount equal to the amount of the Closing Date Liabilities shall be paid and satisfied by the assumption by the Purchaser of the Closing Date Liabilities at Closing by the execution and delivery of the General Conveyance and Assumption of Liabilities Agreement.

2.5 Preparation of Closing Date Statements.

(1) *Draft Closing Date Statements.* Promptly after the Closing Time, the Purchaser shall prepare a draft of the Closing Date Statements which shall be delivered to the Vendor no later than the 60th day following the Closing Date. The Closing Date Statements shall be prepared on a consistent basis and applying the same accounting principles, policies and practices as were used in preparing the Financial Statements (other than the Monthly Financial

Statements) and shall take into account the types of assets and liabilities which were taken into account in preparing the Reference Balance Sheet and shall also take into account any change of control payments or other extraordinary liabilities of the Vendor in respect of the Business resulting from the transactions contemplated hereunder.

(2) *Access to Records, etc.* During the period from the date of delivery of the draft Closing Date Statements until the date no later than 30 days after delivery of the draft Closing Date Statements, the Purchaser shall give the Vendor and its Representatives such assistance and access to the Books and Records as the Vendor and its Representatives may reasonably request in order to enable them to reasonably assess the draft Closing Date Statements. The Vendor's Representatives shall be entitled to be present at inventory counts and other procedures used in the preparation of the draft Closing Date Statements (whether such counts are taken before or after Closing) and shall be provided promptly with copies of all working papers created by the Purchaser and its Representatives in connection with such preparation.

(3) *Deemed Acceptance.* If the Vendor does not give a notice of objection in accordance with Section 2.6, the Vendor shall be deemed to have accepted the draft Closing Date Statements prepared by the Purchaser which shall be final and binding on the Parties and such draft Closing Date Statements shall constitute the Closing Date Statements for purposes of this Agreement immediately following the expiry date for the giving of such notice of objection.

2.6 Dispute Settlement. If the Vendor objects to any matter in the draft Closing Statement prepared pursuant to Section 2.5, then the Vendor shall give notice to the Purchaser no later than 10 days after delivery of the draft Closing Date Statements. Any notice given by the Vendor shall set forth in detail the particulars of such objection. The Parties shall then use reasonable efforts to resolve such objection for a period of 30 days following the giving of such notice. If the matter is not resolved by the end of such 30 day period, then the dispute with respect to such objection shall be submitted by the Parties to a chartered accountant associated with an accounting firm of recognized national standing in Canada, which is independent of the Parties (the "**Independent Accountant**"). If the Parties are unable to agree on the Independent Accountant within a further 10 day period, either Party may apply under the *Arbitration Act, 1991* (Ontario) to have a court appoint the Independent Accountant. The Independent Accountant shall, as promptly as practicable (but in any event, within 45 days following its appointment), make a determination of the Closing Date Statements, based solely on written submissions of the Parties given by them to the Independent Accountant. The submissions of each Party shall be disclosed to the other Party and each other Party shall be afforded a reasonable opportunity to respond thereto. The Closing Date Statements as determined by the Independent Accountant shall be final and binding upon the Parties and shall constitute the Closing Date Statements for purposes of this Agreement. The Purchaser and the Vendor shall each pay one-half of the fees and expenses of the Independent Accountant.

2.7 Working Capital Adjustment. If the Closing Working Capital Amount exceeds the Base Working Capital Amount, then the Purchaser shall pay to the Vendor the amount of such excess within five (5) days following the finalization of the Closing Date Statement in accordance with Section 2.5 or 2.6, as the case may be. If the Base Working Capital Amount exceeds the Closing Working Capital Amount, then the amount of such deficiency shall be

distributed to the Purchaser out of the Escrow Amount within five (5) days following the finalization of the Closing Date Statement in accordance with Section 2.5 or 2.6, as the case may be.

2.8 Allocation of Purchase Price. The Purchase Price shall be allocated among the Purchased Assets (other than the portion of the Purchased Assets used to pay the amount referred to in Section 2.10) in the manner set forth in Exhibit A. The Parties agree and acknowledge that any adjustment to the Purchase Price under Section 2.7 shall require an amendment to the allocation set out in Exhibit A on the same basis as that which gave rise to said adjustment. The Purchaser and the Vendor shall report an allocation of the Purchase Price among the Purchased Assets in a manner entirely consistent with Exhibit A and shall not take any position inconsistent therewith in the preparation of financial statements, the filing of any Tax Returns or in the course of any audit by any Governmental Authority, Tax review or Tax proceeding relating to any Tax Returns.

2.9 GST Election. Upon the Purchaser (and/or its designated Affiliate) providing the Vendor with evidence that it is registered under Part IX of the *Excise Tax Act* (Canada), at the Closing, the Vendor and the Purchaser (and/or its designated Affiliate) shall execute jointly an election under section 167 of the *Excise Tax Act* (Canada) to have the sale of the Purchased Assets take place on a GST-free basis under Part IX of the *Excise Tax Act* (Canada) and the Purchaser (and/or its designated Affiliate) shall file such election with its GST return for the reporting period in which the sale of the Purchased Assets takes place.

2.10 Subsection 20(24) Tax Elections. The Purchaser (and/or its designated Affiliate) and the Vendor shall jointly execute and file an election under subsection 20(24) of the Income Tax Act in the manner required by subsection 20(25) of the Income Tax Act and under the equivalent or corresponding provisions of any other applicable provincial or territorial statute, in the prescribed forms and within the time period permitted under the Income Tax Act and under any other applicable provincial or territorial statute, as to such amount paid by the Vendor to the Purchaser for assuming future obligations, which amount shall be determined by the Vendor and the Purchaser acting reasonably in an amount approximating deferred revenue on the Closing Date within 30 days of Closing; the Vendor shall prepare and file such elections. In this regard, the Purchaser and the Vendor acknowledge that a portion of the Purchased Assets transferred by the Vendor pursuant to this Agreement and having a value equal to the amount elected under subsection 20(24) of the Income Tax Act and the equivalent provisions of any applicable provincial or territorial statute, is being transferred by the Vendor as a payment for the assumption of such future obligations by the Purchaser.

2.11 Restrictive Covenant Tax Election. If requested by the Vendor, the Purchaser (and/or its designated Affiliate) will make a joint election with the Vendor in prescribed form under proposed subsection 56.4(7) of the Income Tax Act to have the provisions of proposed subsection 56.4(5) of the Income Tax Act apply in respect of the non-competition covenant provided by the Vendor in the Non-Competition Agreement. If such prescribed form is not available prior to the time at which such form is required to be filed, the election shall be made in such manner as is acceptable to the Canada Revenue Agency. If any provincial taxing authority proposes a similar provision, then the parties shall make a corresponding provincial election.

2.12 Other Tax Elections. The Purchaser and the Vendor shall also execute and deliver such other Tax elections and forms as they may mutually agree upon.

2.13 Real Property and Other Adjustments. In calculating the Closing Working Capital Amount, the following shall apply:

(1) *General.* Adjustments shall be made as of the Closing Date for prepaid rents (and interest accrued on them, if any), security deposits (and interest accrued on them, if any), realty taxes, local improvement rates and charges, water and assessment rates, utilities, fuel, licenses necessary for the operation of the Real Property and all other items normally adjusted between a vendor and purchaser in respect of the sale of property similar to the Real Property.

(2) *Closing Date.* The Purchaser shall receive all income and pay all expenses in respect of the Purchased Assets for the Closing Date and the period thereafter.

(3) *Insurance.* Insurance premiums shall not be adjusted as of the Closing Date, but insurance shall remain the responsibility of the Vendor until the Closing Date, and thereafter the Purchaser shall be responsible for placing its own insurance.

2.14 GST, Retail Sales Tax and Other Taxes. The Purchaser shall be solely responsible for paying any GST, retail sales taxes and other similar sales taxes in respect of the purchase of the Purchased Assets and any Taxes in respect of the Business from and after the Closing.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Vendor. As a material inducement to the Purchaser's entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties set out in this Section 3.1, the Vendor represents and warrants to the Purchaser as follows:

(1) *Incorporation and Corporate Power.* The Vendor is a corporation incorporated, organized and subsisting under the laws of the Province of Ontario. The Vendor has sent to the appropriate Person all annual returns and financial statements required to be sent under the laws of the Province of Ontario. The Vendor has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its other obligations hereunder and under all such other agreements and instruments. The Vendor has the corporate power, authority and capacity to own and dispose of the Purchased Assets to the Purchaser. No act or proceeding has been taken or authorized by or against the Vendor by any other Person in connection with the dissolution, liquidation, winding up, bankruptcy or insolvency of the Vendor or with respect to any amalgamation, merger, consolidation, arrangement or reorganization of, or relating to, the Vendor and no such proceedings have been Threatened by any other Person.

(2) *Authorization by Vendor.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by the Vendor as contemplated herein and the completion of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Vendor.

(3) *Enforceability of Vendor's Obligations.* This Agreement constitutes the valid and binding obligation of the Vendor enforceable against the Vendor in accordance with its terms. The Vendor is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and will not become an insolvent person as a result of the Closing. There is no Legal Proceeding in progress or Threatened against or affecting the Vendor or affecting the title of the Vendor to any of the Purchased Assets at law or in equity, nor are there, to the knowledge of the Vendor, any grounds on which any such Legal Proceeding might be commenced. There is no Order outstanding against or affecting the Vendor which, in any such case, affects adversely or might affect adversely the ability of the Vendor to enter into this Agreement or to perform its obligations hereunder.

(4) *Residence of Vendor.* The Vendor is not a non-resident of Canada for purposes of section 116 of the Income Tax Act.

(5) *Qualification to do Business.* The Vendor is registered, licensed or otherwise qualified to do business under the laws of the jurisdictions specified in Schedule 3.1(8) and neither the character nor the location of the Purchased Assets nor the nature of the Business requires registration, licensing or other qualification under the laws of any other jurisdiction. The Vendor has all necessary corporate power, authority, and capacity to carry on the Business and to own or lease and operate the Purchased Assets as now carried on and owned or leased and operated.

(6) *Financial Statements.* The Financial Statements have been prepared in accordance with GAAP (except for the Monthly Financial Statements, the reconciliations to GAAP for which are described in Schedule 3.1(6)) consistently applied throughout the periods to which they relate. The balance sheets contained in the Financial Statements fairly present the financial position of the Vendor as of their respective dates and the statements of earnings and retained earnings contained in the Financial Statements fairly present the revenues, earnings and results of operations for the periods indicated. The Financial Statements are accurate and complete in all material respects and are based upon and are consistent with the Books and Records. The Financial Statements disclose all the Liabilities of the Business as of their respective dates or for the periods indicated, as applicable. The Business maintains a system of internal accounting controls which provides reasonable assurance that transactions are executed in accordance with management's authorizations and facilitates the preparation of the Financial Statements. Neither the value of the Purchased Assets nor the annual gross revenue from sales in or from Canada generated by the Business is greater than \$50 million. All of the Vendor's inter-company allocations are properly and accurately reflected in the Financial Statements, as of their respective dates or for the periods indicated, as applicable.

(7) *Books and Records.* The Vendor has made available to the Purchaser all Books and Records subject to Applicable Law. All material financial transactions of the Business have

been accurately recorded in the Financial Records in accordance with sound business and financial practice and the Financial Records accurately reflect the basis for the financial condition and the revenues, expenses and results of operations of the Business as of and to the date hereof. All Books and Records are in the full possession and exclusive control of, and are owned exclusively by, the Vendor and are not dependent upon any computerized or other system, program or device that is not exclusively owned and controlled by the Vendor.

(8) *Title to and Sufficiency of Purchased Assets.* The Vendor has good and marketable legal and beneficial title to all of the Purchased Assets, free and clear of any and all Liens, except for Permitted Liens. Except as disclosed on Schedule 3.1(8), the Purchased Assets constitute all of the property and assets Related to the Business and are sufficient to permit the continued operation of the Business after Closing in substantially the same manner as currently being conducted by the Vendor. Schedule 3.1(8) sets out a complete and accurate list of all locations where the Purchased Assets are situated, including a brief description of the Purchased Assets situated at each location. There is no agreement, option or other right or privilege outstanding in favour of any Person for the purchase from the Vendor of the Business or of any of the Purchased Assets other than the purchase of Inventories in the Ordinary Course of Business. None of the Vendor's Affiliates and Subsidiaries is involved in or has any legal or beneficial ownership interest in any assets or properties which are Related to the Business.

(9) *Real Property.* The Vendor has no interest in any Real Property that is Related to the Business other than the Leased Premises. Schedule 3.1(9) lists all of the Premises Leases and sets out, in respect of each Premises Lease: the municipal address and applicable unit or premises leased; the date of the Premises Lease and any amendments to it; the parties to the Premises Lease; the area of the space subject to each Premises Lease; the remaining term and any unexpired options to extend or renew; the current basic rent; the current percentage rent; and the amount of any prepaid rent, deposit and identification of any guarantee or indemnity or security given in respect of the Premises Lease; any current or future rent-free or reduced rent occupancy. The information set out in Schedule 3.1(9) is true and complete. Each Premises Lease is valid and subsisting, in full force and effect, unamended by oral or written agreement, and the Vendor is entitled to the full benefit and advantage of each Premises Lease in accordance with its terms. Each Premises Lease is in good standing and there has not been any default under any Premises Lease by the Vendor or, to the knowledge of the Vendor, any other party thereto, nor is there any dispute between the Vendor and any landlord or tenant under any Premises Lease. A full copy of each Premises Lease has been made available to the Purchaser. There are no arrears of rent or other defaults under any Premises Lease. None of the Premises Leases has been assigned by the Vendor in favour of any Person. The current uses of each property subject to a Premises Lease comply with Applicable Law.

(10) *Privacy Laws.* Except as set out in Schedule 3.1(10), the Vendor has complied at all times with all Privacy Laws in connection with the Vendor's collection, use and disclosure of Personal Information by the Vendor in conducting the Business; and all Personal Information has been collected, used and disclosed with the consent of each individual to whom such Personal Information relates and has been used only for the purposes for which it was initially collected. All consents required to be obtained in connection with the provision by the Vendor to the

Purchaser of Transaction Personal Information in connection with the Purchaser evaluating or proceeding with the transactions contemplated by this Agreement have been obtained or will be obtained at or prior to Closing. The Vendor has advised the Purchaser of all of the purposes for which Transaction Personal Information was initially collected and, where any such Transaction Personal Information has been used for additional purposes of such additional purposes. Each individual to whom such Transaction Personal Information relates has been notified of, and their consent obtained for, its use for such additional purposes.

(11) *Personal Property.* Schedule 3.1(11) lists each item of Personal Property which had a book value in the Financial Records, at the date of the most recent Annual Financial Statements, of more than \$10,000 or is otherwise material to the Business. Each item of Personal Property is in good operating condition and repair, ordinary wear and tear excepted, and is suitable and adequate for the purpose for which it is being used.

