

[Confidential and private information has been redacted where necessary.]

**BACH-SIMPSON CORPORATION &  
GBI USA HOLDINGS, INC.**

**ASSET AND SHARE PURCHASE AGREEMENT**

**GLOBAL RAILWAY INDUSTRIES LTD.,**

**BACH-SIMPSON CORPORATION,**

**CAD RAILWAY INDUSTRIES LTD.**

**- and -**

**WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION**

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**July 14, 2010**

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**THIS AGREEMENT** made as of the 14<sup>th</sup> day of July, 2010,

**B E T W E E N:**

**GLOBAL RAILWAY INDUSTRIES LTD.,**

a corporation existing under the laws of  
the Province of Alberta

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

- and -

**BACH-SIMPSON CORPORATION,**

a corporation existing under the laws of the  
Province of Ontario

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

- and -

**CAD RAILWAY INDUSTRIES LTD.,**

a corporation existing under the laws of the  
Province of Ontario

(hereinafter referred to as "**CADRI**" and,  
collectively with Parent and Bach, the "**Seller  
Parties**"),

- and -

**WESTINGHOUSE AIR BRAKE  
TECHNOLOGIES CORPORATION,**

a corporation existing under the laws of  
the State of Delaware

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

WHEREAS Parent owns (a) all of the issued and outstanding shares of Bach, and  
(b) all of the issued and outstanding shares (the "**Shares**") of GBI USA Holdings, Inc., a  
corporation existing under the laws of the State of Nevada (the "**Acquired Company**");

AND WHEREAS the Acquired Company owns all of the issued and outstanding  
shares of G&B Specialties, Inc., a corporation existing under the laws of the Commonwealth of  
Pennsylvania (the "**Acquired Operating Company**");

AND WHEREAS (a) Bach is engaged in the business of the design and  
manufacture of electronic instrumentation and custom electric systems for use in the commuter

transit and freight railroad sectors and (b) the Acquired Company is engaged, through the Acquired Operating Company, in the business of the design, manufacture and marketing of railroad tracks, signal components and rail gear for use by freight and passenger railroads;

AND WHEREAS (a) Bach wishes to sell to Purchaser, and Purchaser wishes to purchase from Bach, all of the Acquired Assets, as hereinafter defined, and (b) Parent wishes to sell to Purchaser, and Purchaser wishes to purchase from Parent, the Shares, in each case on the terms hereinafter set forth;

AND WHEREAS prior to the Applicable Closing (as hereinafter defined), (a) Bach will transfer all of the Acquired Assets to CADRI as contemplated by the Pre-Closing Asset Transfer, and (b) Parent will transfer the Shares to CADRI as contemplated by the Pre-Closing Reorganization, so that CADRI will be the ultimate seller of the Acquired Assets and the Shares to Purchaser pursuant hereto;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1        Defined Terms**

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

- (a)        "**Acquired Assets**" means, collectively, all of the assets of Bach and CADRI relating to the Asset Seller Business, including all of the following assets of Bach and CADRI relating to the Asset Seller Business: (i) all Intellectual Property; (ii) all Equipment, (iii) accounts and notes receivable, and other instruments and obligations evidenced thereby; (iv) customer orders; (v) invoices; (vi) all rights under the Assumed Contracts; (vii) prepaid expenses; (viii) deposits; (ix) bonds; (x) vehicles; (xi) licenses; (xii) know-how; (xiii) designs; (xiv) plans; and (xv) specifications and drawings, but excluding the Excluded Assets;
- (b)        "**Acquired Company**" has the meaning set out in the recitals hereto;
- (c)        "**Acquired Companies**" means the Acquired Company and the Acquired Operating Company.
- (d)        "**Acquired Company Annual Financial Statements**" has the meaning set out in Section 4.1(h)(ii);

- (e) **"Acquired Company Business"** means the business carried on by the Acquired Company through the Acquired Operating Company, consisting primarily of the business of the design, manufacture and marketing of railroad tracks, signal components and rail gear for use by freight and passenger railroads;
- (f) **"Acquired Company Financial Statements"** has the meaning set out in Section 4.1(h)(ii);
- (g) **"Acquired Company Intellectual Property"** has the meaning set out in Section 4.1(o)(ii);
- (h) **"Acquired Company Interim Financial Statements"** has the meaning set out in Section 4.1(h)(ii);
- (i) **"Acquired Company Restricted Territory"** has the meaning set out in Section 6.14(a)(i);
- (j) **"Acquired Company Restriction Period"** has the meaning set out in Section 6.14(a)(i);
- (k) **"Acquired Companies' Current Assets"** means the categories of current assets set out in Schedule A;
- (l) **"Acquired Companies' Current Liabilities"** means the categories of current liabilities set out in Schedule A;
- (m) **"Acquired Operating Company"** has the meaning set out in the recitals hereto;
- (n) **"Act 2"** has the meaning set out in Section 6.13(a);
- (o) **"Act 2 Remediation"** has the meaning set out in Section 6.13(b);
- (p) **"Affiliate"** means, with respect to any person (the **"first entity"**), any other person (the **"second entity"**) that controls or is controlled by the first entity, or a second entity that is controlled by the same person that controls the first entity, and for these purposes "control" is the power, whether by contract or ownership of equity interests to select a majority of the board of directors or other supervisory management authority of an entity, whether directly or indirectly through a chain of entities that are "controlled" within the foregoing meaning;
- (q) **"Applicable Closing"** means either the Asset Closing or the Stock Closing, as the context requires;
- (r) **"Applicable Closing Date"** means, in the case of the Asset Closing, Asset Closing Date and, in the case of the Stock Closing, the Stock Closing Date;
- (s) **"Arm's Length"** means, with respect to any person, an entity that is not an Affiliate of that person;

- (t) **"Asset Closing"** means the consummation of the purchase and sale of the Acquired Assets pursuant to this Agreement;
- (u) **"Asset Closing Date"** means the date upon which the Asset Closing actually occurs;
- (v) **"Asset Escrow Amount"** has the meaning set out in Section 2.2(b)(ii);
- (w) **"Asset Purchase Price"** has the meaning set out in Section 2.2(a);
- (x) **"Asset Seller"** means, prior to the completion of the Pre-Closing Asset Transfer, Bach and, from and after the completion of the Pre-Closing Asset Transfer, CADRI;
- (y) **"Asset Seller Annual Financial Statements"** has the meaning set out in Section 4.1(h)(i);
- (z) **"Asset Seller Business"** means the business carried on, prior to the completion of the Pre-Closing Asset Transfer, by Bach and, from and after the completion of the Pre-Closing Asset Transfer, by CADRI as Bach's successor consisting primarily of the design and manufacture of electronic instrumentation and custom electric systems for use in the commuter transit and freight railroad sectors both before and after the transfer of such business from Bach to CADRI;
- (aa) **"Asset Seller Employees"** has the meaning set out in Section 6.8(a);
- (bb) **"Asset Seller Financial Statements"** has the meaning set out in Section 4.1(h)(i);
- (cc) **"Asset Seller Intellectual Property"** has the meaning set out in Section 4.1(o)(i);
- (dd) **"Asset Seller Interim Financial Statements"** has the meaning set out in Section 4.1(h)(i);
- (ee) **"Asset Seller Restricted Territory"** has the meaning set out in Section 6.14(a)(ii);
- (ff) **"Asset Seller Restriction Period"** has the meaning set out in Section 6.14(a)(ii);
- (gg) **"Asset Seller's Current Assets"** means the categories of current assets relating to the Asset Seller Business set out in Schedule B;
- (hh) **"Asset Seller's Current Liabilities"** means the categories of current liabilities relating to the Asset Seller Business set out in Schedule B;
- (ii) **"Asset Working Capital"** means, for the Asset Seller Business, as of a particular date of determination, Asset Seller's Current Assets less Asset Seller's

Current Liabilities, in each case determined in accordance with GAAP, applied on a basis consistent with past practices used in preparing the Asset Seller Financial Statements;

- (jj) **"Assumed Contracts"** means (i) those Material Contracts, and only those Material Contracts, listed on Section 4.1(p) of the Disclosure Schedule to which Bach is a party and CADRI has become a party through assignment from Bach as part of the Pre-Closing Asset Transfer and which relate solely to the Asset Seller Business (other than the London Lease) and (ii) all other Contracts (x) to which Bach is a party and CADRI has become a party through assignment from Bach as part of the Pre-Closing Asset Transfer and which relate solely to the Asset Seller Business and (y) which do not satisfy the definition of "Material Contract" (as defined in Section 4.1(p)(ii)). For the avoidance of doubt, any Contract which constitutes a "Material Contract" as defined in Section 4.1(p)(ii) but which is not listed on Section 4.1(p) of the Disclosure Schedule shall not constitute an Assumed Contract unless Purchaser or its designated Affiliate expressly elects to assume such contract;
- (kk) **"Assumed Liabilities"** means all of the liabilities and obligations of Asset Seller of whatsoever nature or kind relating to the Asset Seller Business, the Acquired Assets, the Assumed Contracts or the Asset Seller Employees accrued at or accruing after the Closing Date, other than the Excluded Liabilities. Liabilities related to the Asset Seller Employees which are assumed by Purchaser hereunder shall be deemed to be liabilities and obligations of Asset Seller for the purposes of this Agreement, and Purchaser shall assume such liabilities or obligations that are not Excluded Liabilities in accordance with the terms of this Agreement;
- (ll) **"Bulk Sales Act"** means the *Bulk Sales Act* (Ontario);
- (mm) **"Bulk Transfers"** has the meaning set out in Section 7.2.3(h);
- (nn) **"Business"** means, collectively, the Acquired Company Business and the Asset Seller Business;
- (oo) **"Business Day"** means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;
- (pp) **"Buyer-Seller Agreement"** has the meaning set out in Section 6.13(a);
- (qq) **"Canadian Employee"** has the meaning set out in Section 6.8(b);
- (rr) **"Claim"** has the meaning set out in Section 8.4(a);
- (ss) **"Closing Date Asset Working Capital"** has the meaning set out in Section 3.5(a);

- (tt) **"Closing Date Stock Working Capital"** has the meaning set out in Section 3.5(a);
- (uu) **"Code"** means the United States Internal Revenue Code of 1986, as amended;
- (vv) **"Company"** or **"Companies"** means Bach, the Acquired Company and the Acquired Operating Company, individually or collectively;
- (ww) **"Company Plan"** has the meaning set out in Section 4.1(t);
- (xx) **"Contract"** means any agreement, indenture, contract, lease, deed of trust, licence, option, instrument or other commitment, whether written or oral;
- (yy) **"Credit Agreement"** means the credit agreement dated November 6, 2007 between Parent, as borrower, the subsidiaries of Parent, as guarantors, HSBC Bank Canada, as administrative agent, and HSBC Bank Canada and Bank of Montreal, as lenders, providing for an aggregate maximum amount of credit facilities of \$34,100,000, comprised of a demand revolving operating facility, a five year revolving, reducing, term loan, a hedge facility and a credit card facility;
- (zz) **"DEP"** has the meaning set out in Section 6.13(a);
- (aaa) **"Direct Claim"** has the meaning set out in Section 8.4(a);
- (bbb) **"Disclosure Schedule"** means the Disclosure Schedule attached hereto, dated as of the date hereof and delivered by the Seller Parties to the Purchaser in connection with this Agreement;
- (ccc) **"Employee Benefit Plan"** means any employee benefit, health, welfare, supplemental unemployment benefit, bonus, incentive, pension, profit sharing, current or deferred compensation, stock compensation, stock option, stock purchase, stock appreciation, phantom stock option, savings, retirement, supplementary retirement, hospitalization insurance, severance, health or other medical, dental, life, legal, disability or other insurance (whether insured or self-insured) and similar plans or arrangements or practices, which are sponsored, maintained or contributed to by any of the Companies;
- (ddd) **"Encumbrances"** means security interests, liens, pledges, charges, claims, equitable interests, options or other rights to acquire an interest, rights of first refusal, pre-emptive rights, mortgages, pledges, hypothecations, prior assignments, rights of way, easements, encroachments, title retention agreements, exceptions, variances, reservations or limitations of any nature, imperfections in title, exceptions, indentures and other encumbrances or restrictions of any kind, including restrictions on use, voting, transfer or receipt of income;

- (eee) **"Environmental, Health, and Safety Requirements"** means applicable Laws concerning public health and safety, worker health and safety, and pollution or protection of, or otherwise pertaining to, the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labelling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Substances, as such requirements are in effect in any and all jurisdictions in which the Acquired Company Business or the Asset Seller Business operates, including the Clean Air Act, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Hazardous & Solid Waste Amendments Act of 1984, as amended, the Superfund Amendments and Reauthorization Act, as amended, the *Canadian Environmental Protection Act, 1999*, as amended, the *Environmental Protection Act* (Ontario), as amended, and the *Ontario Water Resources Act*, as amended;
- (fff) **"Environmental Permits"** has the meaning set out in Section 4.1(y)(vi);
- (ggg) **"Environmental Reports"** has the meaning set out in Section 6.13(a);
- (hhh) **"Equipment"** means the items described in Schedule C hereto;
- (iii) **"Escrow Agent"** means the escrow agent agreed to by the parties, acting reasonably;
- (jjj) **"Escrow Agreement"** means the escrow agreement, substantially in the form attached hereto as Schedule F, to be entered into at the first to occur of the Asset Closing or the Stock Closing by Asset Seller, Stock Seller, Purchaser and the Escrow Agent;
- (kkk) **"Estimated Asset Working Capital"** has the meaning set out in Section 3.4.1(a);
- (lll) **"Estimated Asset Working Capital Adjustment Amount"** has the meaning set out in Section 3.4.1(a);
- (mmm) **"Estimated Stock Working Capital"** has the meaning set out in Section 3.4.2(a);
- (nnn) **"Estimated Stock Working Capital Adjustment Amount"** has the meaning set out in Section 3.4.2(a);
- (ooo) **"Excluded Assets"** means, collectively, the following assets of Asset Seller:
- (i) the London Lease;

- (ii) all licences related to Bach's VISUAL ERP software;
  - (iii) all cash on hand, cash equivalents (determined in accordance with GAAP) and bank deposits;
  - (iv) corporate, financial and taxation records of Asset Seller, whether relating to the Asset Seller Business, the Acquired Assets or otherwise, and records of Asset Seller that do not relate to the Asset Seller Business or the Acquired Assets;
  - (v) all personnel records that Bach or CADRI is required by law to retain in its possession;
  - (vi) all Indebtedness of any Affiliate of Asset Seller to Asset Seller;
  - (vii) all insurance policies and rights thereunder, other than in respect of the right to pursue and receive insurance recoveries under such policies in respect of any loss, damage or destruction of or to the Acquired Assets or in respect of claims or insured losses which relate in any way to the Asset Seller Business;
  - (viii) all prepaid rent in respect of the London Lease and all prepaid insurance premiums;
  - (ix) all Tax instalments paid by Asset Seller, input tax credits in respect of Taxes paid prior to the Asset Closing, Scientific and Experimental Development (SRED) claims accrued prior to the Asset Closing and the right to receive any refund of Taxes paid by Asset Seller;
  - (x) all rights of Bach or CADRI under this Agreement, the Escrow Agreement and any other agreement contemplated hereby in connection with the purchase and sale of the Shares and Acquired Assets;
  - (xi) all parcels and tracts of land in which Bach or CADRI has or has ever had an ownership interest (the “**Owned Lands**”);
  - (xii) all buildings, structures, fixtures and improvements located on the Owned Land;
  - (xiii) assets not related to the Asset Seller Business; and
  - (xiv) all Contracts relating to the foregoing;
- (ppp) **"Excluded Liabilities"** means the liabilities or obligations:
- (i) arising directly or indirectly out of or in connection with the Excluded Assets, including, for certainty, the London Lease;

- (ii) arising directly or indirectly out of or in connection with any Law, Proceeding or claim concerning or involving the presence, release or disposal (or suspected presence release or disposal) of Hazardous Substances in, on or under any real property owned or formerly owned, leased or formerly leased, or used at any time by Bach or CADRI (including any Law or Proceeding relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labelling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Substances) or that flow, diffuse, migrate or percolate into, onto, from or under any real property owned or used at any time by Bach or CADRI;
  - (iii) with respect to Indebtedness of Bach or CADRI;
  - (iv) with respect to Taxes of Bach or CADRI for all periods prior to the Asset Closing Date;
  - (v) arising from or in connection with the legal proceedings relating to the following court files of the Superior Court of Justice, London in which Bach was named as a defendant: 34265/00, 33037/99, 31606/99, 31604/99, 27919/98 and 25404/97;
  - (vi) owing to an Affiliate of any Seller Party;
  - (vii) of CADRI to the extent such liabilities or obligations were not liabilities or obligations of Bach prior to the Pre-Closing Asset Transfer;
  - (viii) not related to the Asset Seller Business; and
  - (ix) of any Seller Party arising under this Agreement and the Escrow Agreement, including, for the avoidance of doubt, any liabilities or obligations for which any Seller Party is responsible under the provisions of Article 6;
- (qqq) **"Final Asset Working Capital Statement"** means the final statement of the Asset Working Capital as of the close of business on the Asset Closing Date which has become final and binding upon the parties pursuant to the provisions of Section 3.5;
- (rrr) **"Final Stock Working Capital Statement"** means the final statement of the Stock Working Capital as of the close of business on the Stock Closing Date which has become final and binding upon the parties pursuant to the provisions of Section 3.5;
- (sss) **"Financial Statements"** means, collectively, the Asset Seller Financial Statements and the Acquired Company Financial Statements;

- (ttt) **"GAAP"** means generally accepted accounting principles established from time to time by the Canadian Institute of Chartered Accountants or any successor body thereto;
- (uuu) **"Governmental Body"** means any applicable (i) multinational, federal, provincial, state, regional, municipal or other government, governmental or public department, central bank, court, tribunal, arbitrator, commission, board, bureau, ministry or agency, whether Canadian, U.S., foreign or multinational, (ii) subdivision, agent, commission, board or authority of any of the foregoing or (iii) self-regulatory organization or stock exchange;
- (vvv) **"Hazardous Substances"** has the meaning specified in CERCLA, RCRA or any other applicable Law. "Hazardous Substance" shall include, but is not limited to, asbestos-containing materials, polychlorinated biphenyls (PCBs), acetone, methyl-ethyl-ketone (MEK), trichloroethylene (TCE), trichloroethane (TCA), perchloroethylene (PCE), toluene, benzene, ethyl benzene, xylene, ethylene glycol, urea formaldehyde, lead, barium, copper, mercury, nickel, zinc, beryllium, cadmium, and petroleum or any petroleum-containing substance;
- (www) **"Indebtedness"** means, with respect to any person, (i) all indebtedness of such person for borrowed money, (ii) all obligations of such person for the deferred purchase price of property or for customer deposits, (iii) all obligations of such person evidenced by letters of credit, notes, bonds, debentures or other similar instruments, (iv) all obligations of such person under capitalized leases, and (v) all indebtedness of others referred to in clauses (i) through (iii) above guaranteed by such person;
- (xxx) **"Indemnity Escrow Account"** has the meaning set out in Section 2.2(b)(ii);
- (yyy) **"Indemnified Party"** has the meaning set out in Section 8.4(a);
- (zzz) **"Indemnifying Party"** has the meaning set out in Section 8.4(a);
- (aaaa) **"Independent Accounting Firm"** means Deloitte & Touche LLP or, if Deloitte & Touche LLP is unable or unwilling to act in the capacity specified herein, a chartered accounting firm in Canada of national recognition other than a firm that then serves as the auditor of any Seller Party or Purchaser or any of their respective Affiliates mutually acceptable to Seller Parties and Purchaser, acting reasonably;
- (bbbb) **"Initial Asset Working Capital Statement"** has the meaning set out in Section 3.5(a);
- (cccc) **"Initial Stock Working Capital Statement"** has the meaning set out in Section 3.5(a);
- (dddd) **"Intellectual Property"** means all intellectual property, including all of the following in any jurisdiction throughout the world: (i) all inventions (whether

patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof, (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, URLs, Internet domain names, Web site content, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (iv) all mask works and all applications, registrations, and renewals in connection therewith, (v) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (vi) all computer software (including source code, executable code, data, databases, and related documentation) and systems, (vii) all advertising and promotional materials, (viii) all industrial designs and integrated circuit topographies, (ix) all other proprietary rights, and (x) all copies and tangible embodiments thereof (in whatever form or medium);

- (eeee) "**Law**" means any federal, provincial, state, foreign, local, municipal, international or multinational law, statute, ordinance, rule, regulation, constitution, common law, treaty or Order;
- (ffff) "**London Lease**" means the leasehold interest of Bach in the property known municipally as 1255 Brydges Street, London, Ontario;
- (gggg) "**Losses**" means all claims, demands, proceedings, fines, losses, damages, liabilities, deficiencies, costs and expenses (including reasonable legal fees and disbursements), arising directly or indirectly as a consequence of such matter, after taking into account any Tax benefits actually realized by the Indemnified Party and any amounts recovered by the Indemnified Party under insurance policies, in each case, in respect of the Losses for which the indemnification payments are being made; provided however that "Losses" will exclude any and all punitive damages, damages for lost profits and exemplary damages, except to the extent such punitive damages, damages for lost profits or exemplary damages are included as part of a damage award owed to a third party;
- (hhhh) "**Material Adverse Effect**" means any change, event, violation, inaccuracy, effect or circumstance (each, an "**Effect**") that, individually or taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Material Adverse Effect, is or would reasonably be expected to be materially adverse to the business, financial condition or results of operations of the Companies; provided, however, that no Effect (by itself or when aggregated or taken together with any and all other Effects)

directly or indirectly resulting from, arising out of, attributable to, or related to any of the following shall be deemed to be or constitute a "Material Adverse Effect", and no Effect (by itself or when aggregated or taken together with any and all other such Effects) directly or indirectly resulting from, arising out of, attributable to, or related to any of the following shall be taken into account when determining whether a "Material Adverse Effect" has occurred or may, would or could occur:

- (i) changes in general political and economic conditions (including Canadian-U.S. dollar exchange rate fluctuations) and changes affecting generally the industries and markets in which the Companies conduct business that, in any of the foregoing cases, do not affect the Companies in a disproportionate manner relative to other participants in the same industry and in the same locales as the Companies;
  - (ii) the fact of the pendency of the transactions contemplated by this Agreement and the identity of Purchaser; and
  - (iii) compliance with the terms of this Agreement, excluding the completion of all or any portion of the Pre-Closing Reorganization and the Pre-Closing Asset Transfer (provided that the transfer of the Acquired Assets from Bach to CADRI shall not constitute a Material Adverse Effect in respect of Bach unless such transfer has an Effect that is, or would reasonably be expected to be, materially adverse to the Asset Seller Business);
- (iiii) **"Material Contract"** has the meaning set out in Section 4.1(p);
- (jjjj) **"Negotiation Period"** has the meaning set out in Section 8.5;
- (kkkk) **"[Redacted] Escrow Account"** has the meaning set out in Section 2.2(c)(iii);
- (llll) **"[Redacted] Escrow Amount"** has the meaning set out in Section 2.2(c)(iii);
- (mmmm) **"[Redacted]"** has the meaning set out in Section 8.1(iv);
- (nnnn) **"Non-Affiliate"** has the meaning set out in Section 6.14;
- (oooo) **"Notified Seller"** has the meaning set out in Section 3.5(a);
- (pppp) **"Notice of Disagreement"** has the meaning set out in Section 3.5(b);
- (qqqq) **"Order"** means any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any Governmental Body;
- (rrrr) **"Ordinary Course of Business"** in respect of any Company means the ordinary course of business of such Company consistent with past custom and practice;

(ssss) **"Permitted Encumbrances"** means the following Encumbrances:

- (i) Taxes, assessments or governmental charges arising in the Ordinary Course of Business, including liens for taxes and assessments not yet due and payable or being contested in good faith by appropriate action and mechanic's, materialmen and similar liens incurred in the Ordinary Course of Business;
- (ii) financing statements and other secured party filings for purchase money liens or liens securing rental payments for transactions made in the Ordinary Course of Business, a complete and accurate list of which is set forth in Section 1.1(ssss) of the Disclosure Schedule;
- (iii) Encumbrances affecting personal property that do not (A) secure Indebtedness, or (B) individually or in the aggregate, materially restrict or impair the right to possession, use or ownership of the personal property subject thereto or affected thereby, provided that Encumbrances permitted pursuant to this Section 1.1(ssss)(iii) shall not include financing statements and other secured party filings or the security interests perfected or evidenced thereby;
- (iv) with respect to the real property owned by a Company (A) servitudes, easements (including access, pipeline, utility, and drainage easements), reservations (including mineral reservations), covenants, conditions and restrictions and rights of way affecting the real property or any part thereof; (B) leases, subleases, license agreements and similar agreements under which a Company grants a third party the right to use or occupy any portion of the real property; (C) zoning ordinances, sanitary and building codes and all other Laws and Orders of any Governmental Body having jurisdiction over the real property; (D) any mortgage or deed of trust to which any real property lease is subject or subordinated, but only to the extent that such mortgage does not secure Indebtedness of a Company; (E) all Encumbrances of record or that are shown on the title commitments obtained by Purchaser or that would be disclosed on a title commitment for any portion of the real property; (F) all Encumbrances affecting the fee title to any parcel of leased real property; and (G) encroachments and matters disclosed by surveys obtained by Purchaser or that would be disclosed by an accurate survey of the real property or applicable portion thereof; and (H) other imperfections in title to the real property; provided, however, that with respect to the Encumbrances described in clauses (A), (B), (C), (D) (E), (F) and (G), above, such Encumbrances shall be Permitted Encumbrances only if such Encumbrances do not (I) secure Indebtedness of any Company, or (II) have a Material Adverse Effect on the ability of any Company to use the property for purposes of the Business;

- (v) Encumbrances that will be released at or prior to the Applicable Closing;  
and
- (vi) the Encumbrances listed in Section 1.1(ssss) of the Disclosure Schedule;
- (tttt) **"person"** means an individual, a partnership, a limited partnership, a corporation, an association, a limited liability company, an unlimited liability company, a trust, a joint venture, an unincorporated organization, or a Governmental Body;
- (uuuu) **"Pittsford Lease"** has the meaning set out in Section 6.21;
- (vvvv) **"Pre-Closing Asset Transfer"** has the meaning set out in Section 6.3(c);
- (wwwv) **"Pre-Closing Asset Transfer Description"** has the meaning set out in Section 6.3(c);
- (xxxx) **"Pre-Closing Reorganization"** has the meaning set out in Section 6.3(b);
- (yyyy) **"Pre-Closing Reorganization Description"** has the meaning set out in Section 6.3(b);
- (zzzz) **"Prime Rate"** means the variable rate of interest per annum announced from time to time by HSBC Bank Canada as the reference rate used by such bank in respect of commercial loans made by such bank and known as such bank's "prime rate";
- (aaaaa) **"Proceeding"** means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body;
- (bbbbb) **"Property"** means the property municipally known as 535 West Third Street, Berwick, Columbia County, Pennsylvania, consisting of tax parcel numbers 04B-04-251-00,000, 04C-04-267-00,000, 04C-04-268-00,000, 04C-04-269-00,000, 04C-04-270-00,000 and 04C-04-266-00,000;
- (ccccc) **"Purchase Price"** has the meaning set out in Section 2.2(a);
- (ddddd) **"Qualifying CADRI Sale"** has the meaning set out in Section 8.1;
- (eeee) **"Qualifying Parent Sale"** has the meaning set out in Section 8.1;
- (fffff) **"Reference Asset Working Capital"** means \$4,000,000;
- (ggggg) **"Reference Stock Working Capital"** means US\$5,100,000 (which amount, for the avoidance of doubt, is based upon an assumption of \$0 for income tax liability);

- (hhhhh) "[Redacted] **Escrow Account**" has the meaning set out in Section 2.2(b)(iii);;
- (iiii) "[Redacted] **Escrow Amount**" has the meaning set out in Section 2.2(b)(iii);;
- (jjjjj) "**Replacement Plans**" has the meaning set out in Section 6.9;
- (kkkkk) "**Restricted Officer**" has the meaning set out in Section 6.14;
- (lllll) "**Section 9.1(f) Termination Notice**" has the meaning set out in Section 9.1(f);
- (mmmmm) "**Shares**" has the meaning set out in the recitals hereto;
- (nnnnn) "**Stock Closing**" means the consummation of the purchase and sale of the Shares pursuant to this Agreement;
- (ooooo) "**Stock Closing Date**" means the date upon which the Stock Closing actually occurs;
- (ppppp) "**Stock Escrow Amount**" has the meaning set out in Section 2.2(c)(ii);
- (qqqqq) "**Stock Purchase Price**" has the meaning set out in Section 2.2(a);
- (rrrrr) "**Stock Seller**" means, prior to the completion of the Pre-Closing Reorganization, Parent and, from and after the completion of the Pre-Closing Reorganization, CADRI;
- (sssss) "**Stock Working Capital**" means, for the Acquired Company, as of a particular date of determination, the Acquired Companies' Current Assets less the Acquired Companies' Current Liabilities, in each case determined on a consolidated basis in accordance with GAAP, applied on a basis consistent with past practices used in preparing the Acquired Company Financial Statements;
- (ttttt) "**Straddle Period**" has the meaning set out in Section 6.11(a);
- (uuuuu) "**Taxes**" means any federal, provincial, territorial, state or local income, goods and services, value added, corporation, land transfer, license, payroll, excise, sales, use, capital, withholding or other tax, levy, duty, assessment, reassessment or other charges of any kind whatsoever, whether deferred, direct or indirect, including any interest or penalty on any of the foregoing, whether disputed or not;
- (vvvvv) "**Threshold Amount**" has the meaning set out in Section 8.3(a);
- (wwwww) "**Third Party**" has the meaning set out in Section 8.6(c);
- (xxxxx) "**Third Party Claim**" has the meaning set out in Section 8.4(a);
- (yyyyy) "**Transferred Employees**" has the meaning set out in Section 6.9;

(zzzzz) **"Transactions"** means the purchase and sale of the Acquired Assets and all other transactions related thereto contemplated by this Agreement; and

(aaaaa) **"Unaffiliated Entity"** has the meaning set out in Section 8.1;

## **1.2 Rules of Construction**

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

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

## **1.3 Entire Agreement**

This Agreement and the other agreements contemplated hereby, including the Escrow Agreement, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and

discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as provided herein or in the other agreements contemplated hereby, including the Escrow Agreement.

**1.4            Time of Essence**

Time shall be of the essence of this Agreement.

**1.5            Governing Law and Submission to Jurisdiction**

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

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

**1.6            Severability**

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

**1.7            Knowledge**

References in this Agreement to the "**Knowledge of Seller**" mean the actual knowledge of any one or more of the following officers, as applicable: (a) in respect of the Seller Parties and the Companies, Brian McMullan, Chief Financial Officer of Parent and Terry McManaman, Chief Executive Officer of Parent, (b) in respect of the Acquired Companies, John Mensinger, President of the Acquired Operating Company, and Tom Madigan, Controller of the Acquired Operating Company, and (c) in respect of Bach, Paul Weber, President of Bach, and Jason McLellan, Controller of Bach, in each case after making diligent inquiry as reasonably necessary to inform themselves as to the relevant matters. Purchaser acknowledges and agrees that the individuals listed in the immediately preceding sentence are acting in their capacities as officers of Parent, Bach or the Acquired Operating Company, as the case may be, and such individuals shall have no personal liability for any breach of this Agreement by any Seller Party. Purchaser shall not name any such individual as a party to any Claim relating to this Agreement.

## **1.8            Disclosure Schedule**

The Disclosure Schedule is arranged in sections and subsections corresponding to the numbered and lettered sections and subsections contained in this Agreement and the disclosures contained in any section or subsection of the Disclosure Schedule shall qualify only the corresponding section or subsection of this Agreement, unless such disclosures cross reference to another section or subsection in which case the disclosures will qualify those sections and subsections as well.

## **1.9            Schedules**

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

|                     |                                              |
|---------------------|----------------------------------------------|
| Schedule A          | Acquired Company Working Capital Information |
| Schedule B          | Asset Seller Working Capital Information     |
| Schedule C          | Asset Seller Equipment                       |
| Schedule D          | Tax Allocation                               |
| Schedule E          | Material Consents                            |
| Schedule F          | Form of Escrow Agreement                     |
| Schedule G          | Form of Buyer-Seller Agreement               |
| Schedule H          | Form of Environmental Insurance              |
| Schedule I          | Pre-Closing Reorganization Description       |
| Schedule J          | Pre-Closing Asset Transfer Description       |
| Schedule K          | Environmental Action Plan                    |
| Disclosure Schedule |                                              |

## **ARTICLE 2**

### **PURCHASE AND SALE OF ACQUIRED ASSETS AND SHARES**

#### **2.1            Purchase and Sale of the Acquired Assets and Shares; Assumption of Assumed Liabilities**

(a) Subject to the terms and conditions hereof, at the Asset Closing, Asset Seller shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase from Asset Seller all, but not less than all, of Asset Seller's right, title and interest in and to the Acquired Assets free and clear of all Encumbrances other than Permitted Encumbrances, and Purchaser shall assume the Assumed Liabilities. Purchaser will not assume or have any responsibility, however, with respect to any Excluded Liabilities, any and all of which shall be retained by Bach or CADRI, as the case may be.

(b) Subject to the terms and conditions hereof, at the Stock Closing, Stock Seller shall sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase from Stock Seller all, but not less than all, of Stock Seller's right, title and interest in and to the Shares, free and clear of all Encumbrances.

## 2.2 Purchase Price

(a) Subject to the adjustments, if any, required by the terms of Sections 3.4 and 3.5, the purchase price for the Acquired Assets shall be Thirteen Million Dollars (\$13,000,000) and the assumption of the Assumed Liabilities (the "**Asset Purchase Price**"), and the purchase price for the Shares shall be Thirty-Five Million Dollars (\$35,000,000) less the sum of the amount of all Indebtedness of the Acquired Company at Closing (other than trade payables included in the Stock Working Capital) (the "**Stock Purchase Price**" and, together with the Asset Purchase Price, the "**Purchase Price**").

(b) At the Asset Closing, Purchaser shall:

- (i) pay to Asset Seller the Asset Purchase Price less the Asset Escrow Amount and, subject to Section 6.20, the [Redacted: Type of escrow account redacted.] Escrow Amount, such payment to be made by wire transfer in immediately available funds to an account designated in writing by Asset Seller not less than three Business Days prior to the Asset Closing Date;
- (ii) deposit One Million Nine Hundred Fifty Thousand Dollars (\$1,950,000) of the Asset Purchase Price (the "**Asset Escrow Amount**") into an account (the "**Indemnity Escrow Account**") established with and maintained by the Escrow Agent, which the Escrow Agent shall hold and maintain pursuant to the terms of the Escrow Agreement; and
- (iii) subject to Section 6.20, deposit [Redacted: Amount of escrow.] (the "[Redacted: Type of escrow account redacted.] **Escrow Amount**") into an account (other than the Indemnity Escrow Account and the [Redacted: Type of escrow account redacted.] Escrow Account) (the "[Redacted: Type of escrow account redacted.] **Escrow Account**") established with and maintained by the Escrow Agent, which the Escrow Agent shall hold and maintain pursuant to the terms of the Escrow Agreement.

(c) At the Stock Closing, Purchaser shall:

- (i) pay to Stock Seller the Stock Purchase Price less the Stock Escrow Amount and the [Redacted: Type of escrow account redacted.] Escrow Amount, such payment to be made by wire transfer in immediately available funds to an account designated in writing by Stock Seller not less than three Business Days prior to the Stock Closing Date;
- (ii) deposit Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000) of the Stock Purchase Price (the "**Stock Escrow Amount**") into the Indemnity Escrow Account established with and maintained by the Escrow Agent, which the Escrow Agent shall hold and maintain pursuant to the terms of the Escrow Agreement; and

- (iii) deposit [Redacted: Amount of escrow.] of the Stock Purchase Price (the "[Redacted: Type of escrow account.] **Escrow Amount**") into an account (other than the Indemnity Escrow Account) (the "[Redacted: Type of escrow account redacted.] **Escrow Account**") established with and maintained by the Escrow Agent, which the Escrow Agent shall hold and maintain pursuant to the terms of the Escrow Agreement.

### **ARTICLE 3** **CLOSING**

#### **3.1 Closing**

Subject to fulfillment or waiver of the applicable conditions in this Agreement:

- (a) the Asset Closing shall take place as soon as practicable following satisfaction or waiver of the conditions applicable to the Asset Closing in Sections 7.1, 7.2.1 and 7.2.3 hereof, but in any event not later than the third Business Day thereafter, or at such other time as the parties may agree; and
- (b) the Stock Closing shall take place as soon as practicable following satisfaction or waiver of the conditions applicable to the Stock Closing in Sections 7.1, 7.2.1 and 7.2.2 hereof, but in any event not later than the third Business Day thereafter, or at such other time as the parties may agree,

in each case at the offices of Davies Ward Phillips & Vineberg LLP, 44<sup>th</sup> Floor, 1 First Canadian Place, Toronto, Ontario or such other place as the parties may agree, at 10:00 a.m., Toronto time. With respect to a particular closing, all closing transactions occurring at such closing shall be deemed to have occurred simultaneously.

#### **3.2 Closing Deliveries by Sellers**

**3.2.1 Asset Closing.** At the Asset Closing, Asset Seller shall deliver to Purchaser quiet possession of all tangible personal property comprising part of the Acquired Assets and shall deliver or cause others, as applicable, to deliver the following duly executed documents to Purchaser:

- (a) a certificate executed on behalf of each Seller Party by the president or any vice president of the relevant Seller Party, dated the Asset Closing Date, representing and certifying that each of the conditions set forth in Sections 7.2.1(a) and 7.2.1(b) and Sections 7.2.3(a), (b) and (d) has been fulfilled;
- (b) one or more duly executed bills of sale for all of the Acquired Assets in form and substance reasonably acceptable to Purchaser and Asset Seller for assignment and transfer of the Acquired Assets to Purchaser;
- (c) documentation of the completion of the Pre-Closing Asset Transfer in accordance with the Pre-Closing Asset Transfer Description;

- (d) one or more assignment and assumption agreements in form and substance reasonably acceptable to Purchaser and Asset Seller for the assignment to Purchaser of all of Asset Seller's right, title and interest in and to the Assumed Contracts and assumption by Purchaser of the Assumed Liabilities;
- (e) one or more duly executed instruments of assignment for each registered patent or trademark and for each pending patent application or pending trademark application with respect to the Asset Seller Business;
- (f) if the Asset Closing occurs prior to or concurrently with the Stock Closing, the Escrow Agreement, executed by Asset Seller, Stock Seller, Purchaser and the Escrow Agent; and
- (g) such other certificates, instruments of conveyance, and documents required by this Agreement or as may be reasonably requested by Purchaser and reasonably agreed to by Asset Seller prior to the Asset Closing Date to carry out the intent and purposes of this Agreement.

**3.2.2 Stock Closing.** At the Stock Closing, Stock Seller shall deliver or cause others, as applicable, to deliver the following duly executed documents to Purchaser:

- (a) a certificate executed on behalf of each Seller Party by the president or any vice president of the relevant Seller Party, dated the Closing Date, representing and certifying that each of the conditions set forth in Section 7.2.1(a) and 7.2.1(b) and Section 7.2.2(a), (b) and (d) has been fulfilled;
- (b) assignments or other instruments of transfer duly endorsed in blank, or accompanied by share powers or other instruments of transfer duly executed in blank, and otherwise in form and substance reasonably acceptable to Purchaser and Stock Seller for transfer of the Shares to Purchaser;
- (c) documentation of the completion of the Pre-Closing Reorganization in accordance with the Pre-Closing Reorganization Description;
- (d) the minute books of the Acquired Companies;
- (e) written resignations effective as of the Stock Closing Date from such directors of the Acquired Companies as the Purchaser may designate by notice in writing given to the Stock Seller at least three Business Days prior to the Closing Date;
- (f) if the Stock Closing occurs prior to or concurrently with the Asset Closing, the Escrow Agreement, executed by Asset Seller, Stock Seller, Purchaser and the Escrow Agent; and
- (g) such other certificates, instruments of conveyance, and documents required by this Agreement or as may be reasonably requested by Purchaser and reasonably agreed to by Stock Seller prior to the Stock Closing Date to carry out the intent and purposes of this Agreement.

### **3.3 Closing Deliveries by Purchaser**

**3.3.1 Asset Closing.** At the Asset Closing, Purchaser shall pay to Asset Seller the Asset Purchase Price (as adjusted, if at all, as contemplated by Section 3.4.1), less the Asset Escrow Amount and, subject to Section 6.20, the [Redacted: Type of escrow account redacted.] Escrow Amount, deposit the Asset Escrow Amount and, subject to Section 6.20, the [Redacted: Type of escrow account redacted.] Escrow Amount as required by Section 2.2(b)(ii) and Section 2.2(b)(iii), respectively, and deliver the following documents duly executed by Purchaser or others, as applicable:

- (a) a certificate executed by the president or any vice president of Purchaser, dated the Asset Closing Date, representing and certifying that each of the conditions set forth in Sections 7.1(a) and 7.1(b) has been fulfilled;
- (b) one or more assignment and assumption agreements in form and substance reasonably acceptable to Purchaser and Asset Seller for the assignment to Purchaser of all of Asset Seller's right, title and interest in and to the Assumed Contracts and assumption by Purchaser of the Assumed Liabilities;
- (c) if the Asset Closing occurs prior to or concurrently with the Stock Closing, the Escrow Agreement, executed by Asset Seller, Stock Seller, Purchaser and the Escrow Agent; and
- (d) such other certificates, instruments, and documents required by this Agreement or as may be reasonably requested by Asset Seller and reasonably agreed to by Purchaser prior to the Asset Closing Date to carry out the intent and purposes of this Agreement.

**3.3.2 Stock Closing.** At the Stock Closing, Purchaser will pay to Stock Seller the Stock Purchase Price (as adjusted, if at all, as contemplated by Section 3.4.2), less the Stock Escrow Amount and the [Redacted: Type of escrow account redacted.] Escrow Amount, deposit the Stock Escrow Amount and the [Redacted: Type of escrow account redacted.] Escrow Amount as required by Section 2.2(c)(ii) and Section 2.2(c)(iii), respectively, and deliver the following documents duly executed by Purchaser or others, as applicable:

- (a) a certificate executed by the president or any vice president of Purchaser, dated the Stock Closing Date, representing and certifying that the conditions set forth in Sections 7.1(a) and 7.1(b) have been fulfilled;
- (b) if the Stock Closing occurs prior to or concurrently with the Asset Closing, the Escrow Agreement, executed by Asset Seller, Stock Seller, Purchaser and the Escrow Agent; and
- (c) such other certificates, instruments, and documents required by this Agreement or as may be reasonably requested by Stock Seller and reasonably agreed to by Purchaser prior to the Stock Closing Date to carry out the intent and purposes of this Agreement.

### **3.4 Closing Adjustments**

#### **3.4.1 Asset Closing Adjustments.**

(a) Asset Seller shall deliver to Purchaser at least five Business Days prior to the Asset Closing Date a written statement setting forth a good faith estimate of the Asset Working Capital, prepared on the basis of, and using the same accounting policies, principles, methodologies and preparations as the Asset Seller Financial Statements (the "**Estimated Asset Working Capital**") as of the Asset Closing Date and the difference obtained by subtracting the Reference Asset Working Capital from the Estimated Asset Working Capital (the "**Estimated Asset Working Capital Adjustment Amount**").

(b) Subject to the last sentence in this Section 3.4.1(b), if the amount which is the (i) Estimated Asset Working Capital Adjustment Amount is a positive number, the Asset Purchase Price shall be increased dollar for dollar by such number, (ii) Estimated Asset Working Capital Adjustment Amount is a negative number, the Asset Purchase Price shall be decreased dollar for dollar by such number. Any adjustment to the Asset Purchase Price resulting from this Section 3.4.1 shall be reflected in the amount of the Asset Purchase Price paid at the Asset Closing pursuant to Section 2.2.

#### **3.4.2 Stock Closing Adjustments**

(a) Stock Seller shall deliver to Purchaser at least five Business Days prior to the Stock Closing Date a written statement setting forth a good faith estimate of the Stock Working Capital, prepared on the basis of, and using the same accounting policies, principles, methodologies and preparations as the Stock Seller Financial Statements (the "**Estimated Stock Working Capital**") as of the Stock Closing Date and the difference obtained by subtracting the Reference Stock Working Capital from the Estimated Stock Working Capital (the "**Estimated Stock Working Capital Adjustment Amount**"). For the avoidance of doubt, the Estimated Stock Working Capital shall include as a component of the Acquired Companies' Current Liabilities a specific reserve in an amount sufficient to fund the cost of all income tax liability for the period up to and including the Stock Closing Date.