(12) *Personal Property Leases.* Schedule 3.1(12) lists all the Personal Property Leases and identifies those which cannot be terminated by the Vendor without liability at any time upon less than 30 days' notice or which involve payment by the Vendor in the future of more than \$10,000 in one or more payments. Each Personal Property Lease is in full force and effect and has not been amended, and the Vendor is entitled to the full benefit and advantage of each Personal Property Lease in accordance with its terms. Each Personal Property Lease is in good standing and there has not been any default under any Personal Property Lease by the Vendor or, to the knowledge of the Vendor, any other party thereto, nor any dispute between the Vendor and any other party under any Personal Property Lease.

(13) *Contracts.* Schedule 3.1(13) lists or identifies all Contracts. The Vendor is not a party to any Contract with any current or former director, officer or employee of the Vendor or with any Affiliate of the Vendor or other Related Person of the Vendor. The Vendor nor, to the knowledge of the Vendor, any other party thereto is in default under any Contract and there has not occurred any event which, with the lapse of time or giving of notice or both, would constitute a default under any Contract by the Vendor or, to the knowledge of the Vendor, any other party to any Contract. Each Contract is in full force and effect, unamended by written or oral agreement, and the Vendor is entitled to the full benefit and advantage of each Contract in accordance with its terms. The Vendor has not received any notice of a default by the Vendor under any Contract or of a dispute between the Vendor and any other Person in respect of any Contract. Except as disclosed in Schedule 3.1(13), no Consent is required nor is any notice required to be given under any Material Contract to any party thereto or any other Person in connection with the completion of the transactions contemplated by this Agreement in order to allow the Purchaser to acquire all rights of the Vendor under such Contract. The completion of the transactions contemplated by this Agreement will not afford any party to any of the Leases or other Contracts or any other Person the right to terminate any Lease or other Contract nor will the completion of such transactions result in any additional or more onerous obligation on the Purchaser under any Lease or other Contract.

(14) *Receivables.* Except as disclosed on Schedule 3.1(14), all Receivables are recorded in the Financial Records, are valid obligations which arose in the Ordinary Course of Business, will be collected in the Ordinary Course of Business (in the aggregate) at their full face

value, and are not subject to any set-off or counterclaim (except for the reserves set out in the Financial Records). None of the Receivables is due from an Affiliate or other Related Person of the Vendor.

(15) *Inventories.* The Inventories consist of items that are current and of good and merchantable quality and not subject to any write-down or write-off (except as set out in the Financial Records). The portion of the Inventories consisting of finished products is saleable in the Ordinary Course of Business at normal prices. The portion of the Inventories consisting of raw materials and work-in-progress is of a quality useable in the production of finished products. Current Inventory levels are consistent with the level of Inventories that has been maintained in the operation of the Business prior to the date hereof in accordance with the operation of the Business in the Ordinary Course of Business.

(16) *Intellectual Property.* Schedule 3.1(16) lists all of the registrations and applications for registration of the Intellectual Property and all common law trade-marks included in the Intellectual Property. All of the registrations and applications for registration of the Intellectual Property are valid and subsisting, in good standing and are recorded in the name of the Vendor. Except as disclosed on Schedule 3.1(16), no application for registration of any Intellectual Property has been rejected, withdrawn or opposed. Except as disclosed on Schedule 3.1(16), the Vendor is the first and only owner of the Intellectual Property and is entitled to the exclusive and uninterrupted use of the Intellectual Property without payment of any royalty or other fees. No Person other than the Vendor (in particular, but not by way of limitation, no Governmental Authority or educational institution) has any right, title or interest in or license under any of the Intellectual Property and all individual Persons have waived their moral rights in any copyright works within the Intellectual Property. The Vendor has diligently protected its legal rights to the exclusive use of the Intellectual Property. The Vendor has maintained all registrations necessary or desirable to protect its rights in the Intellectual Property. Schedule 3.1(16) lists all Legal Proceedings relating to the Intellectual Property which are currently outstanding or Threatened. The Employees and all consultants and independent contractors retained by the Vendor have agreed to maintain the confidentiality of confidential Intellectual Property and have provided waivers of all moral rights in copyright works included in the Intellectual Property. All of the Vendor's permissions and licences to use the Intellectual Property of other Persons (including software and computer programs) are disclosed in Schedule 3.1(16). The Vendor has not permitted or licensed any Person to use any of the Intellectual Property except as disclosed in Schedule 3.1(16). Each licence referred to in Schedule 3.1(16) is in full force and effect and neither the Vendor nor, to the knowledge of the Vendor, any licensor or licensee is in default of its obligations thereunder. No Person has challenged the validity of any of the registrations or applications for registration of the Intellectual Property or the Vendor's rights to any of the Intellectual Property. To the knowledge of the Vendor, neither the use of the Intellectual Property nor the conduct of the Business has infringed or currently infringes upon the intellectual property rights of any other Person. The Vendor has not received any notice of infringement and the Vendor has no knowledge of any facts that could reasonably be expected to form the basis of Legal Proceedings which could constitute a *bona fide* claim for infringement as such. Except as set out in Schedule 3.1(16), to the knowledge of the Vendor, no other Person has infringed the Vendor's rights to the

Intellectual Property, nor does the Vendor have knowledge of any facts that could form the basis for a claim of infringement. No licensee of any Intellectual Property has called on the Vendor to take proceedings for infringement pursuant to section 50 of the *Trade-marks Act* (Canada), nor does the Vendor have knowledge of any facts that could form the basis for a licensee to make such a call. The Vendor has not received any notice or communication from any Governmental Authority or any other Person as to any prohibition or restriction on the use of the Intellectual Property. No fee in respect of any Canadian patent has been paid on the basis that the applicant or patentee qualified as a small entity under the Patent Act (Canada) unless: (i) the applicant or patentee did so qualify on the date each application, or application resulting in a patent, comprised within the Canadian patent was filed on such basis; or (ii) the difference between any fees paid on the basis of small entity status and the full fees payable have been timely paid pursuant to the provisions of Section 78.6 of the *Patent Act*.

(17) *Computer Systems.* The Computer Systems adequately meet the data processing and other computing needs of the Business as presently conducted. The Computer Systems function, operate, process and compute in accordance with all Applicable Laws, industry standards and trade practices. The Vendor has measures in place, consistent with current industry standards and practices, to ensure that the Computer Systems contain appropriate virus protection and security measures to safeguard against the unauthorized use, copying, disclosure, modification, theft or destruction of and access to, system programs and data files comprised by the Computer Systems. The Vendor has and maintains an accurate and confidential listing of all applicable accounts, passwords, encryption algorithms and programs or other access keys required to ensure secure and proper access by the Vendor and its Employees to the system programs and data files comprised by the Computer Systems. The data processing and data storage facilities used by the Vendor in connection with the operation of the Business are adequately and properly protected consistent with current industry standards and practices. The Vendor has and maintains back-up systems and disaster recovery and business continuity plans, consistent with current industry standards, to adequately and properly ensure the continuing availability of the functionality provided by the Computer Systems in the event of any malfunction of, or other form of disaster affecting, the Computer Systems. The Vendor is, or at the Closing Time will be, in possession of the object code and user manuals for all application software which is used in the Business, unless otherwise available on the internet. The Vendor is not a party to any source code escrow agreements in respect of the Business.

(18) *Licences and Compliance with Applicable Law.* Schedule 3.1(18) lists all the Licences and identifies those that by their terms are not transferable. The Licences are the only licences, permits, approvals or evidences of authority of any Governmental Authority required for the operation of the Business and are held by the Vendor free and clear of any and all Liens. The Vendor is conducting the Business in accordance with all terms and conditions of the Licences and in compliance with Applicable Law. All the Licences are valid and are in full force and effect, the Vendor is not in violation of any term or provision or requirement of any Licence, and no Person has Threatened to revoke, amend or impose any condition in respect of, or commenced proceedings to revoke, amend or impose conditions in respect of, any Licence.

(19) *Regulatory Approvals.* No Regulatory Approval or filing with, notice to, or waiver from any Governmental Authority is required to be obtained or made by the Vendor: (a) in connection with the execution and delivery of, and performance by the Vendor of its obligations under, this Agreement or the consummation of the transactions contemplated hereby; (b) to transfer any Licence and all rights and benefits thereunder to the Purchaser; or (c) to permit the Purchaser to carry on the Business after the Closing as the Business is currently carried on by the Vendor.

(20) *Absence of Conflicting Agreements.* The execution, delivery and performance of this Agreement by the Vendor and the completion (with any required Consents and the giving of any required notices) of the transactions contemplated by this Agreement do not and will not result in or constitute any of the following: (a) a default, breach or violation or an event that, with notice or lapse of time or both, would be a default, breach or violation of any of the terms, conditions or provisions of the articles or by-laws of the Vendor or of any Contract or Licence; (b) an event which, pursuant to the terms of any Contract or Licence, would cause any right or interest of the Vendor to come to an end or be amended in any way that is detrimental to the Business or entitle any other Person to terminate or amend any such right or interest or relieve any other Person of its obligations thereunder; (c) the creation or imposition of any Lien on any of the Purchased Assets; or (d) the violation of any Applicable Law.

(21) *Legal Proceedings.* There is no Legal Proceeding in progress or Threatened against or affecting the Vendor, the Business or any of the Purchased Assets or title thereto, nor is there any factual or legal basis on which any such Legal Proceeding might be commenced. There is no Order outstanding against or affecting the Vendor, the Business or any of the Purchased Assets. Without limiting the generality of the foregoing, there is no Legal Proceeding involving any product liability Claim in progress or Threatened against or affecting the Business or the Purchased Assets alleging any defect in, or failure to warn concerning any risks or damages inherent in, the design or manufacture of or the materials used in any of the products manufactured or distributed by or for the Vendor.

(22) *Environmental Matters.* The Business and the Purchased Assets as carried on or used by the Vendor (including the condition of the Leased Premises and the waters on or under the Leased Premises) have been carried on and used and are currently carried on and used in compliance with all Environmental Laws. The Vendor has not used any of the Purchased Assets, or permitted them to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substance except in compliance with all Environmental Laws. To the knowledge of the Vendor, no part of the Real Property or other Purchased Assets contains a Hazardous Substance which exceeds an applicable soil, groundwater or other environmental, health or safety criterion or standard published or enacted by a Governmental Authority having jurisdiction over the Real Property or other Purchased Assets. The Vendor is not, and has not been, subject to any Legal Proceedings (i) investigating or alleging the violation or possible violation of any Environmental Law in connection with the Business or the Purchased Assets or (ii) to determine whether any study or remedial action is required to respond to a Release or the presence of a Hazardous Substance on the Real Property or other Purchased Assets. There are no Legal Proceedings in progress or Threatened in which it

is alleged that the Vendor or any Employee or any director or officer or former Employee or former director or officer of the Vendor or agent or any other Person is liable for a domestic or foreign federal, provincial, state, municipal or local clean-up or remediation of any Real Property contaminated with Hazardous Substances or for any other remedial or corrective action under an Environmental Law nor is there any factual or legal basis on which any such Legal Proceedings might be commenced.

(23) *Employment Matters.*

- (a) Schedule 3.1(23) lists all the Employees and the Persons who are receiving remuneration for work or services provided to the Vendor who are not Employees as of the date of this Agreement and the name, age, position, status, length of service, location of employment, compensation and benefits of each Employee and the terms on which each other Person who is providing work or services to the Vendor is engaged. No employee of the Business is an employee of any Person other than the Vendor. Except as set out in Schedule 3.1(23), no Employee is on long-term disability leave, extended absence or receiving benefits pursuant to the *Workplace Safety and Insurance Act, 1997* (Ontario). Except as set out in Schedule 3.1(23), the Vendor is not a party to or bound by any Contract or requirements of Applicable Law in respect of any Employee or former Employee, including any Contract for the employment or statutorily required re-employment of any Employee and termination or severance agreements with Employees.
- (b) The Vendor is not a party to or bound by, either directly or by operation of Applicable Law, any collective bargaining agreement, labour contract, letter of understanding, letter of intent, voluntary recognition agreement or legally binding commitment or written communication to any labour union, trade union or employee organization or group which may qualify as a trade union in respect of or affecting Employees or independent contractors nor is the Vendor subject to any union organization effort and the Vendor is not currently engaged in any labour negotiation.
- (c) The Vendor is not a party to any application, complaint or other Legal Proceeding under any Applicable Law relating to Employees or former Employees nor is the Vendor aware of, nor is there, any factual or legal basis on which any such Legal Proceeding might be commenced. The Vendor has not engaged in any unfair labour practice nor is the Vendor aware of any Threatened complaint regarding any alleged unfair labour practice or other Legal Proceeding relating to Employees or former Employees.
- (d) Except as set out in Schedule 3.1(23), the Vendor has not paid nor will it be required to pay any bonus, fee, distribution, remuneration or other compensation to any Person (other than salaries, wages or bonuses paid or payable to Employees in the Ordinary Course of Business in accordance with current compensation levels and practices as set out in Schedule 3.1(23)) as a result of the transactions contemplated by this Agreement or otherwise.

- (e) Except as disclosed in writing to the Purchaser prior to the date hereof, none of the Employees or independent contractors engaged by the Vendor in the year immediately prior to the date hereof has indicated to the Chief Executive Officer or the Chief Financial Officer of the Vendor (or a senior officer of the Vendor who directly reports to the Chief Executive Officer or the Chief Financial Officer) that he, she or it intends to resign, retire or terminate his, her or its engagement with the Vendor as a result of the transactions contemplated by this Agreement or otherwise.
- (f) The Vendor is in compliance with all Applicable Laws respecting employment, employment practices and standards, terms and conditions of employment, wages and hours, occupational health and safety, human rights, labour relations, pay equity and workers' compensation in respect of the Employees. All current assessments under the *Workplace Safety and Insurance Act, 1997* (Ontario) that relate to the Business have been paid or accrued, and the Vendor has not been subject to any special or penalty assessment with respect to the Business under such legislation which has not been paid. There are no outstanding inspection orders made under the *Occupational Health and Safety Act* (Ontario) relating to the Business. The Vendor is operating in compliance with all occupational health and safety laws, including the Workplace Hazardous Materials Information System (WHMIS), in connection with the Business. There are no Threatened charges against the Vendor under occupational health and safety laws relating to the Business. There have been no fatal or critical accidents which have occurred in the course of the operation of the Business which might lead to charges under the *Occupational Health and Safety Act* (Ontario). There are no materials present in the Business, exposure to which may result in an occupational disease as defined in the *Workplace Safety and Insurance Act, 1997* (Ontario). The Vendor has complied in all respects with any Orders issued under occupational health and safety laws relating to the Business.
- (g) To the knowledge of the Vendor, none of the Employees is in violation of any non-competition, non-solicitation, non-disclosure or any similar agreement with any third party.
- (h) The services of no Person other than the Employees are required in order to operate the Business as conducted on the Closing Date.
- (24) *Employee Plans.*
 - (a) Schedule 3.1(24) sets forth a true, complete, up-to-date and accurate list of all written or oral employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive compensation, stock compensation, stock purchase, stock option, stock appreciation, phantom stock option, savings, severance or termination pay, retirement, supplementary retirement, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other

insurance (whether insured or self-insured) plan, program, agreement or arrangement, and every other written or oral benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by the Vendor or any Affiliate of the Vendor for the benefit of the Employees and their dependants or beneficiaries or with respect to which the Vendor participates or has any actual or potential liability or obligations, other than plans established pursuant to statute (collectively the **"Employee Plans"**).