(b) Subject to the last sentence in this Section 3.4.2(b), if the amount which is the (i) Estimated Stock Working Capital Adjustment Amount is a positive number, the Stock Purchase Price shall be increased dollar for dollar by such number, (ii) Estimated Stock Working Capital Adjustment Amount is a negative number, the Stock Purchase Price shall be decreased dollar for dollar by such number. Any adjustment to the Stock Purchase Price resulting from this Section 3.4.2 shall be reflected in the amount of the Stock Purchase Price paid at the Stock Closing pursuant to Section 2.2.

### **3.5 Post-Closing Adjustment of Purchase Price.**

Each of the Asset Purchase Price and the Stock Purchase Price shall be subject to adjustment after the Applicable Closing Date as specified in this Section 3.5:

- (a) No later than 90 days after the Applicable Closing Date, Purchaser shall prepare and deliver (i) to Asset Seller, in the case of the Asset Closing, a statement of the

Asset Working Capital as of the close of business on the Asset Closing Date (the "**Closing Date Asset Working Capital**"), which shall set forth Purchaser's determination of the Asset Working Capital prepared on the basis of, and using the same accounting policies, principles, methodologies and preparations as, the Asset Seller Financial Statements (the "**Initial Asset Working Capital Statement**") and (ii) to Stock Seller, in the case of the Stock Closing, a statement of the Stock Working Capital as of the close of business on the Stock Closing Date (the "**Closing Date Stock Working Capital**"), which shall set forth Purchaser's determination of the Stock Working Capital prepared on the basis of, and using the same accounting policies, principles, methodologies and preparations as, the Acquired Company Financial Statements (the "**Initial Stock Working Capital Statement**"). For the avoidance of doubt, the Closing Date Stock Working Capital shall include as a component of the Acquired Companies' Current Liabilities a specific reserve in an amount sufficient to fund the cost of all income tax liability for the period up to and including the Stock Closing Date. The Asset Seller or the Stock Seller, as the case may be, entitled to receive the working capital statement contemplated by the preceding sentence shall be referred to as the "**Notified Seller**". At all reasonable times during the 30 days immediately following receipt by the Notified Seller of the Initial Asset Working Capital Statement or Initial Stock Working Capital Statement, as the case may be, the Notified Seller shall be permitted to review Purchaser's records relating to the Initial Asset Working Capital Statement or the Initial Stock Working Capital Statement, as the case may be, and Purchaser shall make available the individuals responsible for the preparation of the Initial Asset Working Capital Statement or Initial Stock Working Capital Statement, as the case may be, in order to respond to the inquiries of the Notified Seller related thereto.

- (b) The Notified Seller shall notify Purchaser in writing (a "**Notice of Disagreement**") within 30 days after receiving the Initial Asset Working Capital Statement or the Initial Stock Working Capital Statement, as the case may be, if the Notified Seller disagrees with any amounts reflected on the Initial Asset Working Capital Statement or Initial Stock Working Capital Statement, as the case may be. The Notice of Disagreement shall set forth in reasonable detail the reason for such dispute, the dollar amounts involved and the Notified Seller's good faith estimate of the Closing Date Asset Working Capital or Closing Date Stock Working Capital, as the case may be. If the Notified Seller does not deliver a Notice of Disagreement to Purchaser within such 30-day period, then the Initial Asset Working Capital Statement or the Initial Stock Working Capital Statement, as the case may be, shall be deemed to have been accepted by the Notified Seller, shall become final and binding upon the parties and shall be deemed the Final Asset Working Capital Statement or the Final Stock Working Capital Statement, as the case may be. If the Notified Seller does deliver a Notice of Disagreement, only those matters that are specified in such Notice of Disagreement shall be deemed to be in dispute, and all other matters shall be final and binding upon the parties.

- (c) During the 30 days immediately following the delivery of a Notice of Disagreement, the Notified Seller and Purchaser shall seek to resolve any differences that they may have with respect to any matter specified in the Notice of Disagreement, and any resolution by them as to any such matter shall be final and binding on the parties hereto. If at the end of such 30-day period the Notified Seller and Purchaser have been unable to agree upon all matters specified in the Notice of Disagreement, then the Notified Seller and Purchaser shall submit to the Independent Accounting Firm for review and resolution any and all matters specified in the Notice of Disagreement that remain in dispute. Purchaser and the Notified Seller shall cause the Independent Accounting Firm to make a final determination (which determination shall be binding on the parties hereto) of the Closing Date Asset Working Capital or the Closing Date Stock Working Capital, as the case may be, within 45 days from such submission, and such final determination shall be deemed the Final Asset Working Capital Statement or Final Stock Working Capital Statement, as the case may be. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Notified Seller and the other Seller Parties, on the one hand, and Purchaser, on the other hand, in the same proportion that the aggregate amount of such remaining disputed items so submitted to the Independent Accounting Firm that is unsuccessfully disputed by the Notified Seller, on the one hand, and Purchaser, on the other hand (as finally determined by the Independent Accounting Firm), bears to the total amount of such remaining disputed items so submitted. During the 45-day review by the Independent Accounting Firm, Purchaser and the Seller Parties shall each make available to the Independent Accounting Firm such individuals and such information, books and records as may be reasonably required by the Independent Accounting Firm to make its final determination.
- (d) Within five Business Days after the Final Asset Working Capital Statement or the Final Stock Working Capital Statement, as the case may be, becomes or is deemed final and binding on the parties, subject to the last paragraph of this Section 3.5(d), an adjustment to Asset Purchase Price or Stock Purchase Price, as applicable, shall be made as follows:
  - (i) in the event that the Estimated Asset Working Capital exceeds the Closing Date Asset Working Capital (as set forth in the Final Asset Working Capital Statement), then the Asset Purchase Price shall be adjusted downward in an amount equal to the amount by which the Estimated Asset Working Capital exceeds the Closing Date Asset Working Capital (as set forth in the Final Asset Working Capital Statement) and the Seller Parties shall pay to Purchaser such amount;
  - (ii) in the event that the Estimated Stock Working Capital exceeds the Closing Date Stock Working Capital (as set forth in the Final Stock Working Capital Statement), then the Stock Purchase Price shall be adjusted downward in an amount equal to the amount by which the Estimated Stock Working Capital exceeds the Closing Date Stock Working Capital

(as set forth in the Final Stock Working Capital Statement) and the Seller Parties shall pay to Purchaser such amount;

- (iii) in the event that the Closing Date Asset Working Capital (as set forth in the Final Asset Working Capital Statement) exceeds the Estimated Asset Working Capital, then the Asset Purchase Price shall be adjusted upward in an amount equal to the amount by which the Closing Date Asset Working Capital (as set forth in the Final Asset Working Capital Statement) exceeds the Estimated Asset Working Capital and Purchaser shall pay to Asset Seller such amount; and
  - (iv) in the event that the Closing Date Stock Working Capital (as set forth in the Final Stock Working Capital Statement) exceeds the Estimated Stock Working Capital, then the Stock Purchase Price shall be adjusted upward in an amount equal to the amount by which the Closing Date Stock Working Capital (as set forth in the Final Stock Working Capital Statement) exceeds the Estimated Stock Working Capital and Purchaser shall pay to Stock Seller such amount.
- (e) Purchaser agrees that following the Applicable Closing Date through the date on which payment, if any, is made pursuant to Section 3.5(d) or if the Final Asset Working Capital Statement or the Final Stock Working Capital Statement, as the case may be, indicates that no such payment is required, then through the date on which the Final Asset Working Capital Statement or the Final Stock Working Capital Statement, as the case may be, becomes effective, it will not take any actions with respect to any accounting books, records, policies or procedures on which the Initial Asset Working Capital Statement and the Initial Stock Working Capital Statement was, or the Final Asset Working Capital Statement and Final Stock Working Capital Statement is, to be based that would make it impossible or impracticable to calculate the Closing Date Asset Working Capital or the Closing Date Stock Working Capital in the manner and utilizing the methods required hereby. Purchaser agrees to permit the Seller Parties (and their advisors and/or agents) access to (i) the books and records of the Acquired Companies following the Stock Closing through the date on which the Final Stock Working Capital Statement becomes effective for purposes of this Section 3.5, and (ii) the books and records related to the Asset Seller Business (other than books and records that are Excluded Assets) following the Asset Closing through the date on which the Final Asset Working Capital Statement becomes effective for purposes of this Section 3.5. The Seller Parties agree to permit Purchaser (and its advisors and/or agents) access to the books and records related to the Asset Seller Business (other than books and records delivered to Purchaser in accordance with Section 6.2) following the Asset Closing through the date on which the Final Asset Working Capital Statement becomes effective for purposes of this Section 3.5.
- (f) Any payment required to be made by Purchaser or the Seller Parties pursuant to this Section 3.5, if any, shall bear interest from the Applicable Closing Date

through the date of payment at the interest rate per annum equal to the Prime Rate. For the purposes of calculating any adjustment to the Purchase Price in this Section 3.5, the amount of any such adjustment shall be converted from United States dollars to Canadian dollars at the Bank of Canada noon rate of exchange on the Business Day immediately preceding the Applicable Closing Date.

#### **ARTICLE 4**

#### **REPRESENTATIONS AND WARRANTIES OF SELLER PARTIES**

##### **4.1        Representations and Warranties of Seller Parties**

Each Seller Party jointly and severally represents and warrants to Purchaser as follows:

- (a)    **Organization of Seller Parties.** Each of the Seller Parties, the Acquired Company and the Acquired Operating Company is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation. The Companies are duly authorized to conduct business and are in good standing under the Laws of each jurisdiction where such qualification is required, except where the lack of such qualification would not have a Material Adverse Effect. Asset Seller has full power and authority to carry on the Asset Seller Business as currently conducted and the Acquired Companies have full power and authority to carry on the Acquired Company Business as currently conducted. The Acquired Company has no business operations other than holding shares in the capital of the Acquired Operating Company and, prior to the completion of the Pre-Closing Reorganization, GBI Industries, Inc. Except for activities incidental to (i) its organization and formation, (ii) maintenance of its corporate existence, (iii) holding the shares of its subsidiaries, and (iii) managing intercompany balances that will be eliminated prior to the Stock Closing, the Acquired Company has engaged in no other business activities and has incurred no liability or obligations of any nature or kind. Bach's operations and assets are located in the Province of Ontario and in no other jurisdiction (except for one sales representative operating out of the Province of Quebec). CADRI's operations and assets are located in the Provinces of Ontario and Quebec and in no other jurisdiction.
- (b)    **Authorization of Transaction.** Each Seller Party has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of each Seller Party, enforceable in accordance with its terms and conditions, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- (c)    **Non-Contravention.** Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, including, for

the avoidance of doubt, the Pre-Closing Reorganization and the Pre-Closing Asset Transfer, will (i) violate any Law or Order, or the articles or by-laws of any of the Seller Parties or any of the Companies or (ii) except as disclosed in Section 4.1(c) of the Disclosure Schedule, conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which any of the Seller Parties or any of the Companies are a party or by which they are bound or to which any of their assets is subject (or result in the imposition of any Encumbrance upon any of their assets). Except as disclosed in Section 4.1(c) of the Disclosure Schedule (including the lender consent required pursuant to the Credit Agreement), none of the Seller Parties or the Companies has to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Body or other third party in order for the parties to consummate the transactions contemplated by this Agreement, except where the failure to give notice, to file, or to obtain any authorization, consent, or approval would not have a Material Adverse Effect.

- (d) **Broker's Fees.** No Seller Party nor any of the Companies has any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Purchaser could become liable or obligated.
- (e) **Shares.** Parent is, and on the Stock Closing Date CADRI will be, the registered and beneficial owner and holder of the Shares, free and clear of any restrictions on transfer, taxes, Encumbrances (except for the pledge of the Shares in favour of the lenders pursuant to the Credit Agreement which shall be released at or prior to the Stock Closing), options, warrants, purchase rights, claims, and demands, except as may be provided for in the articles of the Acquired Company. The Shares constitute all of the outstanding equity interests in the Acquired Company. The Shares have been duly authorized, are validly issued, fully paid and non-assessable. Neither Parent nor CADRI is a party to any option, warrant, purchase right, or other contract or commitment that could require it to sell, transfer, or otherwise dispose of any of the Shares or other equity interest in the Acquired Company (other than this Agreement and the agreements used to carry out the Pre-Closing Reorganization on terms and conditions consistent with the Pre-Closing Reorganization Description). Neither Parent nor CADRI is a party to any voting trust, proxy, or other agreement or understanding with respect to the voting of the Shares.
- (f) **Acquired Assets.** Bach has good and marketable title to, or a valid leasehold interest in, and on the Asset Closing Date CADRI will have good and marketable title to, or a valid leasehold interest in, the properties and assets used or usable by it, located on its premises, or shown on the balance sheet of Bach for the financial year ended December 31, 2009 or acquired after the date thereof, free and clear of all Encumbrances other than Permitted Encumbrances, except for properties and assets disposed of in the Ordinary Course of Business

since December 31, 2009. Bach has good and marketable title to, and on the Asset Closing Date CADRI will have good and marketable title to, all of the Acquired Assets, free and clear of all Encumbrances or other restrictions on transfer, other than Permitted Encumbrances. No property or interest in any property which relates to and is necessary in the operation of the Asset Seller Business is presently owned by or leased to any party other than Asset Seller (except that the London Lease will continue to be an asset of Bach following the Pre-Closing Asset Transfer). The Acquired Assets are sufficient to carry on the Asset Seller Business in the manner in which Bach has conducted the Asset Seller Business.

(g) **Subsidiaries.**

- (i) Bach does not have any subsidiaries and does not own any equity interest, or right or obligation to acquire any equity interest, in any other person.
- (ii) As at the date of this Agreement, the Acquired Company does not have any subsidiaries, and does not own any equity interest, or right or obligation to acquire any equity interest, in any other person, other than the Acquired Operating Company and GBI Industries, Inc. At the Stock Closing, the Acquired Company will not have any subsidiaries, and will not own any equity interest, or right or obligation to acquire any equity interest, in any other person, other than the Acquired Operating Company.

(h) **Financial Statements.**

- (i) The balance sheets and statements of income of Bach (reported in Canadian dollars) for the financial years ended December 31, 2009, 2008 and 2007 (the "**Asset Seller Annual Financial Statements**") and the balance sheet and statements of income for Bach as at and for the interim period ended March 31, 2010 (the "**Asset Seller Interim Financial Statements**") and, together with the Asset Seller Annual Financial Statements, the "**Asset Seller Financial Statements**") were used in the consolidation of Parent's consolidated financial statements, were prepared in accordance with GAAP and fairly and accurately present the financial condition of Bach at the respective dates indicated and the results of operation of Bach for the periods covered thereby.
- (ii) The balance sheets and statements of income of the Acquired Company (reported in US dollars) for the financial years ended December 31, 2009, 2008 and 2007 (the "**Acquired Company Annual Financial Statements**") and the balance sheet and statements of income for the Acquired Company as at and for the interim period ended March 31, 2010 (the "**Acquired Company Interim Financial Statements**") and, together with the Acquired Company Annual Financial Statements, the "**Acquired Company Financial Statements**") were used in the consolidation of Parent's consolidated financial statements, were prepared in accordance

with GAAP and fairly and accurately present the financial condition of the Acquired Company at the respective dates indicated and the results of operation of the Acquired Company for the periods covered thereby. The Acquired Company Financial Statements have been translated into Canadian dollars using the exchange rate as at the period end and the average rate for the periods respectively to be used in the consolidation of Parent's consolidated financial statements.

(i) **Absence of Changes.** Except as disclosed in Section 4.1(i) of the Disclosure Schedule (including the Seller Parties' non-compliance with the Credit Agreement as described therein), since December 31, 2009:

- (i) the Companies and CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer have conducted their respective businesses, in all material respects, in the Ordinary Course of Business, other than the consummation prior to the Stock Closing of the Pre-Closing Reorganization on terms and conditions consistent with the Pre-Closing Reorganization Description and the consummation prior to the Asset Closing of the Pre-Closing Asset Transfer on terms and conditions consistent with the Pre-Closing Asset Transfer Description;
- (ii) the Companies and CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer have not made any change in their accounting methods, principles or practices;
- (iii) no Company nor CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer has incurred any liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) which has had or would reasonably be expected to have a Material Adverse Effect; and
- (iv) there has occurred no event that has had or would be reasonably expected to have a Material Adverse Effect.

(j) **Books and Records.**

- (i) The books and records of the Companies, in all material respects, fairly and correctly set out the respective financial positions of the Companies as at the date hereof and all financial transactions of the Companies have been accurately recorded in such books and records.
- (ii) Except as disclosed in Section 4.1(j) of the Disclosure Schedule, the minute books of the Acquired Companies and any predecessors thereof made available on behalf of the Seller Parties to Purchaser's counsel are complete minute books of the Acquired Companies and any predecessors thereof.

(k) **Compliance with Laws; Permits.**

- (i) Except as disclosed in Section 4.1(k) of the Disclosure Schedule, each of the Companies and CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer have materially complied with all applicable Laws. None of the Companies nor CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer have received any written notice of an actual or alleged claim or violation of any such Law.
- (ii) Bach has obtained all material permits required under applicable Laws necessary for the operation of the Asset Seller Business, and all such permits are in full force and effect, and no action, claim or proceeding is pending, nor, to the Knowledge of Seller, threatened, to suspend, revoke, revise, limit, restrict or terminate any such permit or declare any such permit invalid.
- (iii) Except as disclosed in Section 4.1(k) of the Disclosure Schedule, the Acquired Operating Company has obtained all material permits required under applicable Laws necessary for the operation of the Acquired Company Business, and all such permits are in full force and effect, and no action, claim or proceeding is pending, nor, to the Knowledge of Seller, threatened, to suspend, revoke, revise, limit, restrict or terminate any such permit or declare any such permit invalid.

(l) **Taxes.**

- (i) Except as disclosed in Section 4.1(l) of the Disclosure Schedule, each of the Acquired Companies has duly filed on a timely basis (after taking into account any extension to file) with the appropriate Governmental Body all Tax returns, information returns and other reports required to be filed by it (being all Tax returns, information returns and other reports up to and including its income Tax return for the financial period ending on December 31, 2009). All such Tax and information returns and other reports were correct and complete in all materials respects, and each of the Acquired Companies has paid or accrued all Taxes that have become due pursuant to those Tax returns or otherwise, or pursuant to any assessment received by any of the Acquired Companies, except such Taxes, if any, as are listed in Section 4.1(l) of the Disclosure Schedule and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the balance sheet of the Acquired Company or the Acquired Operating Company, as applicable.
- (ii) The federal, provincial and state income Tax liability of each of the Acquired Companies has been assessed (but not audited) by the appropriate Tax authorities for all financial years up to and including the financial year ended December 31, 2008 and there are no written

agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any Tax return or the payment of any Taxes by any of the Acquired Companies or the examination of any Tax return or the levying of any assessment by any jurisdiction or authority with which any of the Acquired Companies has filed any Tax return for such financial years.

- (iii) Each of the Acquired Companies has withheld from each payment made to any of its past or present shareholders, employees, independent contractors, officers, creditors, directors or any other Person the amount of all Taxes and other deductions required to be withheld therefrom and has paid the same to the proper Tax or other receiving authorities.
- (iv) Each of the Acquired Companies has collected all amounts required to be collected by it on account of Taxes. Each of the Acquired Companies has remitted to the appropriate Tax authority when required by law to do so all such amounts collected by it.
- (v) Except as disclosed in Section 4.1(l) of the Disclosure Schedule, there are no actions, suits, proceedings, investigations or claims pending or, to the Knowledge of Seller, threatened against any of the Acquired Companies in respect of Taxes nor are any material matters under discussion with any Governmental Body relating to Taxes, governmental charges or assessments asserted by any such authority.
- (vi) Section 4.1(l) of the Disclosure Schedule includes a summary of all income Tax years still open for assessment or reassessment in respect of the Acquired Companies under all applicable federal, provincial and state Laws imposing a requirement to file Tax returns.
- (vii) None of the Acquired Companies (A) is or has been a party to, or bound by any Tax allocation or Tax sharing agreement and (B) has current or potential liability for the Taxes of any Person other than the Acquired Companies by reason of the filing of a consolidated Tax return under Treasury Regulation Section 1.1502-6(c) (or any similar provision of state, local, or non-U.S. law), as transferee or successor, by contract or otherwise.
- (viii) None of the Acquired Companies has made any payments, is obligated to make any payments, or is a party to any agreement that under certain circumstances would reasonably be expected to obligate it to make any payments that would not be deductible under Code Sections 162(a), 162(m), or 404 that would reasonably be expected to give rise to any amounts subject to excise Tax under Code Section 4999.

(m) **Real and Personal Property.**

- (i) *Owned Real Property.* Bach does not own and has not at any time owned any real property. CADRI does not own and has not at any time owned any real property related to the Asset Seller Business. Section 4.1(m) of the Disclosure Schedule lists all real property owned by the Acquired Companies. With respect to each such parcel of owned real property, and except for matters identified in Section 4.1(m) of the Disclosure Schedule or which would not have a Material Adverse Effect, the identified owner has good title to the parcel of real property, free and clear of any Encumbrance other than Permitted Encumbrances.
- (ii) *Leased Real Property.* The Acquired Companies do not lease or sublease any real property. Bach does not lease or sublease any real property except the property known municipally as 1255 Brydges Street, London, Ontario, pursuant to the London Lease. CADRI does not lease or sublease any real property related to the Asset Seller Business. The lease relating to the London Lease is, and shall remain at least until delivery of title and possession of the Acquired Assets to Purchaser, in good standing and in full force and effect without amendment thereto, and Bach is not in breach of any of the covenants, conditions or obligations contained therein.
- (iii) *Personal Property.* Each of the Companies has good and valid title to, or valid and subsisting leasehold interests in, all of its personal property reflected on the balance sheet of the Financial Statements or acquired since the date of the Financial Statements (except for property and assets disposed of since the date of the Financial Statements), free and clear of all Encumbrances, except for Permitted Encumbrances, except that, pursuant to the Pre-Closing Asset Transfer, title to the Acquired Assets will be transferred from Bach to CADRI. Upon the occurrence of the Pre-Closing Asset Transfer, CADRI shall have good and valid title to, or valid and subsisting leasehold interests in, all of the Acquired Assets, free and clear of all Encumbrances, except for Permitted Encumbrances.
- (iv) *Third Party Rights.* Except as provided on Section 4.1(m) of the Disclosure Schedule, none of the Companies and CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer has granted any third party rights to use or occupy any portion of the real property.