- (b) The Vendor has furnished to the Purchaser true, correct, up-to-date and complete copies of all the Employee Plans (or, where oral, written summaries of the material terms thereof) as amended as of the date hereof together with all related documentation including current and past documents and all amendments thereto, including annuity contracts, funding agreements, funding and financial information returns and statements, and plan summaries, employee booklets and personnel manuals. The booklets, brochures, summaries, descriptions and manuals prepared for, and circulated to, the Employees and their beneficiaries concerning each Employee Plan, together with all written communications of a general nature provided to such Employees and their beneficiaries, accurately describe the benefits provided under each such Employee Plan referred to therein.
- (c) All of the Employee Plans have been established, registered, qualified, funded, invested and administered in accordance with, and are in good standing under, all Applicable Benefits Laws, the terms of such Employee Plans and in accordance with all understandings, written or oral, between the Vendor and the Employees.
- (d) No Employee Plan is a "registered pension plan" as that term is defined in subsection 248(1) of the Income Tax Act, no Employee has at any time now or in the past participated in a "registered pension plan" maintained or contributed to by the Vendor and the Vendor has no liability in respect of a "registered pension plan".
- (e) No amendments have been made to any Employee Plan and no improvements to any Employee Plan have been promised and no amendments or improvements to any Employee Plan will be made or promised by the Vendor prior to Closing.
- (f) None of the Employee Plans provides post-retirement benefits to or in respect of the Employees or any former Employees or to or in respect of the beneficiaries of such Employees and former Employees.
- (g) All obligations regarding the Employee Plans have been satisfied and there are no outstanding defaults or violations by the Vendor or, to the knowledge of the Vendor, any other party thereto, and no taxes, penalties or fees are owing or exigible under any of the Employee Plans. All contributions or premiums required to be made by the Vendor under the terms of each Employee Plan or by Applicable Benefits Laws have been made in a timely fashion in accordance with Applicable Benefits Laws and the terms of the Employee Plans, and the Vendor

does not have, and as of the Closing Date will not have, any actual or potential unfunded liabilities (other than liabilities accruing after the Closing Date) with respect to any of the Employee Plans. All liabilities of the Vendor (whether accrued, absolute, contingent or otherwise) related to all Employee Plans have been fully and accurately disclosed in accordance with GAAP in the Financial Statements and will be fully and accurately disclosed in the Closing Date Statements.

- (h) No Employee Plan is subject to any current or Threatened investigation, examination or other Legal Proceeding, initiated by any Governmental Authority or by any other Person (other than routine Claims for benefits), and there exists no state of facts which after notice or lapse of time or both could reasonably be expected to give rise to any such investigation, examination or other Legal Proceeding or to affect the registration of any Employee Plan required to be registered.
- (i) The execution of this Agreement and the completion of the transactions contemplated hereby will not (either alone or in conjunction with any additional or subsequent events) constitute an event under any Employee Plan that will or may result in any payment (whether of severance pay or otherwise), acceleration of payment or vesting of benefits, forgiveness of indebtedness, distribution, restriction on funds, increase in benefits or obligation to fund benefits with respect to any Employee.

(25) *Customers and Suppliers.* Schedule 3.1(25) lists the 10 largest customers and the 10 largest suppliers of the Business for each of the last three successive 12-month periods ending immediately before the date of this Agreement, and the aggregate amount which each customer was invoiced and each supplier was paid during such period. The Vendor is not aware of, nor has the Vendor received notice of, any intention on the part of any such customer or supplier to cease doing business with the Vendor or to modify or change in any material manner any existing arrangement with the Vendor for the purchase or supply of any products or services to the Business. The relationships of the Vendor with each of its principal suppliers, shippers and customers are satisfactory, and there are no material unresolved disputes with any such supplier, shipper or customer.

(26) *Products and Services.* The products produced by the Business have been manufactured in accordance with, and meet all requirements of, Applicable Law and meet the specifications in all Contracts with customers of the Business relating to the sale of such products. There are no Claims against the Vendor greater than \$10,000 individually or \$75,000 in the aggregate pursuant to any product warranty or with respect to the production, distribution or sale of defective or inferior products or with respect to any warnings or instructions concerning such products. All services provided by the Vendor to the customers of the Business have been provided, in all material respects, in accordance with Applicable Law and the terms of all Contracts relating thereto. The Vendor is not in breach of any material term of any Contract relating to the supply of products or services or any instrument ancillary thereto.

(27) *Insurance.* Schedule 3.1(27) sets forth and describes all insurance policies currently maintained by the Vendor in respect of the Business or the Purchased Assets, including a brief description of the type of insurance, the name of the insurer, coverage limits, amount of deductible, expiration date and annual premiums. Each of such insurance policies is valid and subsisting and in good standing, there is no default thereunder and the Vendor is entitled to all rights and benefits thereunder. There are no pending Claims under any of such insurance policies. The Vendor has not failed to give any notice or present any Claim under any of such insurance policies in due and timely fashion. To the knowledge of the Vendor, there are no circumstances which might entitle the Vendor to make a Claim under any of such insurance policies or which might be required under any of such insurance policies to be notified to the insurers. No Claim under any of such insurance policies has been made by the Vendor.

(28) *Withholdings and Remittances.* The Vendor has withheld from each payment made to any of its present or former Employees all amounts required by Applicable Law to be withheld, and has remitted such withheld amounts within the prescribed periods to the appropriate Governmental Authority. The Vendor has remitted all Canada Pension Plan contributions, provincial pension plan contributions, employment insurance premiums, employer health taxes and other Taxes payable by it in respect of the Employees to the proper Governmental Authority within the time required under Applicable Law.

(29) *Tax Returns.* The Vendor has filed all Tax Returns required to be filed by it so as to prevent any valid Lien (other than a Permitted Lien) of any nature on the Purchased Assets and has paid on a timely basis all Taxes relating to the Business which have been due with respect to the periods covered by such Tax Returns, or pursuant to any assessment received in connection therewith.

(30) *GST.* The Vendor is registered for GST under Part IX of the *Excise Tax Act* (Canada) and the Vendor's GST registration number is 138976881 RT 0005.

(31) *Securities Laws.* The Vendor is a "reporting issuer" under Securities Laws and is not in default of any material requirements under Securities Laws. No delisting, suspension of trading or cease trading order with respect to the Shares exists or is Threatened. Except as disclosed on Schedule 3.1(31), no inquiry, review or investigation (formal or informal) of any securities regulatory authority under Securities Laws is in effect or ongoing or expected to be implemented or undertaken. The Vendor has made available to the Purchaser, or the System for Electronic Data, Analysis and Retrieval (SEDAR) database of the Canadian Securities Administrators contain in a publicly available format, complete and correct copies of all reports, schedules, forms, statements and other documents filed with or furnished to the Canadian Securities Administrators by the Vendor since July 31, 2006 (together with all exhibits and schedules thereto and documents and other information incorporated therein by reference, the "**Public Disclosure Documents**"). The Vendor has filed with or furnished to the Canadian Securities Administrators each report, schedule, form, statement or other document or filing required by Law to be filed or furnished since July 31, 2006. As of their respective dates, each of the Public Disclosure Documents complied as to form in all material respects with the requirements of Securities Laws applicable to such Public Disclosure Document, and none of the Public Disclosure Documents at the time it was filed or furnished contained any

Misrepresentation. Except to the extent that information contained in any Public Disclosure Document filed or furnished and publicly available prior to the date of this Agreement (a “**Filed Public Disclosure Document**”) has been revised or superseded by a later filed or furnished Filed Public Disclosure Document, none of the Public Disclosure Documents contains any Misrepresentation.

(32) *No Material Adverse Change.* Since the date of the most recent Annual Financial Statements, there has been no Material Adverse Change and, to the knowledge of the Vendor, no event has occurred nor do any circumstances exist which could result in a Material Adverse Change.

(33) *Absence of Certain Changes or Events.* Except as disclosed on Schedule 3.1(33), since the date of the most recent Annual Financial Statements, the Vendor has carried on the Business in the Ordinary Course of Business and, in particular, but without limitation, has not:

- (a) mortgaged, pledged, granted a security interest in or otherwise created a Lien on any of the Purchased Assets, except in the Ordinary Course of Business and in amounts which, individually and in the aggregate are not material to the financial condition or operation of the Business;
- (b) entered into any contract or any other transaction in respect of the Business that was not in the Ordinary Course of Business;
- (c) revalued or disposed of any of the Purchased Assets except for sales of Inventory in the Ordinary Course of Business;
- (d) terminated, cancelled, modified or amended in any material respect or received notice or a request for termination, cancellation, modification or amendment of any Contract or taken or failed to take any action that would entitle any party to a Contract to terminate, modify, cancel or amend any Contract;
- (e) in respect of the Business, made any capital expenditure or authorized any capital expenditure or made any commitment for the purchase, construction or improvement of any capital assets except in the Ordinary Course of Business;
- (f) made any change in its accounting principles, policies, practices or methods;
- (g) entered into any Contract or commitment to hire, or terminated the services of, any officer or senior management employee with responsibilities for matters Related to the Business; or
- (h) agreed, committed or entered into any understanding to take any actions enumerated in paragraphs (a) to (g) of this Section 3.1(33).

(34) *Full Disclosure.* None of the foregoing representations and warranties and no document furnished by the Vendor or, to the knowledge of the Vendor, on behalf of the Vendor, to the Purchaser in connection with the negotiation of the transactions contemplated by this

Agreement (at the time such document was provided) contains any untrue statement of a material fact or omits to state any material fact necessary to make any such statement or representation not misleading to a prospective purchaser of the Business and the Purchased Assets seeking full information as to the Business and all of the Purchased Assets. There are no facts not disclosed in this Agreement which, if learned by the Purchaser, might reasonably be expected to materially diminish the Purchaser's evaluation of the value of the Purchased Assets or the Business or of the profitability of the Business or which, if learned by the Purchaser, might reasonably be expected to deter the Purchaser from completing the transactions contemplated by this Agreement on the terms of this Agreement. The Purchaser hereby acknowledges and agrees that disclosure made for any purpose in this Agreement or any Schedule hereto shall be deemed to be disclosure made for all other purposes in this Agreement and all Schedules hereto.

3.2 Representations and Warranties of the Purchaser. The Purchaser represents and warrants to the Vendor as follows:

(1) *Incorporation and Corporate Power.* The Purchaser is a corporation incorporated, organized and subsisting under the laws of the State of Delaware. The Purchaser has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Purchaser.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

(3) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress or Threatened against or affecting the Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchaser which, in any such case, affects adversely or might affect adversely the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder.

(4) *Regulatory Approvals.* No Regulatory Approval or filing with, notice to, or waiver from any Governmental Authority is required to be obtained or made by the Purchaser in connection with the execution and delivery of, and performance by the Purchaser of its obligations under, this Agreement or the consummation of the transactions contemplated hereby.

(5) *Absence of Conflicting Agreements.* The execution, delivery and performance of this Agreement by the Purchaser and the completion (with any required Consents and the giving of any required notices) of the transactions contemplated by this Agreement do not and will not result in or constitute any of the following: (a) a default, breach or violation or an event that, with notice or lapse of time or both, would be a default, breach or violation of any of the terms, conditions or provisions of the articles or by-laws of the Purchaser or of any contract to which

the Purchaser is a party or any licence issued to the Purchaser; or (b) the violation of any Applicable Law.

(6) *Legal Proceedings.* There is no Legal Proceeding in progress or Threatened against or affecting the Purchaser which would (a) prevent the Purchaser from paying the Purchase Price to the Vendor; (b) enjoin, restrict or prohibit the transfer of all or any of the Purchased Assets as provided for by this Agreement; or (c) prevent the Purchaser from fulfilling any of its obligations set out in this Agreement or arising from this Agreement, nor is there any factual or legal basis on which any such Legal Proceeding might be commenced.

(7) *Excise Tax Act.* The Purchaser is or will be at the Closing registered under Part IX of the *Excise Tax Act* (Canada).

3.3 Commissions. Each Party represents and warrants to the other Party that such other Party will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, that Party.

3.4 No Waiver. No investigations, inspections, surveys or tests made by or on behalf of a Party at any time shall affect, mitigate, waive, diminish the scope of or otherwise affect any representation or warranty made by the other Party in or pursuant to this Agreement.

ARTICLE 4 CLOSING ARRANGEMENTS

4.1 Closing. The Closing shall take place at 10am on the Closing Date at the offices of the Purchaser's Counsel in Toronto, Ontario, or at such other time on the Closing Date or such other place as may be agreed orally or in writing by the Vendor and the Purchaser.

4.2 Vendor's Closing Deliveries. At the Closing, the Vendor shall deliver or cause to be delivered to the Purchaser the following documents:

- (a) the General Conveyance and Assumption of Liabilities Agreement duly executed by the Vendor, together with such other deeds of conveyance, bills of sale, assurances, transfers, assignments, consents, and such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement;
- (b) all keys, entry devices and passcodes with respect to the Purchased Assets including combinations to any locks or vaults;
- (c) original copies of the Leases and other Contracts and all files and correspondence relating to them;

- (d) a bring-down certificate of the President or other senior officer of the Vendor dated as of the Closing Date in form satisfactory to the Purchaser, acting reasonably;
- (e) a certificate of the Secretary or other officer of the Vendor as to (i) the articles and by-laws of the Vendor, (ii) the incumbency of the Vendor, and (iii) the authorizing resolution of the Vendor dated as of the Closing Date in form satisfactory to the Purchaser, acting reasonably;
- (f) evidence in form satisfactory to the Purchaser acting reasonably that the Consents have been obtained;
- (g) current Purchase Certificate(s) issued by the Ontario Workplace Safety and Insurance Board evidencing that the Vendor's account(s) are in good standing;
- (h) a duplicate copy of the Clearance Certificates;
- (i) the elections referred to in Sections 2.9, 2.10 and 2.11;
- (j) evidence satisfactory to the Purchaser that the bulk sales legislation in each of the jurisdictions in which the Purchased Assets are located has been complied with or that the sale of the Purchased Assets is exempt from compliance with such legislation;
- (k) the list of Employees and the Transaction Personal Information of the Transferred Employees as described in Section 9.2;
- (l) the Escrow Agreement, duly executed by the Vendor;
- (m) a five (5) year reciprocal non-competition agreement in form satisfactory to the Parties, acting reasonably (the "**Non-Competition Agreement**"), duly executed by the Vendor;
- (n) an opinion of the Vendor's Counsel in form satisfactory to the Purchaser's Counsel, acting reasonably;
- (o) a transition services agreement in respect of (i) the transition services to be rendered as between the Parties following the Closing, and (ii) the Shared Assets, in form satisfactory to the Parties, acting reasonably, (the "**Transition Services Agreement**"), duly executed by the Vendor;
- (p) a trademark licensing agreement in respect of, among other things, the name "Virtek", "Virtek Vision International Inc." (and any variation thereof) and the trade mark "V Design" (T674997US), in form satisfactory to the Parties, acting reasonably, (the "**Trademark Licensing Agreement**"), duly executed by the Vendor; and

- (q) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Purchaser, acting reasonably.

4.3 Purchaser's Closing Deliveries. At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendor the following documents and payments:

- (a) the General Conveyance and Assumption of Liabilities Agreement, duly executed by the Purchaser;
- (b) a bring-down certificate of the President or other senior officer of the Purchaser dated as of the Closing Date in form satisfactory to the Vendor, acting reasonably;
- (c) a certificate of the Secretary or other officer of the Purchaser as to (i) the articles and by-laws of the Purchaser, (ii) the incumbency of the Purchaser, and (iii) the authorizing resolution of the Purchaser dated as of the Closing Date in form satisfactory to the Vendor, acting reasonably;
- (d) the Escrow Agreement, duly executed by the Purchaser;
- (e) the Non-Competition Agreement, duly executed by the Purchaser;
- (f) the Transition Services Agreement, duly executed by the Purchaser;
- (g) the Trademark Licensing Agreement, duly executed by the Purchaser;
- (h) the payments referred to in Sections 2.4(a) and (b);
- (i) the elections referred to in Sections 2.9, 2.10 and 2.11; and
- (j) all such other assurances, consents, agreements, documents and instruments as may be reasonably required by the Vendor to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Vendor, acting reasonably.

4.4 Possession. On the Closing Date, the Vendor shall deliver or cause to be delivered to the Purchaser possession of the Purchased Assets, which shall include vacant possession of the Leased Premises.

4.5 Delayed Transfer Assets. To the extent that any Purchased Asset or any claim, right or benefit arising under or resulting from such Purchased Asset is not capable of being transferred without the approval, consent or waiver of any third Person, or if the transfer of any Purchased Asset would constitute a breach of any obligation under, or a violation of, any Applicable Law unless the approval, consent or waiver of such third Person is obtained (all such Purchased Assets being collectively referred to in this Agreement as “**Delayed Transfer Assets**”), except as otherwise expressly provided in this Agreement and without limiting the rights and remedies

of the Purchaser contained elsewhere in this Agreement, this Agreement shall not constitute an agreement to transfer any Delayed Transfer Asset unless and until such approval, consent or waiver has been obtained. After the Closing and until all such Delayed Transfer Assets are transferred to the Purchaser, the Vendor shall:

- (a) maintain its existence and hold the Delayed Transfer Assets in trust for the Purchaser;
- (b) comply with the terms and provisions of or relating to the Delayed Transfer Assets as agent for the Purchaser at the Purchaser's cost and for the Purchaser's benefit;
- (c) co-operate with the Purchaser in any reasonable and lawful arrangements designed to provide the benefits of the Delayed Transfer Assets to the Purchaser; and
- (d) enforce, at the request of the Purchaser and at the expense and for the account of the Purchaser, any rights of the Vendor under or arising from the Delayed Transfer Assets against any third Person, including the right to elect to terminate any such rights in accordance with the terms of such rights upon the written direction of the Purchaser.

In order that the full value of the Delayed Transfer Assets may be realized for the benefit of the Purchaser, the Vendor shall, at the request and expense and under the direction of the Purchaser, in the name of the Vendor or otherwise as the Purchaser may specify, take all such action and do or cause to be done all such things as are, in the reasonable opinion of the Purchaser, necessary or proper in order that the obligations of the Vendor under such Delayed Transfer Assets may be performed in such manner that the value of such Delayed Transfer Assets is preserved and enures to the benefit of the Purchaser, and that any moneys due and payable and to become due and payable to the Purchaser in and under such Delayed Transfer Assets are received by the Purchaser. The Vendor shall promptly pay to the Purchaser all moneys collected by or paid to the Vendor in respect of every such Delayed Transfer Asset.

ARTICLE 5 CONDITIONS OF CLOSING

5.1 Purchaser's Conditions. The Purchaser shall not be obligated to complete the purchase of the Purchased Assets pursuant to this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 5.1 has been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser. The Vendor shall take all such actions, steps and proceedings as are reasonably within its control as may be necessary to ensure that the conditions listed below in this Section 5.1 are fulfilled at or before the Closing Time.

(1) *Representations and Warranties.* The representations and warranties of the Vendor in Section 3.1 which are qualified as to materiality shall be true and correct (including, for greater clarity, and notwithstanding any materiality qualification contained therein, those contained in Sections 3.1(1), (2) and (3) and the first sentence of Section 3.1(8)), and those representations and warranties not so qualified shall be true and correct in all material respects, at the Closing.

(2) *Vendor's Compliance.* The Vendor shall have performed and complied in all material respects with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 4.2 and elsewhere in this Agreement.

(3) *Material Adverse Change.* During the Interim Period, there shall have been no Material Adverse Change.

(4) *No Litigation.* During the Interim Period, there shall have been no Order made or any Legal Proceedings commenced:

- (a) against either Party or against any of their respective Affiliates or any of their respective directors or officers, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated by this Agreement; or
- (b) against either Party or against any of their respective Affiliates or any of their respective directors or officers which in the result, could materially adversely affect the right of the Purchaser to acquire or retain the Purchased Assets or to continue to operate the Business after the Closing in the same manner in which it was operated by the Vendor prior to Closing.

(5) *Consents as to Material Contracts.* All of the Consents required in respect of Material Contracts shall have been obtained.

(6) *Shareholder Approval.* The Shareholder Approval shall have been obtained.

(7) *Employment Agreement for Certain Key Employees.* The Purchaser shall have entered into an employment agreement with certain of the Key Employees identified by the Purchaser in form satisfactory to the parties thereto, acting reasonably, and of full force and effect at Closing.

(8) *Bulk Sales Compliance.* The Vendor shall have provided to the Purchaser evidence satisfactory to the Purchaser that the bulk sales legislation in each of the jurisdictions in which the Purchased Assets are located has been complied with or that the sale of the Purchased Assets is exempt from compliance with such legislation.

5.2 Condition Not Fulfilled. If any condition in Section 5.1 has not been fulfilled at or before the Closing Time or if any such condition is or becomes impossible to satisfy, other than as a result of the failure of the Purchaser to comply with its obligations under this Agreement, then the Purchaser in its sole discretion may, without limiting any rights or remedies available to the Purchaser at law or in equity, either:

- (1) terminate this Agreement by notice to the Vendor, as provided in Section 8.1; or
- (2) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfilment of any other condition.

5.3 Vendor's Conditions. The Vendor shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 5.3 has been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendor. The Purchaser shall take all such actions, steps and proceedings as are reasonably within the Purchaser's control as may be necessary to ensure that the conditions listed below in this Section 5.3 are fulfilled at or before the Closing Time.

(1) *Representations and Warranties.* The representations and warranties of the Purchaser in Sections 3.2(1), (2) and (3) shall be true and correct and those representations and warranties in Sections 3.2(4), (5), (6) and (7) shall be true and correct in all material respects, at the Closing.

(2) *Purchaser's Compliance.* The Purchaser shall have performed and complied with all of the terms and conditions in this Agreement on its part to be performed or complied with at or before the Closing Time and shall have executed and delivered or caused to have been executed and delivered to the Vendor at the Closing all the documents contemplated in Section 4.3 and elsewhere in this Agreement.

(3) *No Litigation.* During the Interim Period, there shall have been no Order made or any Legal Proceedings commenced against either Party or against any of their respective Affiliates or any of their respective directors or officers, for the purpose of enjoining, preventing or restraining the completion of the transactions contemplated by this Agreement.

(4) *Shareholder Approval.* The Shareholder Approval shall have been obtained.

5.4 Conditions Not Fulfilled. If any condition in Section 5.3 shall not have been fulfilled at or before the Closing Time or if any such condition is or becomes impossible to satisfy, other than as a result of the failure of the Vendor to comply with its obligations under this Agreement, then the Vendor in its sole discretion may, without limiting any rights or remedies available to the Vendor at law or in equity, either:

- (1) terminate this Agreement by notice to the Purchaser as provided in Section 8.1; or
- (2) waive compliance with any such condition without prejudice to its right of termination in the event of non-fulfilment of any other condition

5.5 Frustration of Closing Conditions. Neither Party may rely on the failure of any condition set out in this Article 5 if such failure was caused by such Party's breach of any provision of this Agreement.

ARTICLE 6 SURVIVAL AND INDEMNIFICATION

6.1 Survival. All provisions of this Agreement and of any other agreement, certificate or instrument delivered pursuant to this Agreement, other than the conditions in Article 5 hereof, shall not merge on Closing but shall survive the execution, delivery and performance of this Agreement, the Closing and the execution and delivery of any transfer documents or other documents of title to the Purchased Assets and all other agreements, certificates and instruments delivered pursuant to this Agreement and the payment of the consideration for the Purchased Assets.

6.2 Indemnity by the Vendor. The Vendor shall indemnify the Purchaser's Indemnified Parties and save them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatever to:

- (a) any incorrectness in or breach of any representation or warranty of the Vendor contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (b) any breach or any non-fulfilment of any covenant or agreement on the part of the Vendor contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (c) any Liability arising from the ownership or operation of the Business or the Purchased Assets prior to the Closing Date, other than a Liability that is an Assumed Liability;
- (d) any Claim or Legal Proceeding to which the Vendor is a party at any time on or prior to the Closing Date, or to which it becomes a party after the Closing Date arising from facts or circumstances that existed at any time on or prior to the Closing Date;
- (e) any breach or alleged breach of any Contract by the Vendor which occurred prior to the Closing Date or any such breach which occurs after the Closing Date but arises out of a continuation of a course of conduct which commenced prior to the Closing Date, including any Contract disclosed in Schedule 3.1(14); and
- (f) the Retained Liabilities;

and, for greater certainty and without limiting the generality of the provisions of Sections 6.2(a) and (b), the indemnity provided for in Sections 6.2(b) through (f) shall extend to any Damages arising from any act, omission or state of facts that occurred or existed prior to the Closing Time, and whether or not disclosed in any Schedule to this Agreement. The rights to indemnification of the Purchaser's Indemnified Parties under this Section 6.2 shall apply notwithstanding any inspection or inquiries made by or on behalf of any of the Purchaser's Indemnified Parties, or any knowledge acquired or capable of being acquired by any of the Purchaser's Indemnified Parties or facts actually known to any of the Purchaser's Indemnified Parties (whether before or after the execution and delivery of this Agreement and whether before or after Closing). The waiver of any condition based upon the accuracy of any representation and warranty or the performance of any covenant shall not affect the right to indemnification, reimbursement or other remedy based upon such representation, warranty or covenant.

6.3 Indemnity by the Purchaser. The Purchaser shall indemnify the Vendor's Indemnified Parties and save them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatever to:

- (a) any incorrectness in or breach of any representation or warranty of the Purchaser contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (b) any breach or non-fulfilment of any covenant or agreement on the part of the Purchaser contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
- (c) the obligation of the Purchaser to the Transferred Employees pursuant to this Agreement after the Closing Date;
- (d) any action taken by the Vendor pursuant to Section 4.5 of this Agreement under or in respect of any Delayed Transfer Asset; and
- (e) the Assumed Liabilities.

6.4 Notice of Claim. If an Indemnified Party becomes aware of any act, omission or state of facts that may give rise to Damages in respect of which a right of indemnification is provided for under this Article 6, the Indemnified Party shall promptly give written notice thereof (a "**Notice of Claim**") to the Indemnifying Party. Such notice shall specify whether the potential Damages arise as a result of a claim by a Person against the Indemnified Party (a "**Third Party Claim**") or whether the potential Damages do not so arise (a "**Direct Claim**"), and shall also specify with reasonable particularity (to the extent that the information is available):

- (a) the factual basis for the Direct Claim or Third Party Claim, as the case may be; and
- (b) the amount of the potential Damages arising therefrom, if known.

If, through the fault of the Indemnified Party, the Indemnifying Party does not receive notice of a particular claim in time effectively to contest the determination of any liability susceptible of being contested or to assert a right to recover an amount under applicable insurance coverage, then the liability of the Indemnifying Party to the Indemnified Party under this Article 6 shall be reduced to the extent that Damages are incurred by the Indemnifying Party resulting from the Indemnified Party's failure to give such notice on a timely basis. Nothing in this Section 6.4 shall be construed to affect the time within which a Notice of Claim must be delivered pursuant to Sections 6.5(1) and 6.5(2) in order to permit recovery pursuant to Section 6.2(a) or 6.3(a) as the case may be.

6.5 Time Limits for Delivery of Notice of Claim for Breach of Representations and Warranties.

(1) *Notice by the Purchaser.* No Damages may be recovered from the Vendor pursuant to Section 6.2(a) unless a Notice of Claim is delivered by the Purchaser in accordance with the timing set out below:

- (a) with respect to the representations and warranties in Sections 3.1(1), (2) and (3) and the first sentence of Section 3.1(8), at any time after Closing;
- (b) with respect to the representations and warranties in Sections 3.1(28), (29) and (30), at any time before the date that is 90 days after the relevant Governmental Authorities are no longer entitled to assess or reassess the Vendor in respect of the Taxes in question, having regard, without limitation, to:
 - (i) any waiver given by the Vendor in respect of such Taxes; and
 - (ii) any entitlement of a Governmental Authority to assess or reassess the Vendor without limitation in the event of fraud or misrepresentation attributable to neglect, carelessness or wilful default; and
- (c) with respect to all other representations and warranties, on or before date that is twenty (20) months after Closing.

Unless a Notice of Claim has been given in accordance with the timing set out above with respect to each particular representation and warranty, the Vendor shall be released on the date set out, if applicable, from all obligations in respect of that particular representation and warranty and from the obligation to indemnify the Purchaser's Indemnified Parties in respect thereof pursuant to Section 6.2(a). This Section 6.5(1) shall not be construed to impose any time limit on the Purchaser's right to assert a claim to recover Damages under Sections 6.2(b) through 6.2(f), whether or not the basis on which such a claim is asserted could also entitle the Purchaser to make a claim for Damages pursuant to Section 6.2(a).