- (n) **Insurance.** Section 4.1(n) of the Disclosure Schedule is a list of all insurance policies maintained by any Seller Party on, or covering, the property and assets or personnel of the Companies and CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer as of the date hereof and such insurance policies will be continued in full force and effect to and including the Applicable Closing. None of the Seller Parties are in default with respect to any of the provisions contained in any such insurance policy or have failed to give

any notice or present any claim under any such insurance policy in a due and timely fashion.

(o) **Intellectual Property.**

- (i) Bach owns or possesses, and on the Asset Closing Date CADRI will own or possess, licenses or other rights to use all patents, patent applications, registered and unregistered trademarks, trademark applications, service marks, trade names, brand names, copyrights, or other forms of intellectual property used in the Asset Seller Business (the "**Asset Seller Intellectual Property**"), which includes, but is not limited to, the Asset Seller Intellectual Property listed in Section 4.1(o) of the Disclosure Schedule. There are no claims or liabilities for trademark, trade name, patent or copyright infringements in connection with the operation of the Asset Seller Business or any products or services sold or provided in the Asset Seller Business and no events or circumstances exist which could give rise to a claim or liability for such trademark, trade name, patent or copyright infringements. To the Knowledge of Seller, no Person is engaging in any activity that infringes any Asset Seller Intellectual Property.
- (ii) The Acquired Companies own or possess licenses or other rights to use all patents, patent applications, registered and unregistered trademarks, trademark applications, service marks, trade names, brand names, copyrights, or other forms of intellectual property used in the Acquired Company Business (the "**Acquired Company Intellectual Property**"), which includes, but is not limited to, the Asset Seller Intellectual Property listed in Section 4.1(o) of the Disclosure Schedule. There are no claims or liabilities for trademark, trade name, patent or copyright infringements in connection with the operation of the Acquired Company Business or any products or services sold or provided in the Acquired Company Business and no events or circumstances exist which could give rise to a claim or liability for such trademark, trade name, patent or copyright infringements. To the Knowledge of Seller, no Person is engaging in any activity that infringes any Acquired Company Intellectual Property.

(p) **Material Contracts.**

- (i) Section 4.1(p) of the Disclosure Schedule sets forth a list of all Material Contracts of (A) Bach or, following the Pre-Closing Asset Transfer, CADRI related to the Asset Seller Business, and (B) the Acquired Companies. Each Material Contract is in full force and effect; the applicable Company or CADRI has duly performed all of its obligations thereunder to the extent that such obligations to perform have accrued, and as to any of the Companies or CADRI no breach or default, alleged breach or default, or event which would (with the passage of time, notice or both) constitute a breach or default thereunder by such Company or CADRI or,

to the Knowledge of Seller, by the other party thereto, has occurred or is continuing.

- (ii) For purposes of this Agreement, "**Material Contract**" means any of the following:
  - (A) any agreement for the acquisition or sale of interests in other Persons, businesses, real property or other tangible or intangible property outside the Ordinary Course of Business and, in each case, for consideration in excess of \$100,000;
  - (B) any agreement that expressly restricts the ability of any Company or CADRI with respect to the Asset Seller Business to compete or otherwise to conduct any aspect of the Business in any manner or place;
  - (C) a joint venture, partnership or other similar agreement (however named) involving a sharing of profits, losses, costs or liabilities pertaining to a material part of the Business;
  - (D) a sales, marketing or distribution agreement that cannot be terminated without penalty to any Company on notice of less than one year and represents sales in excess of \$500,000 during calendar year 2009;
  - (E) a loan agreement, letter of credit, promissory note, mortgage, deed of trust, security agreement or other debt or financing instrument to which any Company or CADRI with respect to the Asset Seller Business is a party or to which any property of any Company or CADRI with respect to the Asset Seller Business is subject, other than those incurred or entered into in the Ordinary Course of Business and those representing Permitted Encumbrances;
  - (F) an agreement providing for the guarantee by any Company or CADRI with respect to the Asset Seller Business of an obligation of any other Person;
  - (G) any contract for the retention of any (I) sales representative by any Company or CADRI with respect to the Asset Seller Business or (II) consultant to which any Company or CADRI with respect to the Asset Seller Business has paid over \$50,000 during calendar year 2009;
  - (H) any agreement that involves commitments for terms in excess of three years or involves annual payments or sales of more than \$100,000;
  - (I) an agreement that involves any political contribution;

- (J) any agreement relating to employment, severance, change in control, or other agreement involving compensation of any employees of such Person for services rendered or to be rendered other than offer letters to (I) current salaried employees in the Ordinary Course of Business and (II) hourly employees;
  - (K) any license, sublicense or agreement pursuant to which (i) the Acquired Company has granted rights to a third Person pertaining to Acquired Company Intellectual Property, which license, sublicense or agreement is material to the Acquired Company, or (ii) Asset Seller has granted rights to a third Person pertaining to Asset Seller Intellectual Property, which license, sublicense or agreement is material to Asset Seller; and
  - (L) any license, sublicense or agreement pursuant to which any Company or CADRI with respect to the Asset Seller Business has been granted any rights to intellectual property of any third Person, which grant of rights is material to such Company.
- (iii) Except as set forth in Section 4.1(p) of the Disclosure Schedule, neither of the Acquired Companies is bound by or has any obligations under any agreement pursuant to which Parent or any Affiliate of Parent (other than either of the Acquired Companies) receives any goods or services or other benefits.
- (q) **Litigation.** Section 4.1(q) of the Disclosure Schedule sets forth each instance in which any Company or CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer is subject to any outstanding Order. Except as set out in Section 4.1(q) of the Disclosure Schedule, no Company nor CADRI in respect of the Asset Seller Business after the Pre-Closing Asset Transfer is subject to any Proceeding, and no event has occurred and no circumstances exist that could give rise to or serve as the basis for any Proceeding.
- (r) **Bank Accounts and Attorneys.** Section 4.1(r) of the Disclosure Schedule sets forth a true and complete list showing the name of each bank, trust company or similar institution in which either of the Acquired Companies have accounts or safe deposit boxes, the number or designation of each such account and safety deposit box and the names of all persons authorized to draw thereon or to have access thereto and showing the name of each person holding a power of attorney from the Acquired Companies.
- (s) **Non-Arm's Length Transactions.** None of the Companies has made any payment or loan to or borrowed any monies from, and none of the Companies have been otherwise indebted to, any officer, director, employee, shareholder or any other person not dealing at Arm's Length with such Company, other than (i) usual employee reimbursements and compensation paid in the Ordinary Course of Business; (ii) amounts owing by a Company to Parent or by Parent to a

Company on account of (A) deposits into the bank account of such Company to cover over-drafts, and (B) withdrawals from the bank account of such Company, in each case made by Stock Seller, details of which deposits and withdrawals are set out in Section 4.1(s) of the Disclosure Schedule; (iii) in connection with the Pre-Closing Reorganization or the Pre-Closing Asset Transfer; and (iv) as otherwise disclosed in Section 4.1(s) of the Disclosure Schedule. Except in connection with the Pre-Closing Reorganization or the Pre-Closing Asset Transfer or as disclosed in Section 4.1(s) of the Disclosure Schedule, and except for contracts of employment, none of the Companies is on the date hereof a party to any contract with any officer, director, employee, shareholder or any other person not dealing at Arm's Length with such Company.

(t) **Employee Benefit Plans.**

- (i) Section 4.1(t) of the Disclosure Schedule lists each Employee Benefit Plan that any Company sponsors and maintains (each a "**Company Plan**") or to which a Company contributes.
- (ii) Each such Company Plan complies in form and in operation with the requirements of applicable Law.
- (iii) With respect to each Company Plan, no Proceeding with respect to the administration or the investment of the assets of any such Company Plan (other than routine claims for benefits) is pending or, to the Knowledge of Seller, threatened, except where the Proceeding would not have a Material Adverse Effect.
- (iv) No Company Plan is a defined benefit pension plan.

- (u) **Employees.** Except as provided in Section 4.1(u) of the Disclosure Schedule, none of the Companies has (i) any written Contract of employment with any employee, (ii) any severance agreement with any employee, (iii) any "golden parachute" agreement, "golden handcuffs" agreement or similar Contract to provide a severance or stay-on bonus to any employee following a change in control of such Company, or (iv) any other Contract that provides benefits of any type to any employee conditioned on any change in control of such Company. Except as set forth in Section 4.1(u) of the Disclosure Schedule, none of the Companies has a severance policy that provides for any severance benefits to any employee (i) simply as a consequence of the occurrence of a change in control of such Company or (ii) who leaves the employ of a Company voluntarily following the occurrence of any change in control of such Company. Section 4.1(u) of the Disclosure Schedules sets forth as of the date of this Agreement a complete and accurate list of the name of each employee of each of Bach, the Acquired Company and the Acquired Operating Company together with the title, annual salary and years of service of each such employee. Brian McMullan ceased to be an employee of the Acquired Operating Company on December 31, 2009 and neither of the Acquired Companies has any liability to

Mr. McMullan. No employee of either of the Acquired Companies (other than those employees specifically identified in Section 6.5) provides services to an Affiliate of the Acquired Operating Company.

- (v) **Unionized Employees.** None of the Companies nor CADRI has unionized employees. To the Knowledge of Seller, no labour union or other organization has sought certification as the collective bargaining representative of any employee of any Company within the last five years. To the knowledge of Seller, there are no organizational efforts currently being made, threatened by or on behalf of, any trade union or association or organization that may qualify as a trade union or association with respect to employees of any Company.
- (w) **Employee Accruals.** All accruals for unpaid vacation pay, premiums and contributions to Company Plans, accrued wages, salaries, bonuses and commissions have been reflected in the books and records of the Companies.
- (x) **Employee Claims.** There are no outstanding decisions or settlements or pending settlements under applicable employment standards or pay equity legislation that place any obligation on any Company to do or refrain from doing any act. All costs, charges, experience rating assessments or other assessments or other liabilities, contingent or otherwise, under workers' compensation legislation or other legislation relating to industrial accidents and/or occupational health and safety claims applicable to any Company have been paid or accrued and there has not been any special or penalty charge or assessment under those legislation against any Company that has not been paid.
- (y) **Environmental, Health and Safety Matters.**
  - (i) Except as disclosed in Section 4.1(y) of the Disclosure Schedule, since January 1, 2000, the Companies and CADRI in respect of the Asset Seller Business have been at all times and are currently in compliance with Environmental, Health and Safety Requirements.
  - (ii) None of the Companies nor CADRI in respect of the Asset Seller Business has received any written notice, report or other information regarding any actual or alleged material violation of Environmental, Health and Safety Requirements, or any material liabilities or potential material liabilities (whether accrued, absolute, contingent, unliquidated or otherwise), including any investigatory, remedial or corrective obligations, relating to such Company, the Asset Seller Business or their respective facilities arising under Environmental, Health and Safety Requirements.
  - (iii) There has been no release of any Hazardous Substances in, on or affecting the properties, owned, leased, or operated by any of the Companies or CADRI in respect of the Asset Seller Business other than in accordance with all Environmental, Health and Safety Requirements.

- (iv) None of the Companies nor CADRI in respect of the Asset Seller Business has treated, stored, disposed of, arranged for disposal or treatment of, or arranged with a transporter for disposal or treatment of, or released any Hazardous Substances on, under or to any third party owned property or facility, so as to give rise to any current or future liability, including any liability for response costs, corrective action costs, personal injury, property damage, natural resources damages or attorney's fees, or any investigative, corrective or remedial obligation, pursuant to any Environmental, Health and Safety Requirements.
  - (v) This Section 4.1(y) contains the sole and exclusive representations and warranties of the Seller Parties with respect to any environmental, health, or safety matters, including without limitation any matters arising under any Environmental, Health and Safety Requirements.
  - (vi) Except as disclosed in Section 4.1(y) of the Disclosure Schedule, the Asset Seller and the Acquired Companies, as applicable, have obtained all material permits, authorizations and registrations required under Environmental Health and Safety Requirements necessary for the operation of the Asset Seller Business and the Acquired Company Business ("**Environmental Permits**"), and all such Environmental Permits are in full force and effect, and no action, claim or proceeding is pending, nor, to the Knowledge of Seller, threatened, to suspend, revoke, revise, limit, restrict or terminate any of such Environmental Permits or declare any such Environmental Permit invalid.
- (z) **Customers and Suppliers.**
- (i) There has been no termination or cancellation of, and no modification or change in the business relationship of Bach or CADRI or the Asset Seller Business with any major customer or supplier, being those customers or suppliers accounting for more than 10% of sales in the case of customers and 10% of purchases in the case of suppliers (by dollar volume) for the period from January 1, 2009 through and including December 31, 2009, in each case, in respect of the Asset Seller Business.
  - (ii) There has been no termination or cancellation of, and no modification or change in the business relationship of the Acquired Companies or the Acquired Company Business with any major customer or supplier, being those customers or suppliers of the Acquired Companies accounting for more than 10% of sales in the case of customers and 10% of purchases in the case of suppliers (by dollar volume) for the period from January 1, 2009 through and including December 31, 2009.
- (aa) **Inventory.** The inventories of the Acquired Operating Company and any inventories included in the Acquired Assets, in each case as reflected in the Financial Statements, consist of a quality and quantity usable and, with respect

to finished goods, saleable in the ordinary course of business, and do not include obsolete, non saleable or non usable items for an amount exceeding the reserves for such inventory on the balance sheet. Each of Bach and the Acquired Operating Company maintains inventory balances that are currently in compliance with each entity's accounting policies and procedures.

- (bb) **Product Warranties.** Part I of Schedule 4.1(bb) of the Disclosure Schedule sets out all commitments of any Company to take back or repurchase equipment from customers under any Contract having a value in excess of \$50,000. Except as set forth on Part II of Schedule 4.1(bb) of the Disclosure Schedule, each product manufactured, sold, leased or delivered by any Company in connection with the Business (i) has been in conformity in all material respects with all applicable Contracts and all express and implied warranties and (ii) does not suffer from any defects in designs, manufacturing or materials. None of the Companies has any liability for the replacement or repair of any product manufactured, sold, leased, or delivered by such Company in connection with the Business in excess of the reserves therefor set forth on the Financial Statements. There has not been, and there is not under consideration or investigation by any Company, any product recall or post-sale warning conducted by or on behalf of such Company concerning any product, or, to the Knowledge of Seller, any recall conducted by or on behalf of any third Person as a result of any alleged defect in any product of such Company.
- (cc) **Bankruptcy and Insolvency Act (Canada).** Each Seller Party is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof (other than the proposal in bankruptcy with the Court File No. of 35-088275 which has been approved by all relevant creditors, approved by the court and fully performed in accordance with its terms), and no petition for a receiving order has been presented in respect of it. Each Seller Party has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver or interim receiver has been appointed in respect of it or any of its undertakings, property or assets (including any of the Acquired Assets) and no execution or distress has been levied on any of its undertakings, property or assets (including any of the Acquired Assets), nor have any proceedings been commenced in connection with any of the foregoing.

#### **4.2 Disclaimer of Other Representations and Warranties**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1, SELLER PARTIES MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE COMPANIES OR ANY OF THEIR RESPECTIVE ASSETS, LIABILITIES OR OPERATIONS, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. PURCHASER HEREBY ACKNOWLEDGES AND AGREES

THAT, EXCEPT TO THE EXTENT SPECIFICALLY SET FORTH IN SECTION 4.1, PURCHASER IS PURCHASING THE SHARES AND THE ACQUIRED ASSETS ON AN "AS-IS" BASIS.

#### **4.3 Survival of Representations, Warranties and Covenants of the Seller Parties**

The representations and warranties of the Seller Parties contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto relating to (i) Bach, CADRI (as Asset Seller), the Asset Seller Business, the Acquired Assets and the Assumed Liabilities shall survive the Asset Closing until the twelve (12) month anniversary of the Asset Closing Date, and (ii) Parent, CADRI (as Stock Seller), the Acquired Companies and the Acquired Company Business shall survive the Stock Closing until the twelve (12) month anniversary of the Stock Closing Date, and in each case, notwithstanding such Applicable Closing, shall continue in full force and effect for the benefit of Purchaser during such period. To the extent they have not been fully performed at or prior to the Applicable Closing, the covenants of the Seller Parties contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto shall survive the closing of the transactions contemplated hereby in accordance with the terms of such covenants.

### **ARTICLE 5** **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

#### **5.1 Representations and Warranties of Purchaser**

Purchaser represents and warrants to the Seller Parties as follows:

- (a) **Organization.** Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.
- (b) **Authorization.** Purchaser has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes the valid and legally binding obligation of Purchaser, enforceable in accordance with its terms and conditions, except as enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- (c) **Non-Contravention.** Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will violate any provision of the charter or by-laws of Purchaser or any Law or Order to which Purchaser is subject. Purchaser does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Body in order for the parties to consummate the transactions contemplated by this Agreement and except where the failure to give notice, to file, or to obtain any authorization, consent, or approval would not have a Material Adverse Effect.

- (d) **Broker's Fees.** Purchaser has no liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which any Seller Party could become liable or obligated.
- (e) **Funds Available.** Purchaser has sufficient funds available to pay the Asset Purchase Price to the Asset Seller at the Asset Closing and to pay the Stock Purchase Price to the Stock Seller at the Stock Closing, and otherwise consummate the transactions contemplated by this Agreement.

## **5.2 Survival of Representations and Warranties of Purchaser**

The representations and warranties of Purchaser contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto shall survive the closing of the transactions contemplated hereby until the twelve (12) month anniversary of the later to occur of the Asset Closing Date and the Stock Closing Date and, notwithstanding such Closing, shall continue in full force and effect for the benefit of the Seller Parties during such period. To the extent they have not been fully performed at or prior to the Applicable Closing, the covenants of Purchaser contained in this Agreement and any agreement, instrument, certificate or other document executed or delivered pursuant hereto shall survive the closing of the transactions contemplated hereby in accordance with the terms of such covenants.

## **ARTICLE 6** **COVENANTS**

### **6.1 Access to the Companies**

(a) The Seller Parties shall make available to Purchaser and its authorized representatives all title documents, Contracts, financial statements, minute books, share certificate books, share registers, plans, reports, licences, orders, permits, books of account, accounting records, constating documents and all other documents, information and data relating to the Companies and the Business. Stock Seller shall cause the Companies to afford Purchaser and its authorized representatives reasonable access during normal business hours to the Business and the property, assets, records and documents of the Companies, which access will not include the right to conduct any intrusive investigations or disrupt the Business and shall be conducted in accordance with any reasonable requirement of Stock Seller and the Companies. Following the occurrence of the Asset Closing, the Seller Parties shall take all such commercially reasonable actions, at the sole cost and expense of Purchaser, which Purchaser may reasonably request and shall at all times cooperate in good faith with Purchaser to facilitate the delivery, removal and transfer of the Acquired Assets from their current location to the location selected by Purchaser, which shall include, without limitation, ensuring that the Purchaser has access to the facilities of Asset Seller where any Acquired Assets are located and the ability to remove such Acquired Assets.

(b) Following the Applicable Closing, upon the reasonable advance request of Seller Parties and subject to the following sentence, Purchaser shall make available to Seller Parties and their authorized representatives at a reasonable location designated by Purchaser during normal

business hours, reasonable access to (I) the books and records of the Acquired Companies and in respect of the Asset Seller Business and (II) the following personnel of the Business: Tom Madigan, Amy Mensinger and Jason McLellan; which reasonable access shall be permitted to the Seller Parties solely to support (i) the Seller Parties' reviews of their financial reporting for the last fiscal quarter ending prior to the Applicable Closing and the portion of the first fiscal period ending after the Applicable Closing ending on the Applicable Closing Date, (ii) the audit of Seller Parties' financial reporting for the year ending December 31, 2010, and (iii) any audit of the Seller Parties and/or their Affiliates in respect of goods and services tax, retail sales tax or harmonized sales tax for periods prior to the Stock Closing Date. Notwithstanding the foregoing, Purchaser's obligations under this Section 6.1(b) shall not require Purchaser to provide access to books and records and/or personnel or to respond to requests (for information or otherwise) to the extent such access or requests would interfere with the operations or activities of the Business or personnel operating the Business. All requests for access to books and records and/or personnel or to respond to requests (for information or otherwise) shall be made in writing, 14 days in advance, and are subject to approval by the appropriate representative of the Purchaser; provided that Seller Parties hereby give notice of their request for access to Tom Madigan, Amy Mensinger and the books and records of the Acquired Companies for the review of the quarter ending June 30, 2010, which review will commence on or about July 19, 2010, and Purchaser agrees that such notice is sufficient, notwithstanding any specific notice requirements of this Section 6.1(b). Any reasonable request by the Seller Parties for access to such personnel and/or books and records shall not be unreasonably refused by Purchaser.

## **6.2 Delivery of Books and Records**

At the Applicable Closing there shall be delivered to Purchaser, by the Seller Parties, all of the books and records of and relating to (a) the Asset Seller Business (other than books and records that are Excluded Assets, copies of which will be delivered to Purchaser) and (b) the Acquired Companies and the Acquired Company Business. Purchaser agrees that it will preserve the books and records so delivered to it for a period of three years from the Applicable Closing Date, or for such longer period as is required by any applicable Law, and will permit the Seller Parties or their authorized representatives reasonable access thereto in connection with the affairs of the Seller Parties relating to its matters.