(2) *Notice by the Vendor.* No Damages may be recovered from the Purchaser pursuant to Section 6.3(a) unless a Notice of Claim is delivered by the Vendor on or before date that is three years after Closing. Unless a Notice of Claim has been given on or before date that is

three years after Closing with respect to each particular representation and warranty, the Purchaser shall be released on date that is three years after Closing from all obligations in respect of that particular representation and warranty and from the obligation to indemnify the Vendor's Indemnified Parties in respect thereof pursuant to Section 6.3(a). This Section 6.5(2) shall not be construed to impose any time limit on the Vendor's right to assert a claim to recover Damages under Sections 6.3(b) through 6.3(e), whether or not the basis on which such a claim is asserted could also entitle the Vendor to make a claim for Damages pursuant to Section 6.3(a).

6.6 Monetary Limits on Damages for Breach of Representations and Warranties.

- (a) No Damages may be recovered from the Vendor pursuant to paragraph 6.2(a) unless and until the accumulated aggregate amount of Damages of the Purchaser's Indemnified Parties arising pursuant to Section 6.2(a) exceeds \$200,000, in which event the accumulated aggregate amount of all such Damages may be recovered. Such limitation shall have no application to any claim to recover Damages based on any incorrectness in or breach of (i) any representation or warranty of the Vendor in Sections 3.1(1), (2) or (3) or the first sentence of Section 3.1(8) of this Agreement, or (ii) any other representation or warranty of the Vendor in this Agreement resulting from fraud or intentional misrepresentation by the Vendor, nor shall the limitation be construed to apply any of the indemnities in Sections 6.2(b) to 6.2(f). The maximum aggregate liability of the Vendor under Section 6.2 shall be limited to an amount equal to fifty percent (50%) of the Purchase Price.
- (b) No Damages may be recovered from the Purchaser pursuant to Section 6.3(a) unless and until the accumulated aggregate amount of Damages of the Vendor's Indemnified Parties arising pursuant to Section 6.3(a) exceeds \$200,000 in which event the accumulated aggregate amount of all such Damages may be recovered. Such limitation shall have no application to any claim to recover Damages based on any incorrectness in or breach of (i) any representation or warranty of the Purchaser in Sections 3.2(1), (2) or (3) of this Agreement, or (ii) any other representation or warranty of the Purchaser in this Agreement resulting from fraud or intentional misrepresentation by the Purchaser, nor shall the limitation be construed to apply any of the indemnities in Sections 6.3(b) to 6.3(e).

6.7 Limitation Periods.

(1) *Limitation Periods for Representations and Warranties.* Notwithstanding the provisions of the *Limitations Act, 2002* (Ontario) or any other statute, an Indemnified Party may commence a proceeding in respect of Damages arising from any incorrectness in or breach of any representation and warranty of the Indemnifying Party as referred to in a Notice of Claim delivered within the time periods stipulated in Section 6.5 at any time on or before the later of:

- (a) the second anniversary of the last date upon which such Notice of Claim is permitted to be delivered under Section 6.5; and
- (b) the expiry of the limitation period otherwise applicable to such claim,

and any applicable limitation period is hereby so extended to the full extent permitted by law.

(2) *Limitation Periods for Covenants and Other Matters.* The limitation period applicable to any proceeding relating to a claim in respect of any matter in Sections 6.2(b) to 6.2(f) and 6.3(b) to (e) shall be solely as prescribed in sections 15-17 of the *Limitations Act, 2002* and any other limitation period in respect of such claim (including that provided for in section 4 of the *Limitations Act, 2002*) is extended accordingly.

6.8 Calculation of Damages. For greater certainty, for the purpose only of calculating the amount of Damages under this Article 6, the representations and warranties of the Parties contained in this Agreement or in any other agreement, certificate or instrument executed and delivered pursuant to this Agreement shall be deemed to have been made without qualifications as to materiality where the words or phrases “material”, “immaterial”, “in all material respects” or words or phrases of similar import are used, such that the amount of Damages payable to an Indemnified Party is not subject to any deduction in respect of amounts below the agreed upon level of materiality. Further, the calculation of such amount shall not be affected by any inspection or inquiries made by or on behalf of the Party entitled to be indemnified under this Article 6.

6.9 Agency for Non-Parties. Each Party hereby accepts each indemnity in favour of each of its Indemnified Parties who are not Parties as agent and trustee of that Indemnified Party. Each Party may enforce an indemnity in favour of any of that Party’s Indemnified Parties on behalf of each such Indemnified Party.

6.10 Direct Claims. In the case of a Direct Claim, the Indemnifying Party shall have 60 days from receipt of notice thereof within which to make such investigation as the Indemnifying Party considers 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 its right to be indemnified under this Article 6, together with all such other information as the Indemnifying Party may reasonably request. If the Parties fail to agree at or before the expiration of such 60 day period (or any mutually agreed upon extension thereof), the Indemnified Party shall be free to pursue such remedies as may be available to it.

6.11 Third Party Claims. In the case of a Third Party Claim, the provisions in the following paragraphs of this Section 6.11 apply.

- (a) The Indemnifying Party shall have the right, at its expense, to participate in but not control the negotiation, settlement or defence of the Third Party Claim, which control shall rest at all times with the Indemnified Party, unless the Indemnifying Party:
 - (i) irrevocably acknowledges in writing complete responsibility for, and agrees to indemnify the Indemnified Party in respect of, the Third Party Claim; and

- (ii) furnishes evidence to the Indemnified Party which is satisfactory to the Indemnified Party of its financial ability to indemnify the Indemnified Party;

in which case the Indemnifying Party may assume such control at its expense through counsel of its choice.

- (b) If the Indemnifying Party elects to assume control as contemplated in Section 6.11(a), the Indemnifying Party shall reimburse the Indemnified Party for all of the Indemnified Party's out-of-pocket expenses incurred as a result of such participation or assumption. The Indemnified Party shall continue to have the right to participate in the negotiation, settlement or defence of such Third Party Claim and to retain counsel to act on its behalf, provided that the fees and disbursements of such counsel shall be paid by the Indemnified Party unless the Indemnifying Party consents to the retention of such counsel at its expense or unless the named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and a representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), in which case the fees and disbursements of such counsel shall be paid by the Indemnifying Party. The Indemnified Party shall co-operate with the Indemnifying Party so as to permit the Indemnifying Party to conduct such negotiation, settlement and defence and for this purpose shall preserve all relevant documents in relation to the Third Party Claim, allow the Indemnifying Party access on reasonable notice to inspect and take copies of all such documents and require its personnel to provide such statements as the Indemnifying Party may reasonably require and to attend and give evidence at any trial or hearing in respect of the Third Party Claim.
- (c) If, having elected to assume control of the negotiation, settlement or defence of the Third Party Claim, the Indemnifying Party thereafter fails to conduct such negotiation, settlement or defence with reasonable diligence, then the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim.
- (d) If any Third Party Claim is of a nature such that (i) the Indemnified Party is required by Applicable Law or any Order, or (ii) it is necessary in the reasonable view of the Indemnified Party acting in good faith and in a manner consistent with reasonable commercial practices, in respect of (A) a Third Party Claim by a customer relating to products or services supplied by the Business or (B) a Third Party Claim relating to any Contract which is necessary to the ongoing operations of the Business or any material part thereof in order to avoid material damage to the relationship between the Indemnified Party and any of its major customers or to preserve the rights of the Indemnified Party under such an essential Contract, to make a payment to any Person (a "**Third Party**") with respect to the Third Party

Claim before the completion of settlement negotiations or related legal proceedings, as the case may be, then the Indemnified Party may make such payment and the Indemnifying Party shall, promptly after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, promptly after receipt of the difference from the Third Party, pay the amount of such difference to the Indemnifying Party.

- (e) If the Indemnifying Party fails to assume control of the defence of any Third Party Claim, the Indemnified Party shall have the exclusive right to contest, settle or pay the amount claimed and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to such Third Party Claim. Whether or not the Indemnifying Party assumes control of the negotiation, settlement or defence of any Third Party Claim, the Indemnifying Party shall not settle any Third Party Claim without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

6.12 Interest on Damages. The amount of any Damages which is subject to indemnification hereunder shall bear interest from and including the date the Indemnified Party was notified of the claim for Damages at the Interest Rate calculated from and including such date to but excluding the date reimbursement of such Damages by the Indemnifying Party is made, compounded monthly, and the amount of such interest shall be deemed to be part of such Damages.

6.13 Set-off. The Purchaser shall be entitled to set off the amount of any Damages payable by the Vendor under the terms of Article 6 against any other amounts payable by the Purchaser to the Vendor whether under this Agreement or otherwise.

6.14 Indemnifiable Tax. Any amount payable under Article 6 shall be treated by the Parties as an adjustment to the Purchase Price but if such amount is subject to Tax which the Indemnified Party must remit or otherwise account to any Governmental Authority ("**Indemnifiable Tax**"), the payment shall be increased as may be necessary so that the Indemnified Party will receive a net amount (after deducting such Indemnifiable Tax) equal to the amount otherwise payable under Article 6.

ARTICLE 7 COVENANTS

7.1 Shareholder Approval Implementation.

- (1) *Implementation Steps by Vendor.* The Vendor shall:

- (a) subject to compliance with Securities Laws, following the execution of this Agreement, issue a press release on or about August 5, 2008 announcing the entering into of this Agreement, which press release will be satisfactory in form and substance to the Purchaser, acting reasonably. The Vendor will file such press release, together with a material change report in prescribed form, with applicable securities regulatory authorities in each province of Canada on or about August 5, 2008, and with respect to the material change report, within 10 days following the date of this Agreement;
- (b) fix a record date of on or before August 14, 2008 to determine the Shareholders entitled to receive notice of the Meeting;
- (c) convene and hold the Meeting on or before September 10, 2008 in accordance with the Applicable Laws for the purpose of having the Shareholders consider the Shareholder Resolution and for any other proper purpose as may be set out in the Circular provided that: (i) the Meeting shall be held regardless of whether the Board determines at any time that this Agreement is no longer advisable or recommends that the Shareholders reject the Shareholder Resolution or any other Adverse Recommendation Change has occurred at any time; and (ii) the Shareholder Resolution shall be voted on before any other matter at the Meeting, unless otherwise previously agreed to in writing by the Purchaser or required by a Governmental Entity;
- (d) except to the extent required by a Governmental Entity or for quorum purposes (in the case of an adjournment), not adjourn, postpone or cancel (or propose the adjournment, postponement or cancellation of) the Meeting without the Purchaser's prior written consent (such consent not to be unreasonably withheld unless the reason for the adjournment, postponement or cancellation is, in the reasonable opinion of the Purchaser, to frustrate or otherwise prevent the completion of the transactions contemplated herein), and without limiting the generality of the foregoing, the Vendor agrees that its obligations pursuant to Sections 7.1(1)(c) and 7.1(1)(d) shall not be affected by the commencement, public proposal, public disclosure or communication to the Vendor or any other person of any Takeover Proposal;
- (e) include in the Circular the unanimous recommendation of the Board that the Shareholders vote in favour of the Shareholder Resolution;
- (f) at the sole cost and expense of the Purchaser, retain at the request of the Purchaser the services of a proxy solicitation company or dealer, which proxy solicitation company or dealer will receive instructions only from the Vendor following consultation with the Purchaser, to solicit from the Shareholders proxies in favour of the approval of the Shareholder Resolution; and take other actions that the Vendor considers reasonable and customary to seek the Shareholder Approval; and

- (g) provide notice to the Purchaser of the Meeting and allow representatives of the Purchaser to attend and speak at the Meeting.

(2) *Circular.* The Vendor will prepare and complete the Circular together with any other documents required by Securities Laws and any other Applicable Laws in connection with the Meeting. The description of the transactions contemplated herein, including the Parties and the agreements applicable thereto, in the Circular, such other documents, and any amendments thereto, shall be in form and substance satisfactory to the Purchaser, acting reasonably. The Vendor will file the Circular and any other documentation required to be filed under Securities Laws and other Applicable Laws in all jurisdictions where the Circular is required to be filed by the Vendor and mail or cause to be mailed the Circular and any other documentation required to be mailed under Applicable Laws to Shareholders, the directors of the Vendor, the auditors of the Vendor and any other required Persons, on or before August 15, 2008, all in accordance with Applicable Laws. The Purchaser will provide such assistance as the Vendor may reasonably request in such regard.

(3) *Preparation of Filings, Etc.* The Vendor shall do all such acts and things as may be necessary to comply, in all material respects, with National Instrument 54-101 of the Canadian Securities Administrators in relation to the Meeting. Each of the Purchaser and the Vendor shall proceed diligently, in a coordinated fashion and use its commercially reasonable efforts to cooperate in: (a) the preparation of the Circular as described in Section 7.1(2); (b) the preparation and filing of any exemption or other applications or orders and any other documents required by any of them to discharge their respective obligations under Applicable Laws; and (c) the taking of all such action as may be required under Securities Laws and any other Applicable Laws. Each of the Purchaser and the Vendor shall furnish to the other of them, on a timely basis, all information as may be reasonably required to effect the actions contemplated by this Section 7.1(3) and each covenants that no information so furnished by it in writing in connection with those actions or otherwise in connection with the matters contemplated in Section 7.1 will contain any Misrepresentation. Each of the Purchaser and the Vendor shall promptly notify the other of them if, at any time before the Meeting, it becomes aware that the description of the transactions contemplated herein (including the Parties and the agreements applicable thereto) in the Circular or any other filing under Securities Laws contains a Misrepresentation or otherwise requires an amendment or supplement. In any such event, each of the Parties will co-operate in the preparation of a supplement or amendment to the Circular or such other document, as the case may be, that corrects that Misrepresentation, and the Vendor will cause the same to be distributed to the Shareholders, the directors of the Vendor, the auditors of the Vendor and any other required Persons and filed as required under Applicable Laws. The Vendor shall ensure that the Circular includes a statement that the Board has determined that the transactions contemplated by this Agreement are in the best interests of the Vendor and that the Board unanimously recommends that Shareholders vote in favour of the Shareholder Resolution.

7.2 No Solicitation.

(1) Notwithstanding any other provision of this Agreement, from the date of this Agreement until 11:59 p.m. (Toronto time) on August 8, 2008 (the “**Go-Shop Expiry Time**”),

the Vendor shall have the right, directly or indirectly, through any director, officer, employee, investment banker, lawyer, accountant or other advisor or representative:

- (i) to make, solicit, initiate or encourage inquiries from or submissions of proposals or offers from any other Person for the direct or indirect acquisition, in one transaction or a series of transactions, including by way of any arrangement, merger, amalgamation, consolidation, take-over bid, exchange offer, stock acquisition, asset acquisition, binding share exchange, share issuance, business combination, recapitalization, liquidation, dissolution, joint venture, licence agreement or similar transaction of (i) all of the assets of the Vendor and its Subsidiaries, taken as a whole, or (ii) 100% of the outstanding Shares;
- (ii) to participate in any discussions or negotiations with such Person regarding a proposal referred to in clause (i), or otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to do or seek to do any proposal; or
- (iii) pursuant to a confidentiality agreement that contains terms that a reasonable person would conclude are no less restrictive than those contained in the confidentiality agreement entered into between the Purchaser and the Vendor, to furnish to any Person any non-public information with respect to the Vendor and its Subsidiaries;

provided that: (x) the Vendor promptly delivers to the Purchaser all information provided to any third party which has not previously been provided to the Purchaser; and (y) any such activity is intended to elicit a proposal referred to in clause (i) which otherwise satisfies the other requirements for a Superior Proposal.

(2) From and after the date hereof until the earlier of the Closing Time or the date upon which this Agreement is terminated pursuant to Article 8, except as permitted pursuant to Section 7.2(1), the Vendor shall not, nor shall it permit any of its Subsidiaries to, nor shall it authorize or permit any director, officer or employee of the Vendor or any of its Subsidiaries or any investment banker, lawyer, accountant or other advisor or representative of the Vendor or any of its Subsidiaries to, directly or indirectly, (i) make, solicit, initiate or encourage, or take any other action to facilitate (including by way of furnishing non-public information, permitting any visit to any facilities or properties of the Vendor or any of its Subsidiaries, or entering into any form of written or oral agreement, arrangement or understanding), any Takeover Proposal or any inquiries or the making of any proposal that is reasonably likely to lead to a Takeover Proposal, or release any third party from, amend, modify or waive the terms of any standstill or confidentiality agreement that relates to a Takeover Proposal (provided that the Vendor shall be entitled to amend any confidentiality agreement or standstill agreement entered into prior to the date hereof to allow the party thereto to make a Takeover Proposal to the Board or to permit the other party thereto to undertake a transaction with the Vendor that would not constitute a Takeover Proposal) or (ii) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any person (or any representative thereof) any information with respect to, or otherwise cooperate in any way with any person (or any representative

thereof) with respect to, any Takeover Proposal; provided, however, that at any time prior to the Closing Date, in response to a written unsolicited (after the Go Shop Expiry Time) request for material non-public information from a Person who is making or has made a Takeover Proposal that the Board determines in good faith is or could result in a Superior Proposal, and which Takeover Proposal did not result from a breach of this Section 7.2, notwithstanding any other provision of this Agreement the Vendor may, and may permit and authorize its Subsidiaries and its and its Subsidiaries' representatives to, in each case subject to compliance with Section 7.2(7), (A) furnish information with respect to the Vendor and its Subsidiaries to the person making such request or Takeover Proposal (and its representatives) pursuant to a confidentiality agreement that contains terms that a reasonable Person would conclude are no less restrictive than those contained in the confidentiality agreement entered into between the Purchaser and the Vendor, provided that all such information had been provided, or is concurrently provided, to the Purchaser, and (B) participate in discussions or negotiations with the person making such request or Takeover Proposal (and its representatives) regarding such Takeover Proposal; provided that the Vendor shall have provided the Purchaser with a list of, and in the case of information that was not previously made available to the Purchaser, copies of, any information provided to such Person. Without limiting the generality of the foregoing, it is understood that any violation of the restrictions set forth in the preceding sentence by any director, officer or employee of the Vendor or any of its Subsidiaries or any investment banker, lawyer, accountant or other advisor or representative of the Vendor or any of its Subsidiaries shall be deemed to be a breach of this Section 7.2(1).

(3) For purposes of this Agreement, the term "**Takeover Proposal**" means any inquiry, proposal, offer or public announcement from any Person other than the Purchaser (but excluding the StockerYale Takeover Bid) relating to, or that is reasonably likely to lead to, any direct or indirect acquisition, in one transaction or a series of transactions, including by way of any arrangement, merger, amalgamation, consolidation, take-over bid, exchange offer, stock acquisition, asset acquisition, binding share exchange, share issuance, business combination, recapitalization, liquidation, dissolution, joint venture, license agreement or similar transaction, of (i) all or a material portion of the assets of the Vendor and its Subsidiaries, taken as a whole or (ii) 20% or more of the outstanding Shares or any class of shares in the capital of, or other equity or voting interests in, one or more of the Subsidiaries of the Vendor which, in the aggregate, directly or indirectly hold the assets or businesses referred to in clause (i) above. Notwithstanding the foregoing, any transaction consisting of a direct or indirect sale (other than by way of a sale of Shares of the Vendor) of the marking and engraving business of the Vendor which provides for the completion of the transactions contemplated herein without any delay or incremental costs to the Purchaser shall not constitute a Takeover Proposal.

(4) For purposes of this Agreement, the term "**Superior Proposal**" means any bona fide written Takeover Proposal (provided that the reference to "20%" in the definition of "Takeover Proposal" shall be "50.1%" for these purposes) which did not result from a breach of Section 7.2(1) and which is made by any person (other than the Purchaser) and (A) which such Takeover Proposal (i) is reasonably capable of being completed without undue delay, taking into account all financial, legal, regulatory and other aspects of such proposal, (ii) has been demonstrated to the satisfaction of the Board, acting in good faith (after receipt of advice from its

financial advisors and outside legal counsel), to provide that any required financing necessary to complete it is reasonably likely to be obtained, and (iii) is not subject to a due diligence and/or access condition which would allow access to the books, records, personnel or properties of the Vendor or any of its Subsidiaries or their respective representatives beyond 5:00 p.m. (Toronto Time) on the fifth day after which access is afforded to the Person making the Takeover Proposal (provided, however, that the foregoing shall not restrict the ability of such third party to continue to review information provided to it by the Vendor during such five day period) and (B) in respect of which the Board determines in good faith (after receipt of advice from its financial advisors with respect to (y) below and outside legal counsel with respect to (x) below) that (x) failure to recommend such Takeover Proposal to the Shareholders would be inconsistent with the Board's fiduciary duties and (y) taking into account all of the terms and conditions of such Takeover Proposal, if consummated in accordance with its terms (but not assuming away any risk of non-completion), such Takeover Proposal would result in a more favorable transaction from a financial point of view to the Shareholders than the transactions contemplated by this Agreement (taking into account all of the terms and conditions of such proposal and this Agreement (including the ability of the parties thereto to consummate the transactions contemplated thereby and any changes to the terms of this Agreement proposed by the Purchaser in response to such Superior Proposal or otherwise)).

(5) Neither the Board nor any committee thereof shall (i) withdraw, modify or qualify in a manner adverse to the Purchaser, or propose publicly to withdraw, modify or qualify in a manner adverse to the Purchaser, the approval, recommendation or declaration of advisability by the Board or any such committee of this Agreement, or recommend, or propose publicly to recommend, the approval or adoption of any Takeover Proposal, or resolve or agree to take any such action, or remain neutral with respect to any Takeover Proposal (including a Superior Proposal) (any such action, resolution or agreement to take such action being referred to herein as an **"Adverse Recommendation Change"** and it being understood that publicly taking no position or a neutral position with respect to a Takeover Proposal for a period ending on the earlier of (i) the tenth Business Day following the first public announcement of such Takeover Proposal and (ii) the expiration of the Matching Period in respect of such Takeover Proposal shall not be considered to be an Adverse Recommendation Change), (ii) adopt or approve any Takeover Proposal, or propose the approval or adoption of any Takeover Proposal, or resolve or agree to take any such action, or (iii) cause or permit the Vendor to enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, arrangement agreement, merger agreement, amalgamation agreement, option agreement, joint venture agreement, partnership agreement or other agreement (each, an **"Acquisition Agreement"**) constituting or related to, or which is intended to or is reasonably likely to lead to, any Takeover Proposal (other than a confidentiality agreement referred to in Section 7.2(1)), or resolve or agree to take any such action. Notwithstanding the foregoing, at any time prior to the Closing Date, the Board may, in response to a Superior Proposal, effect an Adverse Recommendation Change and/or enter into an Acquisition Agreement, provided that the Board determines in good faith, after consultation with its outside legal counsel and financial advisors that the failure to do so would be inconsistent with its fiduciary duties, and provided, further, that the Board may not effect such an Adverse Recommendation Change or enter into an Acquisition Agreement unless (A) the Board shall have first provided prior written notice to Purchaser (an **"Adverse**

Recommendation Change Notice”) that it is prepared to effect an Adverse Recommendation Change in response to a Superior Proposal, which notice shall attach the most current version of any written agreement or proposal relating to the transaction that constitutes such Superior Proposal, and (B) Purchaser does not make, within five Business Days after the receipt of such notice (the “**Matching Period**”), a proposal that would, in the reasonable good faith judgment of the Board (after consultation with its financial advisors and outside legal counsel), cause the offer previously constituting a Superior Proposal to no longer constitute a Superior Proposal. The Vendor agrees that, during the five Business Day period prior to its effecting an Adverse Recommendation Change or entering into an Acquisition Agreement, the Vendor and its officers, directors and representatives shall negotiate in good faith with the Purchaser and its officers, directors, and representatives regarding any revisions to the terms of the transaction contemplated by this Agreement proposed by the Purchaser. The Vendor acknowledges and agrees that each successive modification of any Superior Proposal shall constitute a new Superior Proposal for the purposes of this Section 7.2 and shall initiate a new two Business Day period.

(6) From and after the date hereof except as provided herein (including Section 7.2(1), except as provided herein, the Vendor shall cease and cause to be terminated any discussion, negotiations, solicitation, encouragement, or activity by the Vendor or its Representatives or agents with any parties other than the Purchaser, with respect to any potential Takeover Proposal, and in connection with any such potential Takeover Proposal, the Vendor will forthwith discontinue access to all data rooms (electronic or otherwise) by all Persons other than the Purchaser.

(7) In addition to the obligations of the Vendor set forth in Section 7.2(1) and Section 7.2(5), the Vendor shall, as promptly as possible and in any event within 24 hours after the Vendor first obtains knowledge of the receipt thereof, advise the Purchaser orally and in writing of (i) any Takeover Proposal or any request for information or inquiry that the Vendor reasonably believes could lead to or contemplates a Takeover Proposal and (ii) the terms and conditions of such Takeover Proposal, request or inquiry (including a copy of any written Takeover Proposal and any subsequent amendment or other modification thereto or to such terms and conditions), and the identity of the Person making any such Takeover Proposal, request or inquiry (in each case subject to any limitations set out in the confidentiality agreement entered into prior to the date of this Agreement). Commencing upon the provision of any notice referred to above, the Vendor (or its outside counsel) shall (A) advise and confer with Purchaser (or its outside counsel) regarding the progress of negotiations concerning any Takeover Proposal, the material resolved and unresolved issues related thereto and the material terms (including amendments or proposed amendments as to price and other material terms) of any such Takeover Proposal, request or inquiry and (B) promptly upon receipt or delivery thereof, provide the Purchaser (or its outside counsel) with copies of all documents and written communications relating to any such Takeover Proposal, request or inquiry exchanged between the Vendor or any of its officers, directors, employees, investment bankers, lawyers, accountants or other advisors or representatives, on the one hand, and the person making a Takeover Proposal or any of its officers, directors, employees, investment bankers, lawyers, accountants or other advisors or representatives, on the other hand.

(8) Nothing contained in this Section 7.2 or elsewhere in this Agreement shall prohibit the Vendor from making any disclosure to the Shareholders in respect of any Takeover Proposal if, in the good faith judgment of the Board, failure so to disclose is reasonably likely to be inconsistent with its fiduciary duties or otherwise with Applicable Laws.

7.3 Investigation. During the Interim Period, the Vendor shall give, or cause to be given, to the Purchaser and its Representatives reasonable access during normal business hours to the Business and the Purchased Assets, including the Books and Records, the Contracts, the Property Documents and the Leased Premises, to familiarize itself with the Business and the Purchased Assets, including the Books and Records, the Contracts, the Property Documents and the Leased Premises. For such purpose, subject to Applicable Law, (i) in respect of the period between the date hereof and August 31, 2008, the Purchaser shall be permitted to have two (2) of its employees attend the Vendor's premises on two (2) consecutive days per week during normal business hours, and (ii) from September 2, 2008, to the Closing Date, the Purchaser shall be provided with full access to the Business and the Purchased Assets in a manner acceptable to the Purchaser, acting reasonably. The Purchaser shall provide to the Vendor on or before August 15, 2008, a work plan for the activities commencing September 2, 2008 to the Closing Time, such plan to be acceptable to the Vendor, acting reasonably and in good faith. In each such case, such access shall be given in such manner so as not to cause undue interference with the operations of the Business and the Vendor shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser.

7.4 Personal Information. Each Party shall comply with Privacy Law in the course of collecting, using and disclosing Transaction Personal Information. The Purchaser shall collect Transaction Personal Information prior to Closing only for purposes related to the transactions contemplated by this Agreement and as is necessary for the completion of its purchase of the Purchased Assets. During the Interim Period, the Purchaser shall not disclose Transaction Personal Information to any Person other than to its Representatives who are evaluating and advising on the transactions contemplated by this Agreement. If the Purchaser proceeds with the transactions contemplated by this Agreement, the Purchaser shall not, following the Closing, without the consent of the individuals to whom such Personal Information relates or as permitted or required by Applicable Law, use or disclose Transaction Personal Information:

- (a) for purposes other than those for which such Transaction Personal Information was collected by the Vendor prior to the Closing; or
- (b) which does not relate directly to the carrying on of the Business or to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented.

The Purchaser shall protect and safeguard the Transaction Personal Information against unauthorized collection, use or disclosure, as provided by Privacy Law. The Purchaser shall cause its Representatives to observe the terms of this Section 7.4 and to protect and safeguard Transaction Personal Information in their possession. If the Vendor or the Purchaser terminates this Agreement as provided herein, the Purchaser shall promptly deliver to the Vendor all

Transaction Personal Information in its possession or in the possession of any of its Representatives, including all copies, reproductions, summaries or extracts thereof.

7.5 Confidentiality.

(1) *Information To Be Confidential.* Each Party shall treat confidentially and not disclose, and shall cause each of its Representatives to treat confidentially and not disclose, other than as expressly contemplated by this Agreement, any Confidential Information of the other Party.

(2) *Use Of Confidential Information.* Either Party may disclose Confidential Information only to those of its Representatives who need to know such Confidential Information for the purpose of implementing the transaction contemplated by this Agreement. Neither Party shall use, nor permit its Representatives to use, Confidential Information for any other purpose nor in any way that is, directly or indirectly, detrimental to the other Party.