## **6.3 Conduct Prior to Closing**

Without in any way limiting any other obligations of the Seller Parties hereunder, during the period from the date hereof to the Applicable Closing:

- (a) **Conduct Business in the Ordinary Course.** Except for the execution and delivery by the Seller Parties of documents used to carry out the Pre-Closing Reorganization and the Pre-Closing Asset Transfer (which documents contain terms and conditions consistent with the Pre-Closing Reorganization Description or the Pre-Closing Asset Transfer Description, as applicable) and the performance of their obligations thereunder, the Seller Parties shall (i) cause the Companies to conduct the Business and their respectable operations and affairs in the Ordinary Course of Business, and (ii) prevent the Companies, without the prior written consent of Purchaser, from entering into any transaction or refrain

from doing any action which, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of a Seller Party contained herein;

- (b) **Pre-Closing Reorganization.** Purchaser acknowledges that, prior to the Stock Closing, Seller Parties will complete a reorganization (the "**Pre-Closing Reorganization**") of certain of the Seller Parties and their Affiliates, as described on Schedule I attached hereto (the "**Pre-Closing Reorganization Description**"), and which shall consist of the following steps: (i) the amendment of the articles of CADRI to create new classes of shares and to exchange its currently outstanding common shares for shares of a different class, (ii) the direct transfer in one step of the Shares to CADRI from Parent, and (iii) the direct transfer in one step of all of the issued and outstanding shares in the capital of GBI Industries, Inc. from the Acquired Company to Parent (for the avoidance of doubt, the Acquired Company shall at all times hold all of the issued and outstanding shares of the Acquired Operating Company);
- (c) **Pre-Closing Asset Transfer.** Purchaser acknowledges that, prior to the Asset Closing, Seller Parties will complete a direct transfer of the Acquired Assets to CADRI from Bach (the "**Pre-Closing Asset Transfer**") as described on Schedule J attached hereto (the "**Pre-Closing Asset Transfer Description**");
- (d) **Continue Insurance.** The Seller Parties shall continue to maintain in full force and effect all policies of insurance or renewals thereof now in effect which relate to the Companies or the Business, and shall give all notices and present all claims under all policies of insurance in a due and timely fashion;
- (e) **Environmental Compliance.** Prior to the Stock Closing, the Acquired Companies and/or Parent shall use reasonable commercial efforts to execute the action plan set out on Schedule K for remedying non-compliance of the Acquired Company Business and the Property with Environmental, Health, and Safety Requirements;
- (f) **Contractual Consents.** The Seller Parties shall use reasonable commercial efforts to give or obtain or cause the Companies to give or obtain, the notices, consents and approvals described in Section 4.1(c) of the Disclosure Schedule, the form of which consents shall be mutually agreed upon by the parties, acting reasonably, and shall include consent to the transfer of the Acquired Assets and/or the Shares to either Purchaser or an Affiliate of Purchaser;
- (g) **Waiver Letters.** On or prior to the Asset Closing Date, Bach shall obtain and deliver to Purchaser waiver letters in form and substance reasonably satisfactory to Purchaser from each of Xerox Canada Ltd. and Pitney Bowes Global Credit Services and CADRI shall obtain and deliver to Purchaser a waiver letter from De Lage Landen Financial Services of Canada establishing that De Lage Landen Financial Services of Canada has no Encumbrance or other interest in the Acquired Assets or the Shares, together with any other additional similar secured

parties which may exist as of the Asset Closing Date, confirming that the Encumbrances held by such entities relate only to specific identified equipment;

- (h) **Worker's Compensation Clearance Certificate.** On or prior to the Asset Closing Date, Bach shall use reasonable commercial efforts to obtain a clearance or purchase certificate or other similar documentary evidence in a form acceptable to the Purchaser from the workers' compensation authority in each jurisdiction in which the Asset Seller Business is carried on, certifying that there are no outstanding assessments, penalties, fines, levies, charges, surcharges or other amounts due or owing to that authority as of the Asset Closing Date and that as of the Asset Closing Date that authority has no claim against Bach in respect of any amount payable under the relevant workers' compensation legislation in respect of the Asset Seller Business and the Acquired Assets;
- (i) **Preserve Goodwill.** The Seller Parties shall use reasonable commercial efforts (i) to preserve, and cause the Companies to preserve intact, the Business and their property, assets, operations and affairs and to cause the Business and the affairs of the Companies to be carried on as currently conducted, and (ii) to preserve for Purchaser the goodwill of suppliers, customers and others having business relations with the Companies; and
- (j) **Corporate Action.** The Seller Parties shall use reasonable commercial efforts to take and cause the Companies to take all necessary corporate action, steps and proceedings to complete the transfer and assignment of the Acquired Assets and the Shares to Purchaser in accordance with the terms of this Agreement and to cause all necessary meetings of directors and shareholders of the Seller Parties and the Companies to be held for such purpose.

#### **6.4 Purchaser Facility**

Purchaser shall use reasonable commercial efforts to (a) obtain, as soon as practicable, but in any event not later than October 31, 2010, a lease for a new facility for the operation of the Asset Seller Business, and (b) apply for, as soon as practicable, but in any event not later than October 31, 2010, all Environmental Permits required in connection with the operation of the Asset Seller Business by Purchaser or its Affiliate at such new leased facility, so as to enable Purchaser or its Affiliate to operate the Asset Seller Business following the Asset Closing.

#### **6.5 Severance Obligations.**

The Seller Parties shall cause the employee obligations, including severance liabilities and obligations, of the Acquired Operating Company with respect to Terry McManaman, William Sturtz and Yvonne Lindberg to be settled and released without any cost to either of the Acquired Companies at or prior to the Stock Closing. Without limiting the foregoing, pursuant to the settlement and release the Seller Parties shall provide Terry McManaman and Yvonne Lindberg with fully paid-up third party medical insurance, which shall provide them with benefits directly from Capital Blue Cross for the eighteen month period

following the termination of their employment. In exchange for such third party medical insurance, and to the extent permitted by applicable Law, Terry McManaman and Yvonne Lindberg shall waive election of coverage under the United States Consolidated Omnibus Budget Reconciliation Act of 1985 and the Seller Parties shall provide Purchaser with evidence of such waivers.

#### **6.6            Delivery of Documents**

Upon the Applicable Closing, the Seller Parties shall deliver to Purchaser all necessary transfers, assignments and other documentation reasonably required to transfer and assign the Acquired Assets and the Shares to Purchaser, in each case with a good and marketable title, free and clear of all Encumbrances, except in the case of the Acquired Assets for Permitted Encumbrances.

#### **6.7            Use of Name**

Purchaser agrees that as promptly as practicable following the Stock Closing (and in any event within 30 days of the Stock Closing) it shall cause the Acquired Companies to cease any use of, and it shall not use or permit any of its Affiliates to use, the name "Global Railway" or any derivatives thereof in the style or manner in which it represents itself or conducts its business, including in the labelling or packaging of products and goods sold by the Acquired Companies, Purchaser or any Affiliate thereof.

#### **6.8            Employees**

(a)    Bach agrees to provide Purchaser with an up-to-date list of the names of each of its employees (the "**Asset Seller Employees**"), including their present employment status, at least two Business Days and not more than four Business Days prior to the Asset Closing Date. Prior to the Asset Closing Date, but conditional on the completion of the Asset Closing, Purchaser agrees that it shall offer employment to all Asset Seller Employees on such list, effective as at the Asset Closing Date, on terms and conditions which, in the aggregate, are substantially equivalent as those that are then applicable to the Asset Seller Employees. From and after the Asset Closing Date, Purchaser shall indemnify and hold Seller Parties harmless from and against all Losses suffered or incurred by Seller Parties as a result of or arising directly or indirectly out of, in connection with or pursuant to any Proceedings by any of the Asset Seller Employees, regardless of whether such claims arose prior to, on or after the Asset Closing Date; provided that Purchaser shall not be required to indemnify the Seller Parties for any Losses resulting from the breach by Bach of a legal obligation to any Asset Seller Employee on or prior to the Asset Closing Date and provided further that any liability or obligation resulting from such a breach shall be deemed to be an Excluded Liability for the purposes of this Agreement.

(b)    Notwithstanding Section 6.8(a), (i) if the Stock Closing occurs prior to the Asset Closing, prior to the Stock Closing Date, but conditional on the completion of the Stock Closing, Purchaser agrees that it shall offer employment to Jim Williamson, an Asset Seller Employee who provides services exclusively to the Acquired Operating Company (the "**Canadian Employee**"), on terms and conditions which, in the aggregate, are substantially equivalent as those that are then applicable to the Canadian Employee, and (ii) if the Asset Closing occurs

prior to the Stock Closing, Purchaser shall have no obligation to offer employment to the Canadian Employee until the Stock Closing Date, at which time it shall offer employment to the Canadian Employee on terms and conditions which, in the aggregate, are substantially equivalent as those that are then applicable to the Canadian Employee. From and after the Stock Closing Date, Purchaser shall indemnify and hold Seller Parties harmless from and against all Losses suffered or incurred by Seller Parties as a result of or arising directly or indirectly out of, in connection with or pursuant to any Proceedings by the Canadian Employee, regardless of whether such claims arose prior to, on or after the Stock Closing Date; provided that Purchaser shall not be required to indemnify the Seller Parties for any Losses resulting from the breach by Bach of a legal obligation to the Canadian Employee on or prior to the Stock Closing Date and provided further that any liability or obligation resulting from such a breach shall be deemed to be an Excluded Liability for the purposes of this Agreement. Purchaser's obligations under Section 6.9 shall apply in respect of the Canadian Employee as of the Stock Closing Date *mutatis mutandis*.

(c) No Asset Seller Employee, including the Canadian Employee, shall be entitled to any rights under this Section 6.8 or under any other provisions of this Agreement.

(d) For the avoidance of doubt, nothing in this Section 6.8 or in Section 6.9 shall in any way qualify or limit the representations and warranties of the Seller Parties in Article 4 or Purchaser's ability to recover Losses arising from a breach of such representations and warranties. Notwithstanding anything in this Section 6.8 or in Section 6.9 to the contrary, if the facts or circumstances giving rise to the particular claim by Seller Parties or any of them against Purchaser also give rise to a breach of one or more of the representations and warranties of the Seller Parties or any of them under this Agreement (determined without regard to any expiration period which may be otherwise applicable to such representation or warranty), then Purchaser shall have no obligation to indemnify a Seller Party on the basis of such facts or circumstances, and no claims may be made against Purchaser in connection with such facts or circumstances, to the extent of the Losses flowing from the breach of such representations or warranties.

## **6.9 Employee Plans**

Purchaser shall assume the liabilities and obligations of Bach under each of Bach's Employee Benefit Plans, regardless of whether such liabilities or obligations arise prior to, on or after the Asset Closing Date; provided that Purchaser shall not assume any liabilities under any of Bach's Employee Benefit Plans that are Excluded Liabilities. Purchaser may establish replacement plans (the "**Replacement Plans**") for those Asset Seller Employees who accept the offers of employment to be made by Purchaser pursuant to Section 6.8 (the "**Transferred Employees**") in respect of their employment by Purchaser from and after the Closing. For the purpose of determining the eligibility of a Transferred Employee for membership or benefits under Bach's Employee Benefit Plans and under the Replacement Plans (a) his or her period of employment shall include employment with both Bach and Purchaser and shall be deemed not to have been interrupted at the Closing, and (b) his or her period of membership shall include membership in both Bach's Employee Benefit Plans and the Replacement Plans and shall be deemed not to have been interrupted on the Closing. The Transferred Employees shall begin to accrue benefits and incur claims under the Replacement Plans as of the Closing Date in respect of their employment by Purchaser. Purchaser agrees to

obtain the required approvals of the applicable federal, provincial and/or state regulatory authorities in connection with the establishment and registration of the Replacement Plans.

#### **6.10 Tax Matters Relating to Asset Seller Business**

(a) The parties agree to allocate the Asset Purchase Price (plus all other capitalized costs and those Assumed Liabilities, if any, that constitute liabilities for federal income tax purposes) among the Acquired Assets and the non-competition provision set forth in Section 6.14, below, for tax purposes in accordance with Schedule D attached hereto. After the Asset Purchase Price is finally determined pursuant to Section 3.5 above, the allocation in Schedule D shall be adjusted to reflect the adjustment resulting from Section 3.5, which shall be allocated on a dollar-for-dollar basis to the particular class of Acquired Assets or Assumed Liabilities that gave rise to such adjustment. The parties and their respective Affiliates shall report, act and file tax returns (including, but not limited to, Internal Revenue Service Form 8594, if applicable) in all respects and for all purposes consistent with such allocation pursuant to this subsection. The Asset Seller shall timely and properly prepare, execute, file and deliver all such documents, forms and other information as Purchaser may reasonably request to prepare such allocation. No party and no party's Affiliates shall take any position (whether in audits, tax returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable law.

(b) The parties shall cooperate in preparing and filing with the appropriate governmental authorities such forms as may be required in order to obtain a tax clearance certificate or other document absolving Purchaser from any responsibility or liability for Asset Seller's income, sales and use taxes, where applicable.

#### **6.11 Tax Matters Relating to Acquired Companies**

(a) Stock Seller shall prepare Tax returns for the Acquired Companies for the financial year ended December 31, 2009. With respect to any Tax returns of the Acquired Company covering any taxable period ending on or before the Stock Closing Date that is required to be filed after the Stock Closing Date, Stock Seller shall cause such Tax return to be prepared and timely filed. Prior to filing such returns with the relevant authorities, Stock Seller shall provide Purchaser with a reasonable opportunity to review them. The portion of any Taxes that are payable with respect to any tax period beginning before and ending after the Stock Closing Date (a "**Straddle Period**") that are allocable to the portion of the Straddle Period ending on the Closing Date shall (i) in the case of Taxes that are either (A) based upon or related to income, receipts or shareholders' equity or (B) imposed in connection with any sale, transfer or assignment or any deemed sale, transfer or assignment of property (real or personal, tangible or intangible) be deemed equal to the amount payable if the Tax year ended on the Stock Closing Date and (ii) in the case of Taxes (other than those described above in clause (i)) imposed on a period basis or otherwise measured by the level of any item, be deemed to be the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period.

(b) Purchaser shall and shall cause the Acquired Companies to co-operate fully with Stock Seller to allow Stock Seller to obtain authorized signatures and to have such access to the

books, records or other documentation within the control of Purchaser or the Acquired Companies, as is deemed reasonably necessary by Stock Seller in order to allow Stock Seller to prepare Tax returns for the Acquired Companies for any taxation year ended before the Stock Closing Date, and Stock Seller shall co-operate fully with the Purchaser and the Acquired Companies with respect to the preparation of Tax returns for the taxation years ended subsequent to the Stock Closing Date.

(c) [Redacted: Information which is private and confidential to the Seller Parties.]

(d) Except as specifically contemplated by this Agreement, Purchaser shall be responsible for all Taxes payable by the Acquired Companies on or after the Stock Closing Date.

#### **6.12      Agreements as to Efforts to Consummate**

Subject to the terms and conditions of this Agreement, each party agrees to use, and to cause each of its Affiliates to use all commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws to consummate and make effective, as soon as reasonably practicable after the date of this Agreement, the contemplated transactions, including using its reasonable efforts to cause to be satisfied the conditions referred to in Article 7; provided that nothing herein shall preclude any party from exercising its rights under this Agreement.

#### **6.13      Act 2 Remediation**

(a) The parties each acknowledge that a Phase I Environmental Site Assessment Report, dated February 4, 2010, prepared by American Geosciences, Inc. ("**AGI**"), subsequent subsurface investigations conducted by AGI in late 2009 and early 2010, and a Remedial Investigation Report/Cleanup Plan, dated May 18, 2010, prepared by Penn Environmental and Remediation, Inc. (collectively, the "**Environmental Reports**") disclosed the presence of Hazardous Substances in the soil and groundwater at, on and under the Property. Prior to Closing, the parties and the Commonwealth of Pennsylvania, Department of Environmental Protection ("**DEP**") shall each execute and deliver and enter into a Consent Order and Agreement (the "**Buyer-Seller Agreement**") in substantially the form attached hereto as Schedule G documenting the Seller Parties' commitment to remediate the presence of the Hazardous Substances at the Property pursuant to the DEP's Land Recycling Program under the Pennsylvania Land Recycling and Environmental Remediation Standards Act ("**Act 2**"), 35 P.S. § 6026.101, et seq.

(b) Seller Parties, together with their respective successors and assigns, agree that, at Seller Parties' sole cost and expense, Seller Parties shall remediate the Hazardous Substances on the Property identified in the Environmental Reports by attaining and demonstrating compliance with a background, state-wide health or site specific cleanup standard, or combination of those cleanup standards, pursuant to Act 2 in order to obtain cleanup liability protection pursuant to Section 501 of Act 2, 35 P.S. § 6026.501 by December 12, 2012 (the "**Act 2 Remediation**"). The parties agree that they shall each comply with their respective obligations under the Buyer-Seller Agreement. Seller Parties further agree that they shall keep Purchaser informed of the status of their Act 2 Remediation efforts by providing Purchaser with a copy of all

correspondence and reports simultaneously when submitted to the DEP in connection with the Act 2 Remediation.

(c) Seller Parties, together with their respective agents, representatives and contractors shall comply with all applicable Laws in conducting the Act 2 Remediation. Seller Parties shall repair, in a commercially reasonable manner and as soon as reasonably practicable, any damage to the Property caused by the activities of Seller Parties and/or Seller Parties' agents, representatives and contractors in performing the Act 2 Remediation including, but not limited to, restoring concrete, asphalt or vegetative cover.

(d) Prior to commencing any field work required for the Act 2 Remediation, Seller Parties and/or Seller Party's respective agents, representatives and contractors shall furnish Purchaser with a copy of a certificate of insurance evidencing policies for standard worker's compensation employer's liability, comprehensive general liability and automobile liability insurance, each with a minimum limit of \$1,000,000 per occurrence. Such policies (except the worker's compensation policy) shall provide that the insurer shall name Purchaser as an additional insured under the policies.

(e) Purchaser agrees to cooperate with the Seller Parties and/or their respective agents, representatives and contractors with respect to the planning and performance of the Act 2 Remediation. As set forth in the Buyer-Seller Agreement, Purchaser shall provide the Seller Parties and/or their respective agents, representatives and contractors, as well as the DEP, with access to the Property at reasonable times for the performance of the Act 2 Remediation. Seller Parties shall give reasonable prior oral or written notice to Purchaser prior to any entry onto the Property and shall make reasonable efforts to conduct the Act 2 Remediation in such a way as to minimize any inconvenience to Purchaser's and/or Purchaser's tenant's business operations.

(f) Purchaser acknowledges and agrees that Seller Parties may, in their sole discretion, choose to remediate the Property to attain a non-residential cleanup standard under Act 2. Purchaser further acknowledges and agrees that if the Property is remediated to a non-residential cleanup standard, Purchaser shall permit and shall cooperate with the Seller Parties with respect to the recording of any environmental covenant, deed notices and/or restrictions required in connection with the application of a non-residential cleanup standard. Purchaser further acknowledges and agrees that such environmental covenant, deed notices and/or restrictions may include provisions that (i) limit the use of the Property to non-residential activity, and (ii) prohibit the use of groundwater at the Property for potable or agricultural uses; provided, however, that the recording of such environmental covenant, deed notices and/or restrictions shall be at the sole cost and expense of the Seller Parties. Purchaser further acknowledges and agrees that such environmental covenant, deed notices and/or restrictions shall be covenants running with the land and Purchaser shall include the covenants in all deeds, leases and other instruments of conveyance of the Property.

#### **6.14            Restrictions on Competition; Non-Solicitation**

(a) Each Seller Party covenants and agrees that:

- (i) during the period commencing on the Stock Closing Date and for a period of three (3) years following the Stock Closing Date (the "**Acquired Company Restriction Period**") such Seller Party shall not, and shall cause its Affiliates not to, either directly or indirectly undertake or carry on or be engaged or have any financial or other interest in, or in any other manner advise or assist any Person engaged in any business that is the same as, similar to or in competition with the Acquired Company Business, as conducted on or prior to the Stock Closing Date, anywhere within North America (the "**Acquired Company Restricted Territory**"); and
- (ii) during the period commencing on the Asset Closing Date and for a period of three (3) years following the Asset Closing Date (the "**Asset Seller Restriction Period**") such Seller Party shall not, and shall cause its Affiliates not to, either directly or indirectly undertake or carry on or be engaged or have any financial or other interest in, or in any other manner advise or assist any Person engaged in any business that is the same as, similar to or in competition with the Asset Seller Business, as conducted on or prior to the Asset Closing Date, anywhere within North America (the "**Asset Seller Restricted Territory**");
- (iii) during the Acquired Company Restriction Period, such Seller Party shall not, and shall cause its affiliates not to, directly or indirectly, solicit the trade of, or trade with, any customers or prospective customers of Purchaser or its Affiliates (including the Acquired Companies) for purposes of competing with the Acquired Company Business, as conducted on or prior to the Stock Closing Date, in the Acquired Company Restricted Territory;
- (iv) during the Asset Seller Restriction Period, such Seller Party shall not, and shall cause its affiliates not to, directly or indirectly, solicit the trade of, or trade with, any customers or prospective customers of Purchaser or its Affiliates (including the Acquired Companies) for purposes of competing with the Asset Seller Business, as conducted on or prior to the Asset Closing Date, in the Asset Seller Restricted Territory;
- (v) during the Acquired Company Restriction Period and the Asset Seller Restriction Period, such Seller Party shall not, and shall cause its Affiliates not to, directly or indirectly, solicit or induce, or attempt to solicit or induce, any employee of Purchaser or its Affiliates (including the Acquired Companies) to leave for any reason whatsoever, or hire any such employee within three months following the termination of the employment of such person with the Purchaser or its Affiliate, as the case may be;

provided, however, that each Seller Party may purchase or otherwise acquire up to five percent (5%) of any class of securities of any Person described in paragraphs (i) or (ii) of this Section

6.14(a) if such securities are listed on any national or regional securities exchange or actively traded in a national over-the-counter market so long as such Seller Party does not actively participate in the management or business of such entities.

(b) Notwithstanding the foregoing, the covenants of the Seller Parties in this Section 6.14 shall not apply:

- (i) in respect of any existing business of CADRI as at the date hereof; and
- (ii) to any Non-Affiliate acquiring all of the issued and outstanding shares in the capital of CADRI or all or substantially all of the assets of CADRI on or after the date hereof.

The term “**Non-Affiliate**” shall mean any person other than (i) an Affiliate of CADRI (either as of the date of this Agreement or as of the time immediately prior to such acquisition), (ii) an officer, either as of the date of this Agreement or as of the time immediately prior to such acquisition, of CADRI or an Affiliate of CADRI (a “**Restricted Officer**”) and (iii) in the case of an acquisition by a person other than an individual, a person which employs (either directly as an employee or indirectly as a consultant or in any other similar capacity) or benefits from the services of a Restricted Officer.

#### **6.15            Notification**

(a) Between the date of this Agreement and the Asset Closing Date, the Seller Parties shall promptly notify Purchaser in writing if any such Seller Party becomes aware of any fact or condition that causes or constitutes a misrepresentation or breach of any of the representations or warranties contained in Article 4 as of the date of this Agreement relating to Bach, CADRI (as Asset Seller), the Asset Seller Business, the Acquired Assets and/or the Assumed Liabilities, or if a Seller Party becomes aware of the occurrence after the date of this Agreement of any fact or condition that would cause or constitute a misrepresentation in or breach of any such representation and warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. Between the date of this Agreement and the Stock Closing Date, the Seller Parties shall promptly notify Purchaser in writing if any such Seller Party becomes aware of any fact or condition that causes or constitutes a misrepresentation or breach of any of the representations or warranties contained in Article 4 as of the date of this Agreement relating to Parent, CADRI (as Stock Seller) the Acquired Companies and/or the Acquired Company Business, or if a Seller Party becomes aware of the occurrence after the date of this Agreement of any fact or condition that would cause or constitute a misrepresentation in or breach of any such representation and warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. During the same period, the Seller Parties shall promptly notify Purchaser of the occurrence of any breach of any covenant of a Seller Party in this Agreement or the occurrence of any event that may make the satisfaction of the conditions to closing set forth in Article 7 impossible or unlikely.