(3) *Required Disclosure.* If either Party or any of its Representatives receives a request or is legally required to disclose all or any part of the Confidential Information in connection with a Legal Proceeding, such Party shall (a) immediately notify the other Party of the request or requirement, (b) consult with the other Party on the advisability of taking legally available steps to resist or narrow the request or lawfully avoid the requirement, and (c) if requested by the other Party, take all necessary steps to seek a protective order or other appropriate remedy. If a protective order or other remedy is not available, or if the other Party waives compliance with the provisions of this Section 7.5(3), (i) the Party receiving the request for disclosure or its Representatives, as the case may be, may disclose to the Person requiring disclosure only that portion of the Confidential Information which such Party is advised by written opinion of counsel is legally required to be disclosed, and (ii) such Party shall not be liable for such disclosure unless such disclosure was caused by or resulted from a previous disclosure by such Party or its Representatives not permitted by this Agreement.

(4) *Return or Destruction.* Following the termination of this Agreement in accordance with the provisions of this Agreement, each Party shall (and shall cause each of its Representatives to) (a) return promptly to the other Party all physical copies of the Confidential Information, excluding Notes, then in such Party's possession or in the possession of its Representatives, (b) destroy all (i) electronic copies of the Confidential Information, and (ii) Notes (including electronic copies thereof) prepared by such Party or any of its Representatives, in a manner that ensures the same may not be retrieved or undeleted by such Party or any of its Representatives, and (c) deliver to the other Party a certificate executed by one of its duly authorized senior officers indicating that the requirements of this sentence have been satisfied in full.

7.6 Risk of Loss. The Purchased Assets shall be at the risk of the Vendor until Closing. If before the Closing all or any material portion of the Purchased Assets are lost, damaged or destroyed or are expropriated or seized by any Governmental Authority or any other Person in accordance with Applicable Law or if notice of any such expropriation or seizure shall have been

given in accordance with Applicable Law, the Purchaser, in its sole discretion, shall have the option, exercisable by notice to the Vendor given prior to the Closing Time:

- (a) to terminate this Agreement by notice to the Vendor, as provided in Section 8.1; or
- (b) to complete the transactions contemplated by this Agreement and require the Vendor to assign to the Purchaser the proceeds of any insurance payable as a result of the occurrence of such loss, damage, destruction, expropriation or seizure.

7.7 Action During Interim Period.

(1) *Operate in Ordinary Course.* During the Interim Period, the Vendor shall operate the Business in the Ordinary Course of Business in compliance with Applicable Law and the terms and conditions of all Contracts, and in a manner that maintains relations with Employees and the suppliers, customers and landlords of the Vendor in accordance with past custom and practice.

- (2) *Negative Covenants.* During the Interim Period, the Vendor shall not:
- (a) mortgage, pledge, grant a security interest in or otherwise create a Lien on any of the Purchased Assets, except in the Ordinary Course of Business and in amounts which, individually and in the aggregate, are not material to the financial condition or the operation of the Business;
 - (b) enter into any lease or other contract or any other transaction relating to the Business that is not in the Ordinary Course of Business;
 - (c) dispose of or revalue any of the Purchased Assets, except for sales of Inventory in the Ordinary Course of Business;
 - (d) terminate, cancel, modify or amend in any material respect or take or fail to take any action which would entitle any party to any Contract to terminate, cancel, modify or amend any Contract;
 - (e) in respect of the Business, make any capital expenditure or authorize any capital expenditure or make any commitment for the purchase, construction or improvement of any capital assets except in the Ordinary Course of Business;
 - (f) make any change in its accounting principles, policies, practices or methods; or
 - (g) agree, commit or enter into any understanding to take any actions enumerated in paragraphs (a) to (f) of this Section 7.7(2).

7.8 Consents and Approvals. Commencing forthwith after the date hereof the Vendor shall use all commercially reasonable efforts to obtain, at or prior to the Closing Time, all Consents.

7.9 Updates to Information. The Vendor shall update on or before the Closing, by amendment or supplement, any of the informational disclosure schedules referred to in this Agreement and any other disclosure in writing from the Vendor to the Purchaser as soon as reasonably possible after new or conflicting information comes to the attention of the Vendor. The Purchaser shall not be obligated to accept any such amendment or supplement and receipt of any such amendment or supplement shall not be deemed to be a waiver or release by the Purchaser of any provision of this Agreement.

7.10 Bulk Sales Legislation Compliance. The Vendor shall use its best efforts to obtain an order or orders exempting the Vendor from compliance with the provisions of the bulk sales legislation in the jurisdictions in which the Purchased Assets are located on terms satisfactory to the Purchaser. The Vendor shall provide the Purchaser with an opportunity to review and to supplement the materials relating to the application for such exemption order or orders.

7.11 Sales Tax Clearance Certificate. The Vendor shall obtain and provide to the Purchaser on Closing a certificate pursuant to Section 6 of the *Retail Sales Act* (Ontario) and a certificate pursuant to similar legislation in each other jurisdiction where the Vendor is registered for sales tax purposes, each of which indicates that all Taxes collectible or payable by the Vendor under such legislation have been paid up to the Closing or that the Vendor has entered into satisfactory arrangements for payment of such Taxes (each, a “**Clearance Certificate**”).

7.12 Cash at Closing. The Vendor shall ensure that at Closing the Business will have at least \$500,000 in available cash on hand.

7.13 Receivables. All Receivables received or collected by the Vendor after the Closing Date shall be deemed to have been received and/or collected on behalf and for the benefit of, and shall be held in trust for, the Purchaser and/or its designated Affiliate as their agent until such Receivables are delivered to the Purchaser as soon as reasonably practicable after receipt or collection thereof and in any event within 10 Business Days. The Vendor shall cooperate fully with the Purchaser and use its best efforts in its collection of the Receivables to ensure that the Purchaser obtains all benefit of the Receivables in full. The Purchaser agrees that it will exercise reasonable diligence in endeavouring to collect all amounts owing with respect to the Receivables reflected in the Closing Date Statements (the “**Closing Receivables**”) from and after the Closing Date. Any payments received by the Purchaser from any Person who is indebted to the Vendor in respect of Receivables (including the Closing Receivables) shall be applied in payment of such Receivables in the order in which such Receivables arose and the Purchaser shall not influence any debtor who owes money for Receivables with respect to the designation of the payment made by such debtor. The Purchaser covenants that, after the Closing Date, it will promptly advise the Vendor of any disputed invoice relating to a Closing Receivable and will allow the Vendor to examine any documents in the possession of the Purchaser relating to such disputed invoice. Any dispute shall be settled only upon the concurrence of the Vendor and the Purchaser. The Purchaser shall not grant any credit notes, rebates, cash discounts or other allowances claimed with respect to a Closing Receivable after the Closing Date nor write off any Closing Receivable without the prior written consent of the Vendor. The Vendor shall be entitled to participate in the collection of any Closing Receivable which remains uncollected sixty (60) days following the Closing Date. To the extent any Closing Receivables remain

uncollected ninety (90) days following the Closing Date, the Purchaser shall be entitled to reflect any such Closing Receivables in the Closing Date Statements for the purpose of effecting an adjustment to the Purchase Price pursuant to Section 2.7 and the Purchaser shall, contemporaneously with such adjustment to the Purchase Price, assign title to such uncollected Closing Receivables to the Vendor. Upon such assignment, the Vendor shall be free to collect any such uncollected Closing Receivables in any reasonable manner.

7.14 Books and Records. The Purchaser shall provide to the Vendor copies of all documentation created by the Purchaser in preparing the Closing Date Statements, together with any and all relevant Books and Records required by the Vendor for purposes of the Income Tax Act, not yet prepared at the time of Closing, for the period ending on or before the Closing Date (the “**Pre-Closing Period**”). The Purchaser shall promptly deliver such documentation to the Vendor in order that the Vendor comply with subsection 230(1) of the Income Tax Act at all times in respect of the Pre-Closing Period.

7.15 Assignment of Intellectual Property. At or prior to Closing, the Vendor shall cause all Intellectual Property which is the subject of a registration or application to be recorded in the name of the Vendor and shall deliver to the Purchaser at Closing or forthwith thereafter duly executed documents suitable for recording in the applicable intellectual property offices to permit the assignment to the Purchaser of the applicable Intellectual Property to be recorded therein.

7.16 Guarantee from Mitek US. Mitek US hereby irrevocably and unconditionally guarantees the due and punctual performance of all obligations of the Purchaser (and/or its designated Affiliate) hereunder.

ARTICLE 8 TERMINATION

8.1 Grounds for Termination. This Agreement may be terminated prior to Closing:

- (1) by the mutual written agreement of the Vendor and the Purchaser;
- (2) by the Purchaser or the Vendor if the Closing shall not have occurred by October 31, 2008 (the “**Termination Date**”) for any reason provided, however, that the right to terminate this Agreement under this Section 8.1(2) shall not be available to the Party whose action or failure to act has been a principal cause of or resulted in the failure of the Closing to occur on or before such date and such action or failure to act constitutes breach of this Agreement;
- (3) by the Purchaser or the Vendor if the Meeting shall have been held and the Shareholder Approval shall not have been obtained thereat or at any adjournment or postponement thereof;

(4) by the Purchaser, in the event the Vendor delivered an Adverse Recommendation Change Notice or an Adverse Recommendation Change occurred;

(5) by the Vendor if the Board proposes to enter into an Acquisition Agreement in compliance with the procedures set forth in Section 7.2 provided that the Matching Period has expired without the Purchaser making a counter proposal contemplated in Section 7.2(5) and, concurrently with such termination, the Vendor pays the Termination Fee;

(6) by the Purchaser, so long as the Purchaser is not in material breach of its obligations under this Agreement, if: (a) the Vendor breached any of its representations or warranties or failed to perform any of its covenants or other agreements contained in this Agreement, which breach or failure to perform: (i) would give rise to the failure of a condition set forth in Section 5.1(1) or Section 5.1(2); and (ii) is incapable of being cured by the Vendor by the Termination Date or, if capable of being cured by the Vendor by the Termination Date, the Vendor does not commence to cure such breach or failure within 10 Business Days after its receipt of written notice thereof from the Purchaser and diligently pursue such cure thereafter; or (b) if any Legal Proceeding specified in Section 5.1(4) shall be in effect and shall have become final and nonappealable; or

(7) by the Vendor, so long as the Vendor is not in material breach of its obligations under this Agreement, if the Purchaser shall have breached any of its representations or warranties or failed to perform any of its covenants or other agreements contained in this Agreement, which breach or failure to perform: (a) would give rise to the failure of a condition set forth in Section 5.3(1) or 5.3(2); and (b) is incapable of being cured by Purchaser by the Termination Date or, if capable of being cured by the Purchaser by the Termination Date, the Purchaser does not commence to cure such breach or failure within 10 Business Days after its receipt of written notice thereof from the Vendor and diligently pursue such cure thereafter; or (b) if any Legal Proceeding specified in Section 5.3(3) shall be in effect and shall have become final and nonappealable.

(8) by the Purchaser if there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the transactions contemplated herein by any Governmental Entity, which would prohibit the Purchaser's ownership or operation of any material portion of the Business or the Purchased Assets;

(9) by the Purchaser if StockerYale Waterloo Acquisition Inc. and/or an Affiliate takes up and pays for a minimum of 50.1% of the outstanding Shares pursuant to a StockerYale Takeover Bid that has been amended to offer the Shareholders a price per Share higher than the Offer Price or any other party (other than StockerYale Waterloo Acquisition Inc. and/or an Affiliate) acquires a minimum of 50.1% of the outstanding Shares pursuant to a takeover bid or other transaction which is not supported by the Board;

(10) by the Purchaser if StockerYale Waterloo Acquisition Inc. and/or an Affiliate takes up and pays for a minimum of 50.1% of the outstanding Shares pursuant to the StockerYale Takeover Bid;

(11) by written notice from the Purchaser to the Vendor as permitted in Section 5.2 or 7.6; or

(12) by written notice from the Vendor to the Purchaser as permitted in Section 5.4.

8.2 Effect of Termination. If this Agreement is terminated:

(1) by the Vendor or by the Purchaser under Section 8.1 then, subject to Section 8.2 (2), all further obligations of the Parties under this Agreement shall terminate, except for the obligations under Sections 7.4, 7.5, 8.3 and 8.4, 10.1 and 10.2., which shall survive such termination; and

(2) by a Party under Section 8.1 (except Section 8.1(1)) and the right to terminate arose because of a breach of this Agreement by the other Party (including a breach by the other Party resulting in a condition in favour of the terminating Party failing to be satisfied), then, the other Party shall remain fully liable for any and all Damages sustained or incurred by the terminating Party directly or indirectly as a result thereof.

8.3 Termination Fee. In the event that, on or after the date hereof (i) a Takeover Proposal shall have been made directly to its Shareholders or any Person has publicly announced an intention (whether or not conditional and whether or not withdrawn) to make a Takeover Proposal and such Takeover Proposal or announced intention shall not have been publicly withdrawn prior to the Meeting and thereafter (A) this Agreement is terminated by either the Purchaser or the Vendor pursuant to Section 8.1(3) and (B) prior to the date that is 9 months after the date of the Meeting at which the Shareholders do not approve the Shareholder Resolution, the Vendor or any of its Subsidiaries consummates such Takeover Proposal (solely for purposes of this Section 8.3, the term "Takeover Proposal" shall have the meaning set forth in the definition of Takeover Proposal contained in Section 7.2 except that all references to 20% shall be deemed references to 50%) or (ii) this Agreement is terminated by the Purchaser pursuant to Section 8.1(4) or 8.1(9) or by the Vendor pursuant to Section 8.1(5), then, in each such case, the Vendor shall pay the Purchaser a fee equal to \$927,500 (the "**Termination Fee**") by wire transfer of same-day funds to an account designated by the Purchaser (A) in the case of a termination by the Purchaser pursuant to Section 8.1(4), within two Business Days after such termination, (B) in the case of a termination by the Vendor pursuant to Section 8.1(5), simultaneously with such termination, and (C) in the case of a payment as a result of any other event referred to in this Section 8.3, on the consummation of such Takeover Proposal. The Termination Fee shall be reimbursed by the Purchaser to the Vendor in the event the Purchaser, within 9 months of the date hereof, subsequently acquires the Business and the Termination Fee shall be reimbursed forthwith following such acquisition. The Vendor acknowledges that the agreements contained in this Section 8.3 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Purchaser would not have entered into this Agreement. Accordingly, if the Vendor fails promptly to pay the amounts due pursuant to this Section 8.3 and, in order to obtain such payment, the Purchaser commences a suit that results in a judgment against the Vendor for the amounts set forth in this Section 8.3, the Vendor shall pay to the Purchaser its reasonable costs and expenses (including attorneys' fees and expenses) in connection with such suit and any appeal relating thereto, together with interest on the amounts

set forth in this Section 8.3 at the Interest Rate. The Purchaser acknowledges that in no event shall the Vendor be required to pay the Termination Fee on more than one occasion. In the event the Termination Fee is paid to Purchaser, except as provided for in Section 8.4, no other amounts will be due and payable as damages or otherwise by the Vendor and the Purchaser hereby accepts that the Termination Fee is in lieu of any damages or any other payment or remedy to which it may be entitled. The Vendor agrees that the Termination Fee constitutes payment of liquidated damages which are a genuine anticipated assessment or estimate of the damages which it will suffer or incur as a result of the event giving rise to such damages and resulting in the termination of this Agreement and does not and will not constitute payment of a penalty. Notwithstanding the foregoing sentence, nothing in this Agreement shall relieve or have the effect of relieving any party to this Agreement in any way from liability for damages incurred or suffered by another party to this Agreement as a result of an intentional or wilful breach of this Agreement.

8.4 Expense Reimbursement. In the event (a) a Takeover Proposal (solely for purposes of this Section 8.4, the term "Takeover Proposal" shall have the meaning set forth in the definition of "Takeover Proposal" contained in Section 7.2 except that all references to 20% shall be deemed to be references to 50%) is consummated, or (b) this Agreement is terminated pursuant to Section 8.1(4), 8.1(5) or 8.1(9), the Vendor shall reimburse the Purchaser for all of the Purchaser's reasonable out of pocket costs incurred in connection with the transactions contemplated herein to a maximum of \$250,000 (the "**Expense Reimbursement**"). In the event StockerYale Waterloo Acquisition Inc. and/or an Affiliate takes up and pays for a minimum of 50.1% of the outstanding Shares pursuant to the StockerYale Take Over Bid, the Vendor shall reimburse the Purchaser for all of the Purchaser's reasonable costs, including costs related to the Purchaser's management and employee time, incurred in connection with the transactions contemplated herein to a maximum of \$400,000 (the "**Additional Reimbursement**"). In the event the Expense Reimbursement or Additional Reimbursement is paid to Purchaser, other than as provided for in Section 8.3, no other amounts will be due and payable as damages or otherwise by the Vendor and the Purchaser hereby accepts that the Expense Reimbursement or Additional Reimbursement is in lieu of any damages or any other payment or remedy to which it may be entitled.

ARTICLE 9 EMPLOYEES AND EMPLOYEE BENEFITS

9.1 Offers of Employment and Employee Liabilities.

(1) *Offers to Employees.* The Purchaser shall offer employment effective as of the Closing Date to all of the Employees on substantially equivalent terms and conditions, in the aggregate, to those under which such Employees are currently employed by the Vendor as disclosed on Schedule 3.1(23). The Purchaser shall make such offers before the 10th Business Day prior to the Closing Date and, in connection therewith, shall request the written consent of each such Employee to the provision by the Vendor to the Purchaser of the Transaction Personal Information relating to such Employee. Notwithstanding the foregoing, in respect of Employees

on disability or medical leave on the Closing Date, the effective date of employment may not be the Closing Date but rather the terms of offers to any such Employee shall specify that the offer is conditional upon the Employee being capable of returning to work and the date on which such Employee returns to work shall be the effective date of employment. The Purchaser shall recognize the past service of Transferred Employees with the Vendor for any required notice of termination, termination or severance pay (contractual, statutory or at common-law).

(2) *Employment Agreements for Key Employees.* The Vendor shall use its commercially reasonable efforts to assist the Purchaser to enter into employment agreements with the Key Employees in form satisfactory to the parties thereto, acting reasonably, as soon as possible after the date hereof.

(3) *Employee Liabilities of the Purchaser.* Subject to Section 9.5, the Purchaser shall be responsible for all liabilities:

- (a) for salary, benefits, wages, bonuses, commissions, vacations, vacation pay and other compensation relating to employment of all Transferred Employees on and after the Closing Date;
- (b) to an Employee who is eligible to receive an offer of employment from the Purchaser pursuant to Section 9.1(1) but does not receive such offer of employment, and which arise directly or indirectly out of, as a result of, in connection with or pursuant to the Vendor's termination of the employment of such Employee.

(4) *Employee Liabilities of the Vendor.* Subject to Section 9.5 below, the Vendor shall be responsible for all liabilities:

- (a) for salary, benefits, wages, bonuses, commissions, vacations, vacation pay and other compensation relating to employment of all Employees up to the Closing Date;
- (b) for salary, benefits, wages, bonuses, commissions, vacations, vacation pay and other compensation in respect of Employees on disability or medical leave on the Closing Date until the date that such Employees return to work and commence active employment with the Purchaser;
- (c) to an Employee who receives an offer of employment from the Purchaser pursuant to Section 9.1(1) but rejects or otherwise does not accept such offer of employment, and which arise directly or indirectly out of, as a result of, in connection with or pursuant to the Vendor's termination of the employment of such Employee; it being understood and agreed that such liabilities shall include reasonable legal fees incurred by the Purchaser in respect of any Claim asserted by such Employee against the Purchaser.

9.2 Employee List and Transaction Personal Information as to Transferred Employees.

At least 30 days before the Closing Date, the Vendor shall deliver to the Purchaser an up-to-date list of all Employees as at such date certified complete by a senior officer of the Vendor. On the Closing Date, the Vendor shall also deliver to the Purchaser an up-to-date list of Employees as at the Closing Time certified complete by a senior officer of the Vendor. Immediately upon the Purchaser obtaining the consent of a Transferred Employee as described in Section 9.1(1), the Vendor shall provide the Purchaser with the Transaction Personal Information relating to such Transferred Employee, including, without limitation, the age, position, status, length of service, location of employment, compensation and benefits of such Transferred Employee.

9.3 Employee Benefit Matters.

(1) Group RRSP. Effective as of the Closing Date, the Transferred Employees shall cease to accrue benefits under the Vendor's Group RRSP. On or as soon as practicable following the Closing Date, but effective as of the Closing Date, the Purchaser shall, at its own expense, establish and register or cause to be established and registered a group registered retirement savings plan (the "**Purchaser's Group RRSP**") for the Transferred Employees which replaces the Vendor's Group RRSP. The Vendor shall cooperate with the Purchaser to facilitate the transfer of funds from the Vendor's Group RRSP to the Purchaser's Group RRSP in respect to Transferred Employees who wish to elect this option.

(2) Employee Non-Retirement Benefit Plans Accruals. Except as otherwise provided under the Transition Services Agreement, the Transferred Employees shall cease to accrue benefits under all Employee Non-Retirement Benefit Plans effective as of the Closing Date. Where, pursuant to the Transition Services Agreement, the Transferred Employees continue to participate in certain Employee Non-Retirement Benefit Plans after the Closing Date, the date on which such participation ceases in accordance with the Transition Services Agreement shall be referred to in this Section 9.3 as the "**Benefits Transition Date**".

(3) Responsibility for Accrued Claims. The Vendor shall retain responsibility for all amounts payable by reason of or in connection with any and all Claims incurred under the Employee Non-Retirement Benefit Plans by the Transferred Employees (and their eligible dependants) on or prior to the Closing Date or, where applicable, the Benefits Transition Date, whether such claims are reported before or after the Closing Date or the Benefits Transition Date, as the case may be. For the purposes of this Section 9.3(3), a claim shall be deemed to have been incurred:

- (a) with respect to a death or dismemberment claim, on the actual date of death or dismemberment;
- (b) with respect to a short-term or long-term disability claim, the date of occurrence of the injury or accident or the date of diagnosis of the illness or other event giving rise to such claim or series of related claims;

- (c) with respect to an extended health care claim, including vision, dental and medical treatments, the date of diagnosis of the illness or condition or other event giving rise to the claim or treatment; and
- (d) with respect to a prescription drug claim, the date the prescription is filled.

(4) **Post-Retirement Benefits.** For greater certainty, it is acknowledged the Vendor shall retain all liabilities and obligations with respect to post-retirement health and life insurance benefits for employees of the Vendor who as of the Closing Date were retired.

9.4 Service Credit and Pre-existing Conditions.

(1) *Service Recognition.* The Purchaser shall recognize all service of the Transferred Employees with the Vendor for purposes of those employee benefit plans in which the Transferred Employees are enrolled by the Purchaser effective on or following the Closing Date, to the extent the recognition of such service credit affects the provision of benefits pursuant to such plans.

(2) *Pre-Existing Conditions.* The Purchaser shall, on a reasonable best efforts basis, arrange for the waiver of any and all pre-existing limitation restrictions under its health and welfare plans, but only to the extent that such limitation restrictions are waived under the applicable corresponding Employee Non-Retirement Benefit Plan. With respect to Transferred Employees who are subject to the pre-existing limitation provisions on their respective dates of enrolment in the Purchaser's health and welfare plans, the Purchaser's pre-existing limitation provisions shall lapse on the date such limitations would have lapsed under the Employee Non-Retirement Benefit Plan had the Transferred Employee remained in the employ of the Vendor.

(3) *Co-payments, etc.* The Purchaser agrees to recognize and give credit for any deductible, co-payment, co-insurance or out-of-pocket amounts paid or incurred by the Transferred Employees, including with respect to their covered dependants, under the Employee Non-Retirement Benefit Plans from the beginning of the current calendar year to their date of enrolment in the Purchaser's health and welfare plans, as though such amounts had been paid or incurred under the health and welfare plans of the Purchaser.

9.5 Vacation and Bonuses. From and after the Closing Date, Transferred Employees shall be entitled to use and obtain their unused and accrued vacation benefits and vacation pay under the Vendor's vacation arrangements, determined as of the Closing Date and the Purchaser shall have all liability therefor up to a maximum of \$10,000 with the Vendor being liable for all amounts in excess thereof. The Vendor shall retain liability to Transferred Employees for any bonus accrued or any discretionary bonus consistent with past practice with respect to periods prior to the Closing Date; the amounts and timing of such payments shall be in accordance with the Vendor's bonus plans and, in particular, amounts will be paid as determined by the Vendor.

**ARTICLE 10
GENERAL**

10.1 Expenses. Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers).

10.2 Public Announcements. Except to the extent otherwise required by Applicable Law or with the prior consent of the other Party, neither Party shall make any public announcement regarding this Agreement or the transactions contemplated by this Agreement.

10.3 Notices.

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent by fax or other similar means of electronic communication, in each case to the applicable address set out below:

(a) if to the Vendor, to:

Virtek Vision International Inc.
785 Bridge Street
Waterloo, Ontario N2V 2K1
Fax: 519-746-3383
Attention: President and Chief Executive Officer

with a copy to:

McCarter Grespan Beynon Weir LLP
675 Riverbend Drive
Kitchener, Ontario N2K 3S3
Fax: 519-742-1841
Attention: Tom Beynon

(b) if to the Purchaser, to:

MiTek Holdings, Inc. c/o MiTek, Inc.
14515 North Outer Forty Drive, Suite 300
Chesterfield, MO 63017-5746
Fax: 314-434-6826
Attention: Joe Carr

with a copy to:

Blake, Cassels & Graydon LLP
199 Bay Street, Suite 2800
Commerce Court West
Toronto, Ontario M5L 1A9
Fax: 416-863-2653
Attention: Frank P. Arnone

(2) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, faxed or sent before 4:30 p.m. on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day. Any such communication sent by mail shall be deemed to have been given and made and to have been received on the fifth Business Day following the mailing thereof; provided however that no such communication shall be mailed during any actual or apprehended disruption of postal services. Any such communication given or made in any other manner shall be deemed to have been given or made and to have been received only upon actual receipt.

(3) *Change of Address.* Any Party may from time to time change its address under this Section 10.3 by notice to the other Party given in the manner provided by this Section 10.3.

10.4 Time of Essence. Time shall be of the essence of this Agreement in all respects.

10.5 Further Assurances. Each Party shall from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

10.6 Filing of Returns and Preservation of Records. The Purchaser agrees to provide to the Vendor all reasonable co-operation following the Closing Date in connection with the filing of Tax Returns of the Vendor in respect of which the Books and Records delivered to the Purchaser pursuant to this Agreement are relevant. The Purchaser agrees to provide to the Vendor all reasonable co-operation following the Closing Date in connection with the filing of income tax returns of the Vendor in respect of which the Books and Records delivered to the Purchaser pursuant to this Agreement are relevant. The Purchaser shall take all reasonable steps to preserve and keep all Books and Records delivered to it in connection with the completion of the transactions provided for in this Agreement for a period of seven (7) years from the Closing Date, or, provided the Vendor provides written notice thereof prior to the expiration of the period described above, for any longer period as may be required by any Applicable Law or Governmental Authority, and, upon the Vendor executing and delivering to the Purchaser a confidentiality agreement in form satisfactory to the Purchaser acting reasonably, shall make such records available to the Vendor (including providing copies thereof) as may be reasonably

required by it in connection with the Vendor complying with its obligations under Article 6 or relating to any inquiries or requirements of any Governmental Authority with jurisdiction over the Vendor or as otherwise required by the Vendor to permit it and its shareholders and Affiliates to comply with their obligations under Applicable Laws.

10.7 Entire Agreement. This Agreement, together with the Exhibits and Schedules attached hereto, constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, including that letter of intent between the Parties dated July 23, 2008. There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except or explicitly set out in this Agreement.

10.8 Amendment. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

10.9 Waiver. A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

10.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

10.11 Remedies Cumulative. The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

10.12 Attornment. Each Party agrees (i) that any action or proceeding relating to this Agreement may (but need not) be brought in any court of competent jurisdiction in the Province of Ontario, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of such Ontario court; (ii) that it irrevocably waives any right to, and will not, oppose any such Ontario action or proceeding on any jurisdictional basis, including *forum non conveniens*; and (iii) not to oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from an Ontario court as contemplated by this Section 10.12.

10.13 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in such Province and this Agreement shall be treated, in all respects, as an Ontario contract.

10.14 Successors and Assigns. This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns. Neither Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its respective rights or obligations under this Agreement without the prior written consent of the other Party, except that the Purchaser may assign or transfer its rights and obligations hereunder to a designated Affiliate.

10.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

10.16 Language. The Parties have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.

[signature page follows]

IN WITNESS WHEREOF the Parties have executed this Agreement on the date first above written.

VIRTEK VISION INTERNATIONAL INC.

By: _____
 "Stephen J. Sorocky
 President and Chief Executive Officer"

MITEK HOLDINGS, INC.

By: _____
 "Ronald S. Burkhardt
 Vice-President and CFO"

MITEK, INC.

By: _____
 "Ronald S. Burkhardt
 Vice-President and CFO"

Exhibit “A”

The purchase price allocation schedule has been removed as it would be seriously prejudicial to the issuer’s interests.