#### **6.16            HST Election**

The Purchaser and the Asset Seller shall jointly elect under subsection 167(1) of the *Excise Tax Act* (Canada) and under any similar provision of any applicable provincial

legislation imposing a similar value added or multi-staged tax, that no tax be payable with respect to the purchase and sale of the Acquired Assets pursuant to this Agreement. The Purchaser and the Asset Seller shall make those elections in prescribed form containing prescribed information and shall file those elections in compliance with the requirements of applicable legislation.

**6.17            No Negotiation**

Until such time as this Agreement is terminated pursuant to Article 9, none of the Seller Parties nor any Company shall directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any non-public information to or consider the merits of any inquiries or proposals from any person (other than Purchaser) relating to any business combination transaction involving the Companies, or any one of them, including the sale of the stock of any of the Companies, the merger or consolidation of a Company or the bulk sale of either the Asset Seller Business or the Acquired Company Business or a material or substantial portion of any of the assets related thereto. The Seller Parties and the Companies shall notify Purchaser of any such inquiry or proposal within twenty-four (24) hours of receipt or awareness of the same by a Seller Party or a Company.

**6.18            Accounts Receivable**

From and after the Asset Closing, in the event Bach or CADRI or any Affiliate of Bach or CADRI shall receive payment of any funds in respect of any accounts receivable forming part of the Acquired Assets or any other Acquired Asset or receive any instrument of payment of any of Bach's accounts receivable, Bach shall, or shall cause such Affiliate to, promptly deliver to Purchaser the entire amount of such funds and/or promptly deliver to Purchaser any such instrument of payment, endorsed where necessary, without recourse, in favour of Purchaser. From and after the Asset Closing, as and when requested by Purchaser, Seller Parties shall sign notices to account debtors confirming the assignment to Purchaser or its Affiliate of such accounts receivable and directing that payment in respect of such accounts receivable be made directly to Purchaser or its Affiliate.

**6.19            Accounts Receivable Election**

If requested by the Purchaser, the Purchaser and the Asset Seller shall elect jointly in the prescribed form under Section 22 of the *Income Tax Act* (Canada) and under any similar provision of any other applicable provincial legislation as to the sale of the accounts and notes receivable forming part of the Acquired Assets and described in Section 22 of the *Income Tax Act* (Canada) and shall in that election allocate an amount equal to the portion of the Purchase Price allocated to those assets pursuant to Schedule D as the consideration paid by the Purchaser for those assets. The Purchaser and the Asset Seller shall file such election forms, along with any documentation necessary or desirable to give effect to such election, with Canada Revenue Agency and any other appropriate taxation authority within the prescribed time limits.

**6.20** [Redacted: Information which is private and confidential to the Seller Parties.]

**6.21 Pittsford Lease**

Prior to the Stock Closing, the Acquired Operating Company shall assign to Parent its leasehold interest in respect of Parent's office space at 1160 K. Pittsford-Victor Road, Pittsford, New York, 14543 (the "**Pittsford Lease**").

**ARTICLE 7**  
**CONDITIONS OF CLOSING**

**7.1 Conditions to Closing in Favour of Seller Parties**

The obligation of Asset Seller to consummate the Asset Closing and the obligation of Stock Seller to consummate the Stock Closing shall be subject to the fulfillment as of the Applicable Closing Date of each of the following conditions, which are for the exclusive benefit of, and may be waived in writing by, Asset Seller or Stock Seller:

- (a) the representations and warranties of Purchaser contained in this Agreement that are qualified by materiality shall be true and correct and the representations and warranties of Purchaser that are not so qualified shall be true and correct in all material respects, in each case as of the Applicable Closing Date (except to the extent such representations and warranties speak as at an earlier date, which representations and warranties shall be true and correct or true and correct in all material respects, respectively, as of such earlier date, or except as affected by transactions contemplated by this Agreement), with the same force and effect as if such representations and warranties were made at and as of such time;
- (b) Purchaser shall have performed and complied with in all material respects all the covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Applicable Closing Date, and all deliveries contemplated by Section 3.3 shall have been tabled; and
- (c) no preliminary or permanent injunction or other order, decree, or ruling issued by a Governmental Body, and no statute, rule, regulation, or executive order promulgated or enacted by a Governmental Body, which restrains, enjoins, prohibits, or otherwise makes illegal the consummation by Asset Seller or Stock Seller, as applicable, of the transactions contemplated hereby shall be in effect.

**7.2 Conditions to Closing in Favour of Purchaser**

**7.2.1 General Conditions**

The obligation of Purchaser to consummate (i) the Asset Closing and (ii) the Stock Closing shall be subject to the fulfillment as of the Applicable Closing Date of each of the following conditions, which are for the exclusive benefit of, and may be waived in writing by, Purchaser:

- (a) the representations and warranties of the Seller Parties contained in this Agreement that are qualified by materiality shall be true and correct and the representations and warranties of the Seller Parties that are not so qualified shall be true and correct in all material respects, in each case as of the Applicable Closing Date (except to the extent such representations and warranties speak as of an earlier date, which representations and warranties shall be true and correct or true and correct in all material respects, respectively, as of such earlier date, or except as affected by transactions contemplated by this Agreement), with the same force and effect as if such representations and warranties were made at and as of such time; provided that if the Asset Closing occurs before the Stock Closing, all representations and warranties in Article 4 shall be excluded from this Section 7.2.1(a) for the purposes of the Stock Closing to the extent, and only to the extent, they relate to Bach, CADRI (as Asset Seller), the Asset Seller Business, the Acquired Assets and/or the Assumed Liabilities, and (ii) if the Stock Closing occurs before the Asset Closing, all representations and warranties in Article 4 shall be excluded from this Section 7.2.1(a) for the purposes of the Asset Closing to the extent, and only to the extent, they relate to Parent, CADRI (as Stock Seller), the Acquired Companies and/or the Acquired Company Business;
- (b) each Seller Party shall have performed and complied with in all material respects the covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Applicable Closing Date, and all deliveries contemplated by Section 3.2 in respect of the Applicable Closing shall have been tabled;
- (c) no preliminary or permanent injunction or other order, decree or ruling issued by a Governmental Body, and no statute, rule, regulation or executive order promulgated or enacted by a Governmental Body, which restrains, enjoins, prohibits, or otherwise makes illegal the consummation by Purchaser of the transactions contemplated hereby, shall be in effect; and
- (d) Parent shall have executed and delivered to the Acquired Operating Company a release agreement releasing the Acquired Operating Company from any and all obligations under that certain Agreement of Lease dated March 23, 2007 relating to the Pittsford Lease and pursuant to which release agreement Parent shall agree to indemnify the Acquired Operating Company from and against any and all liabilities arising under or in connection with the Pittsford Lease.

## **7.2.2 Additional Conditions to Stock Closing**

In addition to the conditions set forth in Section 7.2.1 above, the obligation of Purchaser to consummate the Stock Closing shall be further subject to the fulfillment as of the Stock Closing Date of the following conditions, which are for the exclusive benefit of, and may be waived in writing by, Purchaser:

- (a) Stock Seller shall have obtained the consents listed in Part 1 of Schedule E;

- (b) documents reasonably satisfactory to Purchaser, including payoff letters, if requested by Purchaser, evidencing the repayment in full of all Indebtedness of the Acquired Companies and the release of any and all Encumbrances in connection therewith, including the release of any and all Encumbrances on assets of the Acquired Companies in favour of HSBC Bank Canada;
- (c) documents reasonably satisfactory to Purchaser evidencing the release of any and all Encumbrances on the Shares, including the release of any and all Encumbrances in favour of Jevco Insurance Company and HSBC Bank Canada;
- (d) the Seller Parties shall have completed the Pre-Closing Reorganization on terms and conditions consistent with the Pre-Closing Reorganization Description;
- (e) Parent, Purchaser and the DEP shall each have executed and delivered and entered into the Buyer-Seller Agreement, substantially in the form attached hereto as Schedule G, which Buyer-Seller Agreement shall otherwise be in form and substance reasonably satisfactory to Purchaser, it being understood that Purchaser will not execute the Buyer-Seller Agreement until (i) after the July 6, 2010 deadline for Berwick Borough to request to be involved in the development of the remediation and reuse plans for the Property under Act 2; and (ii) the Purchaser receives written confirmation from the DEP that Berwick Borough has not so requested to be involved in the development of the remediation and reuse plans for the Property; and
- (f) the Seller Parties shall have obtained for the benefit of Purchaser and its Affiliates (including the Companies) a pollution and remediation legal liability insurance policy for a term of ten (10) years (the "**Environmental Insurance Policy**") in substantially the form attached hereto as Schedule H providing insurance coverage in amounts up to \$10 million on a per incident basis and in the aggregate and on such other terms and conditions as are reasonably acceptable to Purchaser against Losses which may be incurred from time to time following the Closing by Purchaser or its Affiliates (including the Companies) with respect to the Property which Losses relate in any way to Laws or Proceedings concerning pollution or protection of the environment, including all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labelling, testing, processing, discharge, release, threatened release, control, or cleanup of any Hazardous Materials, regardless of whether such Losses arise from Proceedings initiated by any Governmental Body or any other Person.

### **7.2.3 Additional Conditions to Asset Closing**

In addition to the conditions set forth in Section 7.2.1 above, the obligation of Purchaser to consummate the Asset Closing shall be further subject to the fulfillment as of the Asset Closing Date of the following conditions, which are for the exclusive benefit of, and may be waived in writing by, Purchaser:

- (a) each of Bach and CADRI shall have obtained the discharge of all Encumbrances on the Acquired Assets other than Permitted Encumbrances (including the release of any and all Encumbrances in favour of HSBC Bank Canada and Jevco Insurance Company) and Purchaser shall have received evidence of such discharge reasonably satisfactory to Purchaser;
- (b) Asset Seller shall have obtained the consents listed in Part 2 of Schedule E;
- (c) all Environmental Permits required in connection with the operation of the Asset Seller Business by Purchaser or its Affiliate at a new leased facility location satisfactory to Purchaser shall have been obtained and shall be in full force and effect so as to enable Purchaser or its Affiliate to operate the Asset Seller Business immediately following the Asset Closing; provided that if the condition in this Section 7.2.3(c) is not satisfied prior to October 31, 2010, it shall be deemed to be irrevocably waived by Purchaser as of and from October 31, 2010;
- (d) the Seller Parties shall have completed the Pre-Closing Asset Transfer on terms and conditions consistent with the Pre-Closing Asset Transfer Description;
- (e) each of Bach and CADRI shall have obtained certificates current to June 30, 2010 in respect of the Bulk Transfers issued by the relevant Governmental Authority under subsection 6(1) of the RSTA and under similar applicable Law;
- (f) Bach shall have delivered to Purchaser waiver letters in form and substance reasonably satisfactory to Purchaser from each of Xerox Canada Ltd. and Pitney Bowes Global Credit Services and CADRI shall have delivered to Purchaser waiver letters from De Lage Landen Financial Services of Canada, together with any other additional similar secured parties which may exist as of the Asset Closing Date, confirming that the Encumbrances held by such entities related only to specific identified equipment;
- (g) all corporate proceedings required to be taken by Bach and CADRI in connection with the Transactions have been completed, and Purchaser has received copies of all instruments and other evidence as it may reasonably request in order to establish the consummation of the Transactions and the taking of all necessary corporate proceedings in connection therewith;
- (h) the Seller Parties shall have complied with the Bulk Sales Act in respect of the transfer of the Acquired Assets from Bach to CADRI and from CADRI to the Purchaser (the “**Bulk Transfers**”) or, if after having used all commercially reasonable efforts to achieve the foregoing compliance with the Bulk Sales Act the Seller Parties have been unable to achieve full compliance, the Seller Parties shall have deposited into an escrow account held by an independent third party escrow agent funds in an amount sufficient to satisfy in full the claims (or potential claims) of all creditors (both secured and unsecured) who have or may have a remedial right under the Bulk Sales Act in respect of the Bulk Transfers or either of them (other than claims or potential claims (A) that relate to Assumed

Liabilities, or (B) of creditors from which Bach and/or CADRI have obtained a waiver of any claim under the Bulk Sales Act in respect of the Bulk Transfers in a form satisfactory to Purchaser, acting reasonably), pursuant to an escrow agreement containing terms and conditions which are satisfactory to Purchaser, acting reasonably, and which provides for the immediate release of escrowed funds to the Seller Parties in the amount of any claims for which the Seller Parties have provided evidence of repayment reasonably satisfactory to Purchaser; and

- (i) Asset Seller shall deliver to Purchaser a true and correct list as of the Asset Closing Date of all accounts receivable included in the Acquired Assets, including the name and address of the account debtor and the receivable balance for each account receivable.

## **ARTICLE 8**

### **INDEMNIFICATION**

#### **8.1        Indemnification by Seller Parties**

The Seller Parties, jointly and severally, agree to indemnify and save harmless Purchaser and its Affiliates (including the Acquired Companies) from all Losses suffered or incurred as a result of or arising directly or indirectly out of or in connection with:

- (a) the untruthfulness or inaccuracy of any representation or warranty of the Seller Parties relating to Bach, CADRI (as Asset Seller), the Asset Seller Business, the Acquired Assets and/or the Assumed Liabilities contained in this Agreement or in any agreement, certificate or other document delivered at the Asset Closing pursuant to this Agreement;
- (b) any breach or non-performance by a Seller Party of any covenant relating to Bach, CADRI (as Asset Seller), the Asset Seller Business, the Acquired Assets and/or the Assumed Liabilities to be performed by it which is contained in this Agreement or in any agreement, certificate or other document delivered at the Asset Closing pursuant to this Agreement;
- (c) any Excluded Liabilities;
- (d) non-compliance with the Bulk Sales Act, if applicable;
- (e) the Pre-Closing Asset Transfer;
- (f) obtaining licenses for or other rights to use any software used by Bach in connection with the Asset Seller Business which rights will not be transferred and available to Purchaser following the Asset Closing; provided that Seller Parties shall not be required to indemnify Purchaser and its Affiliates for Losses related to any licenses or rights of use in excess of the number of such licenses or rights of use used by Bach at the Asset Closing Date;

- (g) the untruthfulness or inaccuracy of any representation or warranty of the Seller Parties relating to Parent, CADRI (as Stock Seller), the Acquired Companies and/or the Acquired Company Business contained in this Agreement or in any agreement, certificate or other document delivered at the Stock Closing pursuant to this Agreement;
- (h) any breach or non-performance by a Seller Party of any covenant relating to Parent, CADRI (as Stock Seller), the Acquired Companies and/or the Acquired Company Business to be performed by it which is contained in this Agreement or in any agreement, certificate or other document delivered at the Stock Closing pursuant to this Agreement;
- (i) the Act 2 Remediation;
- (j) Taxes with respect to the Acquired Companies for any Tax period that ends prior to the Stock Closing Date and the portion of any Straddle Period that ends on the Stock Closing Date, but only to the extent such Taxes exceed the amount, if any, of the liability for Taxes taken into account in calculating the purchase price adjustments provided for in Section 3.4 and Section 3.5;
- (k) any and all operations of (x) the Acquired Company, to the extent such operations occurred prior to the Stock Closing, or (y) GBI Industries, Inc.;
- (l) the Pre-Closing Reorganization, including without limitation, Losses which arise as a result of a reassessment of the proceeds of disposition paid upon transfer of the issued and outstanding shares of GBI Industries, Inc. from the Acquired Company to Parent, or which arise as a result of non-compliance with Section 116 of the *Income Tax Act* (Canada) in respect of such share transfer; and
- (m) Losses resulting from any non-compliance of the Acquired Operating Company with applicable Environmental, Health, and Safety Requirements existing on or prior to the Stock Closing Date, in each case and without derogating from the Purchaser's rights under Section 8.1(a), only to the extent set forth in the Disclosure Schedule, as well as any non-compliance of the Seller Parties with their obligations under Section 6.3(e);

provided, however, that:

(i) the Seller Parties shall not be required to indemnify or save harmless Purchaser or its Affiliates in respect of the indemnification obligations pursuant to paragraph (a) in this Section 8.1 unless Purchaser shall have provided written notice of a Claim being asserted under paragraph (a) in this Section 8.1 on or prior to the first anniversary of the Asset Closing Date;

(ii) the Seller Parties shall not be required to indemnify or save harmless Purchaser or its Affiliates in respect of the indemnification obligations pursuant to paragraphs (b), (c), (d), (e) or (f) in this Section 8.1 unless Purchaser shall have provided written notice of a Claim being asserted under paragraph (b), (c), (d), (e) or (f) in this Section 8.1 on or prior to the earlier to occur of (x) the third anniversary of the Asset Closing Date, (y) completion of the final step

required in connection with the final liquidation and dissolution of Parent under applicable Law or (z) completion of a bona fide acquisition by an Unaffiliated Entity of 100% of the issued and outstanding equity interests in Parent (a “**Qualifying Parent Sale**”) (provided, however, that if the event described in (y) or (z) occurs prior to the first anniversary of the Asset Closing Date, the period of time contemplated by (y) and (z) shall be the first anniversary of the Asset Closing Date);

(iii) the Seller Parties shall not be required to indemnify or save harmless Purchaser or its Affiliates in respect of the indemnification obligations pursuant to paragraph (g) in this Section 8.1 unless Purchaser shall have provided written notice of a Claim being asserted under paragraph (g) in this Section 8.1 on or prior to the first anniversary of the Stock Closing Date;

(iv) the Seller Parties shall not be required to indemnify or save harmless Purchaser or its Affiliates in respect of the indemnification obligations pursuant to paragraphs (h), (j), (k), (l) or (m) in this Section 8.1 unless Purchaser shall have provided written notice of a claim being asserted under paragraph (h), (j), (k), (l) and (m) in this Section 8.1 on or prior to the earlier to occur of (x) the third anniversary of the Stock Closing Date, (y) completion of the final step required in connection with the final liquidation and dissolution of Parent under applicable Law, or (z) completion of a Qualifying Parent Sale (provided, however, that if the event described in (y) or (z) occurs prior to the first anniversary of the Stock Closing Date, the period of time contemplated by (y) and (z) shall be the first anniversary of the Stock Closing Date, and provided further that, notwithstanding the occurrence of the event described in (y) or (z), Seller Parties shall be required to indemnify and save harmless Purchaser of its Affiliates pursuant to paragraph [Redacted: Information relating to termination of certain indemnities that is private and confidential to the Seller Parties.];

(v) the Seller Parties shall not be required to indemnify or save harmless Purchaser or its Affiliates in respect of the indemnification obligations pursuant to paragraph (i) in this Section 8.1 unless Purchaser shall have provided written notice of a claim pursuant to paragraph (i) on or prior to the completion of the Act 2 Remediation.

(vi) in the event of a bona fide sale by Parent of 100% of the issued and outstanding equity interests in CADRI to a Unaffiliated Entity (a “**Qualifying CADRI Sale**”), CADRI shall not be liable as a Seller Party under this Article 8 for payment of any Claim which has not been asserted by Purchaser in writing on or prior to the date of closing of such Qualifying CADRI Sale; provided, however, that notwithstanding the foregoing, (x) CADRI shall remain jointly and severally liable as a Seller Party under this Article 8 in respect of any Claim asserted by Purchaser in writing on or prior to the first anniversary of the later to occur of the Asset Closing or the Stock Closing irrespective of whether there has occurred prior to such first anniversary a Qualifying CADRI Sale and (y) the occurrence of a Qualifying CADRI Sale shall not prohibit or restrict in any way the ability of Purchaser to recover any and all amounts in the Indemnity Escrow Account, the [Redacted] Escrow Account or the [Redacted] Escrow Account.

The term “**Unaffiliated Entity**” shall mean any person other than (i) an Affiliate of CADRI (either as of the date of this Agreement or as of the time immediately prior to such sale); and (ii) in the case of an acquisition, either directly or indirectly, by a person other than an individual, a person owning, directly or indirectly and either individually or together with all

persons acting jointly or in concert with such person, greater than 5% of the outstanding equity interests of CADRI or any Affiliate of CADRI (either as of the date of this Agreement or as of the time immediately prior to such sale).

The Purchaser and the Seller Parties confirm that it is their intention that all representations and warranties of the Seller Parties contained in this Agreement or in any agreement, certificate or other document delivered at the Stock Closing or the Asset Closing be referred to and addressed in Section 8.1(a) or Section 8.1(g). To the extent that any such representation or warranty of the Seller Parties is not referenced in Section 8.1(a) or Section 8.1(g), such representation and warranty shall be deemed to be referenced in Section 8.1(a). Similarly, the Purchaser and the Seller Parties confirm that it is their intention that all covenants of the Seller Parties contained in this Agreement or in any agreement, certificate or other document delivered at the Stock Closing or the Asset Closing be referred to in and addressed in Section 8.1(b) or Section 8.1(h). To the extent that any such covenant of the Seller Parties is not referenced in Section 8.1(b) or Section 8.1(h), such covenant shall be deemed to be referenced in Section 8.1(b).

## **8.2                    Indemnification by Purchaser**

Purchaser agrees to indemnify and save harmless the Seller Parties and their Affiliates from all Losses suffered or incurred as a result of or arising directly or indirectly out of or in connection with:

- (a) the untruthfulness or inaccuracy of any representation or warranty of Purchaser contained in this Agreement or in any agreement, certificate or other document delivered at either the Asset Closing or the Stock Closing pursuant to this Agreement;
- (b) any breach or non-performance by Purchaser of any covenant to be performed by it which is contained in this Agreement or in any agreement, certificate or other document delivered at either the Asset Closing or the Stock Closing pursuant to this Agreement; and
- (c) the Assumed Liabilities.

provided, however, that:

(i) Purchaser shall not be required to indemnify or save harmless the Seller Parties in respect of the indemnification obligations pursuant to paragraph (a) in this Section 8.2 unless the Seller Parties shall have provided written notice of a claim being asserted under paragraph (a) on or prior to the first anniversary of the later to occur of the Asset Closing Date and the Stock Closing Date; and

(ii) Purchaser shall not be required to indemnify or save harmless the Seller Parties in respect of the indemnification obligations pursuant to paragraphs (b) or (c) in this Section 8.2 unless the Seller Parties shall have provided written notice of a claim being asserted under paragraphs (b) or (c) on or prior to the earlier to occur of (x) the third anniversary of the later to occur of the Asset Closing Date and the Stock Closing Date, (y) completion of the final step

required in connection with the final liquidation and dissolution of Parent under applicable Law, or (z) completion of a Qualifying Parent Sale (provided, however, that if the event described in (y) or (z) occurs prior to the first anniversary of the later to occur of the Asset Closing Date and the Stock Closing Date, the period of time contemplated by (y) and (z) shall be the first anniversary of the later to occur of the Asset Closing Date and the Stock Closing Date).

### **8.3            Limitation of Liability**

(a) Purchaser shall not be entitled to require payment of any amount by a Seller Party on the indemnities contained in Section 8.1(a), (b), (g) and (h) until the aggregate of all such amounts for which it would otherwise be entitled to require payment exceeds \$350,000 (the "**Threshold Amount**"), which amount will constitute a deductible. Once the Threshold Amount has been exceeded, Purchaser shall be entitled to require payment on the indemnities contained in Section 8.1 from the first dollar of such amounts in excess of the Threshold Amount. In addition, no Seller Party shall be liable for any claim for a breach of representation or warranty contained in Article 4 or any claim on the indemnities in Section 8.1 unless the amount of such claim asserted against such Seller Party shall be at least \$20,000, in which case the total amount of the claim, and not just the portion in excess of \$20,000, shall be recoverable by Purchaser (assuming the Threshold Amount has been exceeded, if applicable).

(b) Seller Parties shall not be entitled to require payment of any amount by a Seller Party on the indemnities contained in Section 8.2(a) and (b) until the aggregate of all such amounts for which it would otherwise be entitled to require payment exceeds the Threshold Amount, which amount will constitute a deductible. Once the Threshold Amount has been exceeded, Seller Parties shall be entitled to require payment on the indemnities contained in Section 8.2 from the first dollar of such amounts in excess of the Threshold Amount. In addition, Purchaser shall not be liable for any claim for a breach of representation or warranty contained in Article 5 or any claim on the indemnities in Section 8.2 unless the amount of such claim asserted against Purchaser shall be at least \$20,000, in which case the total amount of the claim, and not just the portion in excess of \$20,000, shall be recoverable by the Seller Parties (assuming the Threshold Amount has been exceeded, if applicable).

(c) The total liability, including interest and costs, of the Seller Parties to Purchaser in respect of all indemnification Claims under Section 8.1(a), (b), (g), (h) or (i) shall not exceed the aggregate amount of funds on deposit in the Indemnity Escrow Account at the time when written notice of the particular Claim is delivered by Purchaser.

(d) The total liability, including interest and costs, of the Seller Parties to Purchaser in respect of all indemnification Claims under Section 8.1(c), (d), (e), (f), (j), (k), (l) and (m) shall not exceed 50% of the Purchase Price; provided that the total liability, including interest and costs, of the Seller Parties to Purchaser in respect of all indemnification Claims under Section [Redacted: Information relating to redacted information in Section 8.1(iv).] for which written notice is delivered by Purchaser after the later to occur of (x) completion of the final step required in connection with the final liquidation and dissolution of Parent under applicable Law or a Qualifying Parent Sale, and (y) the first anniversary of the Stock Closing Date, shall not exceed the aggregate amount of funds on deposit in the [Redacted] Escrow Account at the time when written notice of the particular Claim is delivered by Purchaser.

(e) The first \$35,000 of liability of the Sellers Parties with respect to a Claim under Section 8.1(f) shall be subject to a 50% deductible (the intention of the parties being that, as between Purchaser, on the one hand, and the Seller Parties, on the other hand, the first \$35,000 of such Losses will be shared equally) and any Losses in excess of \$35,000 for which Purchaser is entitled to indemnification under Section 8.1(f) shall not be subject to any deductible (the intention of the parties being that the Seller Parties shall be solely responsible for such Losses in excess of \$35,000).

(f) To the extent that Purchaser or any of its Affiliates is entitled to any indemnification from a Seller Party hereunder, it shall recover any indemnified Losses from the amounts held by the Escrow Agent in accordance with the terms of the Escrow Agreement before making a Claim against any other assets of the Seller Parties; provided that:

- (i) the sole remedy for Purchaser and its Affiliates in respect of any indemnification Claims under Section 8.1(a), (b), (g), (h) or (i) shall be the funds in the Indemnity Escrow Account to which Purchaser and its Affiliates are entitled in accordance with the Escrow Agreement and Purchaser and its Affiliates shall not make any Claims on the other assets of the Seller Parties in respect of any such Claims; and
- (ii) the sole remedy for Purchaser and its Affiliates in respect of any indemnification Claims under Section [Redacted: Information relating to redacted information in Section 8.1(iv).] for which written notice is delivered by Purchaser after the later to occur of (x) completion of the final step required in connection with the final liquidation and dissolution of Parent under applicable Law or a Qualifying Parent Sale, and (y) the first anniversary of the Stock Closing Date, shall be the funds in the [Redacted] Escrow Account to which Purchaser and its Affiliates are entitled in accordance with the Escrow Agreement and Purchaser and its Affiliates shall not make any Claims on the other assets of the Seller Parties in respect of any such Claims.

#### **8.4            Notice of Claim**

(a) In the event that a party (the "**Indemnified Party**") shall become aware of any claim, proceeding or other matter (a "**Claim**") in respect of which another party (the "**Indemnifying Party**") agreed to indemnify the Indemnified Party pursuant to this Agreement, the Indemnified Party shall promptly give written notice thereof to the Indemnifying Party. In the case of a claim by Purchaser, a copy of such written notice shall be provided to the Escrow Agent. Such notice shall specify whether the Claim arises as a result of a claim by a person against the Indemnified Party (a "**Third Party Claim**") or whether the Claim does not so arise (a "**Direct Claim**"), and shall also specify with reasonable particularity, to the extent that the information is available, the factual basis for the Claim and the amount of the Claim (or if not then reasonably ascertainable, the maximum amount of such Claim reasonably estimated by the Indemnified Party).

(b) The failure by the Indemnified Party to so notify the Indemnifying Party on a timely basis shall not relieve the Indemnifying Party of any liability to the Indemnified Party hereunder except to the extent that the Indemnifying Party demonstrates that the defense of the Claim is prejudiced by the Indemnifying Party's failure to give such notice on a timely basis.

(c) Upon determination of the amount of a Claim that is binding on both the Indemnifying Party and the Indemnified Party, the amount of such Claim shall be paid promptly, but in no event more than ten (10) Business Days after the date such amount is determined.

## **8.5 Direct Claims**

With respect to any Direct Claim, following receipt of notice from the Indemnified Party of the Claim, the Indemnifying Party shall have 30 days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnifying Party the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnifying Party may reasonably request. If both parties agree at or prior to the expiration of such 30-day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnifying Party shall immediately pay to the Indemnified Party the full agreed-upon amount of the Claim. In the event that within thirty (30) days after the receipt by the Indemnifying Party of such a written notice, the Indemnified Party shall not have received from the Indemnifying Party a written objection to such Claim, such Claim shall be conclusively presumed and considered to have been assented to and approved by the Indemnifying Party following receipt by the Indemnifying Party of a written notice from the Indemnified Party to such effect. If within the thirty (30) day period, the Indemnified Party shall have received from the Indemnifying Party a written notice setting forth the Indemnifying Party's objections to such Claim and the Indemnifying Party's reasons for such objections, then the parties shall negotiate in good faith for a period of ten (10) Business Days from the date the Indemnified Party receives such objection (such period, the "**Negotiation Period**"). Following the Negotiation Period, if the parties still cannot agree on the Claim, the parties shall be entitled to seek any remedies that they may have at law or in equity.

## **8.6 Third Party Claims**

(a) The Indemnifying Party shall have the right, at its expense, to participate in or assume control of the negotiation, settlement or defence of, with counsel reasonably satisfactory to the Indemnified Party, any Third Party Claim as to which the Indemnifying Party has agreed to indemnify the Indemnified Party. If the Indemnifying Party assumes control, (i) the Indemnifying Party shall reimburse the Indemnified Party for all of the Indemnified Party's out-of-pocket expenses prior to the time the Indemnifying Party assumed control; and (ii) the Indemnified Party shall 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 named parties to any action or proceeding include both the Indemnifying Party and the Indemnified Party and representation of both the Indemnifying Party and the Indemnified Party by the same counsel would be inappropriate due to actual or potential differing interests between them (such as the availability of different defences). The Indemnifying Party shall not settle any Third Party Claim

without the Indemnified Party's approval (which shall not be unreasonably withheld, delayed or conditioned).

(b) If the Indemnifying Party, having elected to assume such control, thereafter fails to defend the Third Party Claim within a reasonable time, the Indemnified Party shall be entitled to assume such control and the Indemnifying Party shall be bound by the results obtained by the Indemnified Party with respect to the Third Party Claim.

(c) If any Third Party Claim is of a nature such that the Indemnified Party is required by applicable Law to incur losses or 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, the Indemnified Party may incur such Losses or make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnified Party, reimburse the Indemnified Party for such payment. If the amount of any liability of the Indemnified Party under such Third Party Claim, as finally determined, is less than the amount that was paid by the Indemnifying Party to the Indemnified Party, the Indemnified Party shall, forthwith after the receipt of the difference from the Third Party, pay the amount of such difference, together with any interest thereon paid by the Third Party to the Indemnified Party, to the Indemnifying Party. In addition, the Indemnifying Party shall post all security required by any court, regulatory body or other authority having jurisdiction, including without limitation, for purposes of enabling the Indemnifying Party to contest any Third Party Claim.

(d) If the Indemnifying Party fails to assume control of the defence of any Third Party Claim or defaults in respect of any of its obligations under this Section 8.6 with respect thereto, the Indemnified Party shall have the exclusive right to contest the amount claimed and may settle and pay the same on 14 days' prior written notice to the Indemnifying Party and the Indemnifying Party shall, thereupon, be deemed to have agreed that such settlement is reasonable and may be agreed to by the Indemnified Party and all other persons liable in respect of the Third Party Claim unless within such 14-day period the Indemnifying Party notifies the Indemnified Party that it is assuming or reassuming control of such defence in accordance with Section 8.6(a) and thereafter assumes or reassumes such control and does not default.

(e) The Indemnified Party and the Indemnifying Party shall co-operate fully with each other with respect to Third Party Claims, and shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available).

## **8.7        Exclusivity**

The provisions of this Article 8 shall apply to any Claim (other than a claim for specific performance or injunctive relief) for breach of any covenant, representation, warranty or other provision of this Agreement or any agreement, certificate or other document delivered pursuant hereto or arising out of any Tax liability of the Companies, so that all such Claims shall be subject to the limitations and other provisions contained in this Article 8 to the extent such limitations and other provisions are applicable to such Claims.

## **ARTICLE 9**

### **TERMINATION**

#### **9.1            Termination Events**

The obligations of the Asset Seller and the Purchaser to consummate the Asset Closing and the obligations of the Stock Seller and the Purchaser to consummate the Stock Closing, in each case as contemplated by Article 3 may, by written notice given prior to the occurrence of the Asset Closing or the Stock Closing, as the case may be, be terminated:

- (a) by either Purchaser, on the one hand, or the Seller Parties, on the other hand, if a material breach of any provision of this Agreement has been committed by the other party and such breach has not been waived by the terminating party;
- (b) by Purchaser (i) in the case of the Asset Closing, if satisfaction of any of the conditions in Section 7.2.1 or 7.2.3 is or becomes impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement), or (ii) in the case of the Stock Closing, if satisfaction of any of the conditions in Section 7.2.1 or 7.2.2 is or becomes impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement);
- (c) by Asset Seller, in the case of the Asset Closing, if satisfaction of any of the conditions in Section 7.1 is or becomes impossible (other than through the failure of any Seller Party to comply with its obligations under this Agreement);
- (d) by Stock Seller, in the case of the Stock Closing, if satisfaction of any of the conditions in Section 7.1 is or becomes impossible (other than through the failure of any Seller Party to comply with its obligations under this Agreement);
- (e) by mutual written consent of Purchaser and Seller Parties; or
- (f) by either Purchaser or, in the case of and with respect to the Asset Closing, the Asset Seller, or in the case of and with respect to the Stock Closing, by Stock Seller, in each case by delivering written notice of termination pursuant to this Section 9.1(f) (a “**Section 9.1(f) Termination Notice**”) at least three Business Days’ prior to the effective date of termination if the Applicable Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before October 31, 2010, or such later date as Purchaser and the Seller Parties may mutually agree upon. Notwithstanding the foregoing, neither Purchaser, on the one hand, nor the Seller Parties, on the other hand, may terminate this Agreement pursuant to this Section 9.1(f) if the party or parties receiving a Section 9.1(f) Termination Notice delivers written notice of its intention to waive any unsatisfied conditions to its obligation to consummate the Applicable Closing and agrees to consummate such Applicable Closing within five Business Days.

## **9.2            Effect of Termination**

Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1 with respect to a particular closing, all further obligations of the parties under this Agreement to consummate such closing shall terminate; *provided* that if this Agreement is terminated by a party with respect to a particular closing because of the breach of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied with respect to such closing as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies shall survive such termination unimpaired.

## **ARTICLE 10** **MISCELLANEOUS**

### **10.1            Notices**

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

(i) if to any Seller Party:

Global Railway Industries Ltd.  
155 boul. Montréal-Toronto  
(Highway 2-20)  
Lachine, QC H8S 1B4

Attention: Chief Executive Officer  
Fax No.: 514.634.4358

(ii) if to Purchaser:

Westinghouse Air Brake Technologies Corporation  
1001 Air Brake Avenue  
Wilmerding, PA 15148

Attention: Legal Department  
Fax No.: 412.825.1305

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

communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

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

## **10.2 Amendments and Waivers**

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

## **10.3 Assignment**

Each of the Seller Parties may assign all or any portion of its right, title, interest and obligations under this Agreement, in whole or in part, to one or more of its Affiliates; provided that, if such assignment takes place, such Seller Party shall continue to be liable jointly and severally with the assignee and the other Seller Parties for any obligations hereunder. Purchaser may assign its rights and obligations under this Agreement, in whole or in part, to one or more Affiliates of Purchaser; provided that, if such assignment takes place, Purchaser shall continue to be liable jointly and severally with the assignee for any obligations hereunder. This Agreement shall not otherwise be assignable by any party hereto except with the prior written consent of the other parties.

## **10.4 Successors and Assigns**

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

## **10.5 Expenses**

Each party shall pay its own costs and expenses incurred in connection with the negotiations, preparation and performance of this Agreement and the agreements and transactions contemplated hereby and thereby, including the fees and expenses of legal counsel, financial advisors, accountants and other professional advisors and fees payable to government agencies. Purchaser, on the one hand, and the Seller Parties, on the other hand, shall share equally in all personal property transfer taxes, if any, and all sales, use and other similar taxes, if any, imposed on or in connection with the transfers contemplated by this Agreement.

## **10.6 Consultation**

The parties shall consult with and obtain the consent (not to be unreasonably withheld) of each other before issuing any press release or making any other public announcement with respect to this Agreement or the transactions contemplated hereby; provided, however, that the foregoing shall not prohibit any party from taking any actions required by applicable Law.

**10.7            Further Assurances**

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

**10.8            Counterparts**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, with the same effect as if all parties had signed and delivered the same document, and all counterparts shall together constitute one and the same original document.

***[Remainder of page intentionally left blank.]***

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

**SELLER PARTIES:**

**GLOBAL RAILWAY INDUSTRIES LTD.**

(signed) *Fausto Levy*

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Name: Fausto Levy

Title: President and Chief Executive  
Officer

**BACH-SIMPSON CORPORATION**

(signed) *Brian McMullan*

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Name: Brian McMullan

Title: Chief Financial Officer

**CAD RAILWAY INDUSTRIES LTD.**

(signed) *Fausto Levy*

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Name: Fausto Levy

Title: President

**PURCHASER:**

**WESTINGHOUSE AIR BRAKE  
TECHNOLOGIES CORPORATION**

(signed) *R. Mark Cox*

---

Name: R. Mark Cox

Title: Vice President Corporate  
Development

**SCHEDULE A**

**ACQUIRED COMPANY WORKING CAPITAL INFORMATION**

[Redacted]

**SCHEDULE B**

**ASSET SELLER WORKING CAPITAL INFORMATION**

[Redacted]

**SCHEDULE C**  
**ASSET SELLER EQUIPMENT**

[Redacted]

**SCHEDULE D**  
**TAX ALLOCATION**

[Redacted]

## **SCHEDULE E**

### **MATERIAL CONSENTS**

#### **Part 1 – Stock Closing**

The release of any security interest of Jevco Insurance Company in the Shares under the Indemnity and Security Agreement dated November 27, 2007 between Jevco, CADRI and Parent.

The consent of HSBC Bank Canada and Bank of Montreal (the "**Banks**") under the Credit Agreement and certain related agreements of even date therewith, including a general security agreement, deed of hypothec, guaranty and suretyship agreement, security agreement and deposit account control agreement (collectively, the "**Facility Documents**"), to (a) the release of any security interest of the Banks in the Shares and in the assets of the Acquired Companies, (b) the release and discharge of the Acquired Companies from any obligations arising under any of the Facility Agreements to which they are party, and (c) the termination of the deposit account control agreement in respect of the Acquired Operating Company.

#### **Part 2 – Asset Closing**

The release of any security interest of Jevco Insurance Company in the Acquired Assets under the Indemnity and Security Agreement dated November 27, 2007 between Jevco, CADRI and Parent.

The consent of the Banks under the Facility Documents to the release of any security interest of the Banks in the Acquired Assets.

**SCHEDULE F**

**FORM OF ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** made as of the ■ day of ■, 2010,

**B E T W E E N:**

**CAD RAILWAY INDUSTRIES LTD.,**  
a corporation existing under the laws of the  
Province of Ontario

(hereinafter referred to as the "**Seller**"),

- and -

**GLOBAL RAILWAY INDUSTRIES LTD.,**  
a corporation existing under the laws of  
the Province of Alberta

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

- and -

**BACH-SIMPSON CORPORATION,**  
a corporation existing under the laws of the  
Province of Ontario

(hereinafter referred to as "**Bach**" and, collectively  
with Seller and Parent, the "**Seller Parties**"),

- and -

**WESTINGHOUSE AIR BRAKE  
TECHNOLOGIES CORPORATION,**  
a corporation existing under the laws of  
the State of Delaware

(hereinafter referred to as the "**Purchaser**"),

- and -

■,

(hereinafter referred to as the "**Escrow Agent**").

WHEREAS the Seller Parties and the Purchaser have entered into an asset and share purchase agreement dated July ■, 2010 (as the same may be amended from time to time, the "**Purchase Agreement**");

AND WHEREAS it is a condition to each of the Asset Closing and the Stock Closing that the Seller, the Purchaser and the Escrow Agent enter into this Agreement;

AND WHEREAS pursuant to the terms and conditions of the Purchase Agreement, the Purchaser has delivered to the Escrow Agent **[the Asset Escrow Amount and/or the Stock Escrow Amount]** to be held in accordance with the terms and conditions hereof;

**[AND WHEREAS pursuant to the terms and conditions of the Purchase Agreement, the Purchaser is required to deliver to the Escrow Agent the [Asset/Stock] Escrow Amount at the [Asset/Stock] Closing to be held in accordance with the terms and conditions hereof;]**

AND WHEREAS pursuant to the terms and conditions of the Purchase Agreement, the Purchaser **[has delivered/is required to deliver]** to the Escrow Agent the [Redacted] Escrow Amount (as hereinafter defined) **[at the Stock Closing]** to be held in accordance with the terms and conditions hereof;

AND WHEREAS pursuant to the terms and conditions of the Purchase Agreement, the Purchaser **[has delivered/may be required to deliver]** to the Escrow Agent the [Redacted] Escrow Amount (as hereinafter defined) **[at the Asset Closing]** to be held in accordance with the terms and conditions hereof;

AND WHEREAS Parent and Bach have executed this Agreement solely for the purpose of confirming their agreement to the distribution of the Indemnity Escrow Funds, the [Redacted] Escrow Funds (each as hereinafter defined) and the [Redacted] Escrow Amount in accordance with the terms and conditions of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the parties herein contained and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each party), the parties agree as follows:

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1 Definitions**

For the purposes of this Agreement, including the recitals hereto, unless the context otherwise requires:

- (a) the following expressions shall the respective meanings set out below:

- (i) **"Affected Release Amount"** has the meaning given to such term in Section 3.3(a)(vi)(A);
- (ii) **"Applicable Indemnity Collection Amount"** means, in respect of a Release Amount, the portion of any Indemnity Collection Amount that was distributed by the Escrow Agent to the Purchaser on or prior to the Release Date applicable to such Release Amount (the **"Applicable Release Date"**), but which did not reduce the amount of any other Release Amount, or any unreleased portion thereof, with a Release Date that occurred prior to the Applicable Release Date;
- (iii) **"Applicable Unresolved Claim"** means, in respect of a Release Amount, an Unresolved Claim for which an Indemnity Notice was delivered to the Escrow Agent and the Seller prior to the Release Date applicable to such Release Amount;
- (iv) **"Holdback Amount"** means, in respect of a Release Amount (the **"particular Release Amount"**) on any date of determination, an amount equal to the lesser of:
  - (A) the amount, if any, by which the aggregate amount on such date of (x) all Applicable Unresolved Claims in respect of the particular Release Amount and (y) all Indemnity Collection Amounts in respect of Claims or parts of Claims that were, but have ceased to be, Applicable Unresolved Claims in respect of the particular Release Amount that have not been disbursed to Purchaser, exceeds (z) the aggregate amount on such date of the Holdback Amounts in respect of all Release Amounts with earlier Release Dates than the particular Release Amount; and
  - (B) the unreleased portion of the particular Release Amount on such date;
- (v) **"Indemnity Award Amount"** has the meaning given to such term in Section 3.3(a)(i);
- (vi) **"Indemnity Collection Amount"** has the meaning given to such term in Section 3.3(a)(i);
- (vii) **"Indemnity Escrow Funds"** means, at any date of determination, the amount of funds in the Indemnity Escrow Account on such date;
- (viii) **"Indemnity Notice"** has the meaning given to such term in Section 3.2(a);
- (ix) [Redacted];
- (x) **"Joint Direction"** means a written direction signed by each of the Purchaser and the Seller, directing the Escrow Agent to release a portion

of the Indemnity Escrow Funds, [Redacted] Escrow Funds or [Redacted] Escrow Amount as set forth in such direction;

- (xi) **"Joint Notice"** means a written notice to the Escrow Agent signed by each of the Purchaser and the Seller;
- (xii) [Redacted];
- (xiii) "[Redacted] **Award Amount**" has the meaning given to such term in Section 4.2(a)(i);
- (xiv) "[Redacted] **Claim**" means a Claim for which a [Redacted] Indemnity Notice is delivered to the Escrow Agent and the Seller prior to the [Redacted] Release Date and which involves a Loss arising out of or otherwise relating to [Redacted: Information relating to certain indemnity claims private and confidential to the Seller Parties.]
- (xv) "[Redacted] **Collection Amount**" has the meaning given to such term in Section 4.2(a)(i);
- (xvi) "[Redacted] **Escrow Amount**" means US\$[Redacted];
- (xvii) "[Redacted] **Escrow Funds**" means, at any date of determination, the amount of funds in the [Redacted] Escrow Account on such date;
- (xviii) "[Redacted] **Indemnity Notice**" has the meaning given to such term in Section 4.1(a);
- (xix) "[Redacted] **Release Date**" has the meaning given to it in Section 4.2(a)(ii);
- (xx) **"Objection Notice"** means a written notice delivered by the Seller to the Purchaser and the Escrow Agent, notifying the Purchaser and the Escrow Agent that the Seller objects to a Direct Claim in respect of which the Purchaser has delivered an Indemnity Notice or a [Redacted] Indemnity Notice;
- (xxi) **"Pre-Claim Release Amount"** means, in respect of a Claim, any unreleased portion of a Release Amount for which the Release Date occurred on or before the delivery date of the Indemnity Notice in respect of such Claim;
- (xxii) **"Purchase Agreement"** has the meaning given to such term in the recitals hereto;
- (xxiii) **"Purchaser Direction"** means a written direction signed by the Purchaser, directing the Escrow Agent to release a portion of the Indemnity Escrow

Funds, [Redacted] Escrow Funds or [Redacted] Escrow Amount as set forth in such direction;

- (xxiv) **"Release Amount"** means such portion of the Indemnity Escrow Funds to be released by the Escrow Agent to the Seller in accordance with Section 3.3(a)(ii), (iii), (iv) or (v), as the case may be; provided that, for the avoidance of doubt, a Release Amount cannot be less than \$0;
  - (xxv) **"Release Date"** means, in respect of a Release Amount, the date on which the Purchaser and the Seller become obligated to deliver a Joint Direction to the Escrow Agent for the release of such Release Amount (less any amount required to be held back by the Escrow Agent in accordance with this Agreement) to the Seller pursuant to Section 3.3(a);
  - (xxvi) **"[Redacted] Escrow Amount"** means \$[Redacted]; and
  - (xxvii) **"Unresolved Claim"** means any Claim or part of a Claim for which an Indemnity Notice has been delivered to the Escrow Agent and the Seller in accordance with this Agreement, other than (i) a Claim or part of a Claim that has been settled by the Purchaser and the Seller as evidenced by a Joint Direction to release funds from the Indemnity Escrow Account or [Redacted] Escrow Account in full or partial satisfaction of such Claim or a Joint Notice that no funds shall be released from the Indemnity Escrow Account or [Redacted] Escrow Account in respect of such Claim, (ii) a Claim or part of a Claim in respect of which a decision of a court of competent jurisdiction or an award of any arbitrator has been issued and is not appealable or in respect of which the time periods during which any appeal of such decision or award may be brought have expired, or (iii) any Direct Claim for which the Seller has not delivered an Objection Notice to Purchaser and the Escrow Agent within 30 days of receipt of an Indemnity Notice in respect of such Direct Claim; and
- (b) all capitalized terms other than the expressions in Section 1.1(a) shall have the respective meanings given to them in the Purchase Agreement.

## 1.2 **Rules of Construction**

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

- (a) the terms "Agreement", "this Agreement", "the Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;
- (b) references to an "Article" or "Section" followed by a number or letter refer to the specified Article or Section of this Agreement;

- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and *vice versa* and words importing the use of any gender shall include all genders;
- (e) the word "including" is deemed to mean "including without limitation";
- (f) the terms "party" and "the parties" refer to a party or the parties to this Agreement;
- (g) any reference to this Agreement means this Agreement as amended, modified, replaced or supplemented from time to time;
- (h) all dollar amounts refer to Canadian dollars, unless otherwise specified;
- (i) any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and
- (j) whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Business Day, such payment shall be made, action shall be taken or period shall expire on the next following Business Day.

### **1.3 Entire Agreement**

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

### **1.4 Time of Essence**

Time shall be of the essence of this Agreement.

### **1.5 Governing Law and Submission to Jurisdiction**

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

(b) Each of the parties irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction of the courts of the Province of Ontario over any action or proceeding arising out of or relating to this Agreement, (ii) waives any objection that it might otherwise be

entitled to assert to the jurisdiction of such courts, and (iii) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.

## **1.6 Severability**

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

## **ARTICLE 2 Deposit and Investment of ESCROW Funds**

### **2.1 Deposit of Indemnity Escrow Amounts**

(a) The Escrow Agent acknowledges receipt of [the Asset Escrow Amount and/or the Stock Escrow Amount] and shall forthwith deposit [the Asset Escrow Amount and/or the Stock Escrow Amount] in the Indemnity Escrow Account.

(b) [At the [Asset/Stock] Closing, if such closing occurs, the Purchaser shall deliver to the Escrow Agent the [Asset/Stock] Escrow Amount to be held by the Escrow Agent in accordance with the terms and conditions hereof. The Escrow Agent shall, forthwith upon receiving such amount, deposit the [Asset/Stock] Escrow Amount in the Indemnity Escrow Account.]

### **2.2 Deposit of [Redacted] Escrow Amount**

[The Escrow Agent acknowledges receipt of the [Redacted] Escrow Amount and shall forthwith deposit the [Redacted] Escrow Amount in the [Redacted] Escrow Account.] [At the Stock Closing, if such closing occurs, the Purchaser shall deliver to the Escrow Agent the [Redacted] Escrow Amount to be held by the Escrow Agent in accordance with the terms and conditions hereof. The Escrow Agent shall, forthwith upon receiving such amount, deposit the [Redacted] Escrow Amount in the [Redacted] Escrow Account.]

### **2.3 Deposit of [Redacted] Escrow Amount**

[The Escrow Agent acknowledges receipt of the [Redacted] Escrow Amount and shall forthwith deposit the [Redacted] Escrow Amount in the [Redacted] Escrow Account.] [Redacted].

## **2.4 Investment of Escrowed Funds**

(a) The Indemnity Escrow Funds and [Redacted] Escrow Funds may be invested in 30 day deposit certificates and similar instruments issued by a trust company licensed to carry on business in the Province of Ontario (including, for certainty, the Escrow Agent) or a Canadian chartered bank; provided that the Indemnity Escrow Funds and the [Redacted] Escrow Funds shall not be co-mingled. If the Escrow Agent is required to cash an investment in which the Indemnity Escrow Funds or [Redacted] Escrow Funds have been made in order to make a payment hereunder, the Escrow Agent shall not be liable for any lost interest or penalties resulting from such transaction. The Escrow Agent acknowledges and agrees that it is not the beneficial owner of the Indemnity Escrow Funds or [Redacted] Escrow Funds but holds them as agent for the Purchaser and the Seller on the terms and conditions set out in this Agreement. The Indemnity Escrow Funds and [Redacted] Escrow Funds shall be held by the Escrow Agent pursuant to the terms hereof and shall be subject to the terms and conditions hereinafter provided.

(b) The [Redacted] Escrow Amount shall not be invested by the Escrow Agent.

## **ARTICLE 3**

### **Distribution of Indemnity Escrow Funds**

#### **3.1 Applicability to [Redacted] Claims**

For the purposes of this Article 3, a [Redacted] Claim shall be deemed, on any date of determination, to be a Claim only for the amount, if any, by which the amount of such [Redacted] Claim exceeds the amount of [Redacted] Escrow Funds on such date, and the [Redacted] Indemnity Notice in respect of such [Redacted] Claim shall be deemed to be an Indemnity Notice of a Claim for such excess amount.

#### **3.2 Claims Against Indemnity Escrow Funds**

(a) Written notice of a Claim delivered by Purchaser as contemplated in Article 8 of the Purchase Agreement shall be referred to herein as an "**Indemnity Notice**". Notwithstanding Section 3.3(a), during the period beginning on the date on which the Indemnity Notice in respect of a Claim is delivered to the Escrow Agent and the Seller and ending on the date on which such Claim ceases to be an Unresolved Claim, the Escrow Agent shall not release to the Seller such portion of any Release Amount (other than a Pre-Claim Release Amount) as would result in the Holdback Amount in respect of such Release Amount immediately prior to such release exceeding the unreleased portion of such Release Amount immediately following such release.

(b) Where a Claim or part of a Claim has ceased to be an Unresolved Claim, but no funds are to be released to the Purchaser from the Indemnity Escrow Account in respect of such Claim or part of a Claim, the Purchaser and Seller shall so notify the Escrow Agent by forthwith delivering a Joint Notice to the Escrow Agent.

### 3.3 Release of Indemnity Escrow Funds

(a) Subject to Section 3.2(a), the Indemnity Escrow Funds shall be distributed from time to time as follows:

- (i) if and to the extent any Claim or part of a Claim ceases to be an Unresolved Claim and, as a result, an amount (an "**Indemnity Award Amount**") is to be paid to the Purchaser out of the Indemnity Escrow Funds, the Purchaser and Seller shall forthwith deliver to the Escrow Agent a Joint Direction, notifying the Escrow Agent that such Claim or part of a Claim has ceased to be an Unresolved Claim and directing the Escrow Agent to release to the Purchaser an amount equal to the lesser of:
  - (A) the Indemnity Award Amount; and
  - (B) the Indemnity Escrow Funds, less all Pre-Claim Release Amounts in respect of such Claim or part of such Claim,

(an "**Indemnity Collection Amount**") whereupon the Escrow Agent shall promptly release such Indemnity Collection Amount as so directed; provided that, where a Claim that is a Direct Claim ceases to be an Unresolved Claim due to the failure by the Seller to deliver an Objection Notice within 30 days of receipt of the Indemnity Notice in respect of such Claim, the Purchaser may deliver to the Escrow Agent a Purchaser Direction in lieu of the Joint Direction required by this Section 3.3(a)(i), and such Purchaser Direction shall have the same force and effect as a Joint Direction;

- (ii) provided that the Asset Closing has occurred, on the date that is six months following the Asset Closing Date, the Seller and the Purchaser shall forthwith deliver to the Escrow Agent a Joint Direction, directing the Escrow Agent to release to the Seller such portion of the Indemnity Escrow Funds equal to the one-third of an amount equal to the Asset Escrow Amount, plus any interest accrued thereon, less the aggregate of any Applicable Indemnity Collection Amounts, whereupon the Escrow Agent shall promptly release such amount to the Seller from the Indemnity Escrow Account;
- (iii) provided that the Asset Closing has occurred, on the first anniversary of the Asset Closing Date, the Seller and the Purchaser shall forthwith deliver to the Escrow Agent a Joint Direction, directing the Escrow Agent to release to the Seller such portion of the Indemnity Escrow Funds equal to two-thirds of an amount equal to the Asset Escrow Amount, plus any interest accrued thereon, less the aggregate of any Applicable Indemnity Collection Amounts, whereupon the Escrow Agent shall promptly release such amount to the Seller from the Indemnity Escrow Account;

- (iv) provided that the Stock Closing has occurred, on the date that is six months following the Stock Closing Date, the Seller and the Purchaser shall forthwith deliver to the Escrow Agent a Joint Direction, directing the Escrow Agent to release to the Seller such portion of the Indemnity Escrow Funds equal to an amount equal to one-third of the Stock Escrow Amount, plus any interest accrued thereon, less the aggregate of any Applicable Indemnity Collection Amounts, whereupon the Escrow Agent shall promptly release such amount to the Seller from the Indemnity Escrow Account;
- (v) provided that the Stock Closing has occurred, on the later to occur of (A) the first anniversary of the Stock Closing Date and (B) the completion of the Act 2 Remediation of the Property in accordance with the terms of the Purchase Agreement and the Buyer-Seller Agreement, the Seller and the Purchaser shall forthwith deliver to the Escrow Agent a Joint Direction, directing the Escrow Agent to release to the Seller such portion of the Indemnity Escrow Funds equal to an amount equal to two-thirds of the Stock Escrow Amount, plus any interest accrued thereon, less the aggregate of any Applicable Indemnity Collection Amounts, whereupon the Escrow Agent shall promptly release such amount to the Seller from the Indemnity Escrow Account; and
- (vi) if the Release Date applicable to a particular Release Amount has occurred and a portion of such Release Amount remains unreleased due to the application of Section 3.2(a):
  - (A) on the date that the Escrow Agent receives a Joint Notice, Joint Direction or Purchaser Direction indicating that a Claim or part of a Claim that was an Applicable Unresolved Claim has ceased to be an Unresolved Claim, the unreleased portion of such Release Amount shall be reduced by the Indemnity Collection Amount, if any, in respect of such Claim or part of a Claim which has been paid to the Purchaser; provided that, if such Claim or part of a Claim had been an Applicable Unresolved Claim in respect of more than one Release Amount (each, an "**Affected Release Amount**"), the unreleased portion of a particular Affected Release Amount shall be reduced only by the amount, if any, by which the Indemnity Collection Amount in respect of such Claim or part of a Claim exceeds the aggregate of the unreleased portions (determined immediately prior to the delivery of the notice or direction described in this Section 3.3(a)(vi)(A)) of all Affected Release Amounts with earlier Release Dates than the first-mentioned Affected Release Amount; and
  - (B) on the date that is one Business Day after the Escrow Agent receives the notice or direction described in Section 3.3(a)(vi)(A), the Escrow Agent shall release to the Seller such portion, if any, of

the unreleased portion of such Release Amount (as reduced in accordance with Section 3.3(a)(vi)(A), if applicable) as is no longer required to be held back by the Escrow Agent pursuant to Section 3.2(a);

provided that, if the Release Dates for more than one Release Amount occur on the same date, (x) such Release Amounts shall be aggregated as a single Release Amount, (y) any Applicable Indemnity Collection Amounts in respect of such aggregated Release Amount shall be deducted only once for the purposes of determining such aggregated Release Amount, and (z) the amount of any Applicable Unresolved Claims in respect of such aggregated Release Amount shall be deducted only once for the purposes of determining the amount of any unreleased portion of such aggregated Release Amount that may be released by the Escrow Agent to the Seller in accordance with Section 3.3(a)(vi)(B).

(b) The Escrow Agent shall not pay or otherwise release the Indemnity Escrow Funds except as provided by Section 3.3(a) or Section 6.4(b) or pursuant to and in accordance with:

- (i) a Joint Direction; or
- (ii) an order of a court of competent jurisdiction directing the Escrow Agent to pay the Indemnity Escrow Funds in a specified manner,

whereupon the Escrow Agent shall immediately pay the Indemnity Escrow Funds in such specified manner.

#### **ARTICLE 4**

#### **Distribution of [Redacted] Escrow Funds**

##### **4.1 Claims Against [Redacted] Escrow Funds**

(a) Written notice of a Claim that is an [Redacted] Claim delivered by Purchaser as contemplated in Article 8 of the Purchase Agreement shall be referred to herein as an "[Redacted] **Indemnity Notice**". Notwithstanding Section 4.2, during the period beginning on the date on which the [Redacted] Indemnity Notice in respect of a [Redacted] Claim is delivered to the Escrow Agent and the Seller and ending on the date on which such [Redacted] Claim ceases to be an Unresolved Claim, the Escrow Agent shall not release to the Seller such portion of the [Redacted] Escrow Funds as would result in the aggregate amount of (x) all [Redacted] Claims that are Unresolved Claims and (y) all [Redacted] Collection Amounts in respect of [Redacted] Claims or parts of [Redacted] Claims that have ceased to be Unresolved Claims that have not been disbursed to Purchaser, exceeding the amount of funds in the [Redacted] Escrow Account immediately following such release.

(b) Where a [Redacted] Claim or part of a [Redacted] Claim has ceased to be an Unresolved Claim, but no funds are to be released to the Purchaser from the [Redacted] Escrow Account in respect of such [Redacted] Claim or part of a [Redacted] Claim, the Purchaser and Seller shall so notify the Escrow Agent by forthwith delivering a Joint Notice to the Escrow Agent.

## 4.2 Release of [Redacted] Escrow Funds

(a) Subject to Section 4.1(a), the [Redacted] Escrow Funds shall be distributed from time to time as follows:

- (i) if and to the extent any [Redacted] Claim or part of a [Redacted] Claim ceases to be an Unresolved Claim and, as a result, an amount (an "[Redacted] **Award Amount**") is to be paid to the Purchaser out of the [Redacted] Escrow Funds, the Purchaser and Seller shall forthwith deliver to the Escrow Agent a Joint Direction, notifying the Escrow Agent that such [Redacted] Claim or part of a [Redacted] Claim has ceased to be an Unresolved Claim and directing the Escrow Agent to release to the Purchaser an amount equal to the lesser of:

- (A) the [Redacted] Award Amount; and

- (B) the [Redacted] Escrow Funds,

(an "[Redacted] **Collection Amount**") whereupon the Escrow Agent shall promptly release such [Redacted] Collection Amount as so directed; provided that, where a [Redacted] Claim that is a Direct Claim ceases to be an Unresolved Claim due to the failure by the Seller to deliver an Objection Notice within 30 days of receipt of the Indemnity Notice in respect of such Claim, the Purchaser may deliver to the Escrow Agent a Purchaser Direction in lieu of the Joint Direction required by this Section 4.2(a)(i), and such Purchaser Direction shall have the same force and effect as a Joint Direction;

- (ii) on the earlier to occur of:

- (A) the date that is one Business Day after the Escrow Agent receives a Joint Direction directing that the [Redacted] Escrow Funds be released to the Seller; provided that the Purchaser and the Seller shall forthwith deliver such Joint Direction forthwith upon the earlier to occur of [Redacted: Information regarding termination and release of certain escrowed monies private and confidential to Seller Parties]; and

- (B) the third anniversary of the Stock Closing Date,

(the "[Redacted] **Release Date**"), the [Redacted] Escrow Funds on such date shall be released by the Escrow Agent to the Seller; and

- (iii) if the [Redacted] Release Date has occurred and a portion of the [Redacted] Escrow Funds remains unreleased due to the application of Section 4.1(a), on the date that is one Business Day after the Escrow Agent receives a Joint Notice, Joint Direction or Purchaser Direction indicating that a [Redacted] Claim or part of a [Redacted] Claim has

ceased to be an Unresolved Claim, the Escrow Agent shall release to the Seller such portion, if any, of the [Redacted] Escrow Funds remaining after payment of the [Redacted] Collection Amount, if any, in respect of such [Redacted] Claim or part of a [Redacted] Claim as is no longer required to be held back by the Escrow Agent pursuant to Section 4.1(a).

(b) The Escrow Agent shall not pay or otherwise release the [Redacted] Escrow Funds except as provided by Section 4.2(a) or Section 6.4(b) or pursuant to and in accordance with:

- (i) a Joint Direction; or
- (ii) an order of a court of competent jurisdiction directing the Escrow Agent to pay the [Redacted] Escrow Funds in a specified manner,

whereupon the Escrow Agent shall immediately pay the [Redacted] Escrow Funds in such specified manner.

## **ARTICLE 5**

### **Distribution and use of [Redacted] Escrow Amount**

#### **5.1 Distribution of [Redacted] Escrow Amount**

(a) The [Redacted] Escrow Amount shall be distributed as follows:

- (i) [Redacted: Information relating to redacted information in Section 6.20 of Purchase Agreement;] and
- (ii) [Redacted: Information relating to redacted information in Section 6.20 of Purchase Agreement].

(b) The Escrow Agent shall not pay or otherwise release the [Redacted] Escrow Amount from the [Redacted] Escrow Account except as provided by Section 5.1(a) or Section 6.4(b) or pursuant to and in accordance with:

- (i) a Joint Direction; or
- (ii) an order of a court of competent jurisdiction directing the Escrow Agent to pay the [Redacted] Escrow Amount in a specified manner,

whereupon the Escrow Agent shall immediately pay the [Redacted] Escrow Amount in such specified manner.

#### **5.2 Use of [Redacted] Escrow Amount**

[Redacted: Information relating to redacted information in Section 6.20 of Purchase Agreement.].

**ARTICLE 6**  
**Escrow Arrangements**

**6.1 Duties and Obligations of Escrow Agent**

The acceptance by the Escrow Agent of its duties and obligations under this Agreement is subject to the following terms and conditions, which the Seller and the Purchaser hereby agree shall govern and control with respect to the Escrow Agent's rights, duties, liabilities and immunities:

- (a) the Escrow Agent shall not have any duties or responsibilities as escrow agent hereunder except those set forth in this Agreement, and shall not be bound by the provisions of any agreement between the Seller and the Purchaser with respect to the subject matter hereof to which the Escrow Agent is not a party;
- (b) the duties of the Escrow Agent hereunder are intended to be purely administrative in nature;
- (c) the Escrow Agent shall not be responsible to determine, nor shall it be required to investigate, the genuineness or validity of any document, direction, notice, request, waiver, consent, receipt, election or declaration deposited with or furnished to it, and the Escrow Agent is hereby authorized and directed to follow the instructions contained therein, and the Escrow Agent is and will at all times be fully indemnified pursuant to Section 6.2 for acting in accordance with such instructions given hereunder or thereunder and believed by the Escrow Agent to have been signed by the proper parties. For greater certainty, the Escrow Agent will have no liability for making a payment pursuant to a direction delivered to it in accordance with Article 3, Article 4 or Article 5;
- (d) notwithstanding any other provision of this Agreement, the Escrow Agent is hereby authorized and directed to comply with and obey any order, judgment, decree or award of any court of competent jurisdiction, and in the case of such compliance, the Escrow Agent will not be liable by reason of such compliance to any person even if thereafter, such order, judgment, decree or award is appealed, reversed, modified, annulled, set aside or vacated;
- (e) if the Escrow Agent receives a notice, claim, award, order, judgment, demand or instruction with respect to the Indemnity Escrow Funds, [Redacted] Escrow Funds or [Redacted] Escrow Amount that the Escrow Agent considers to be conflicting with one or more other such notices, claims, awards, orders, judgments, demands or instructions, or to be incomplete, ambiguous or otherwise insufficient for the purposes of the Escrow Agent, or if for any other reason the Escrow Agent determines in good faith that it is unable to identify clearly the person or persons entitled to receive the Indemnity Escrow Funds, [Redacted] Escrow Funds or [Redacted] Escrow Amount, the Escrow Agent may refuse to make any payment and may retain the Indemnity Escrow Funds, [Redacted] Escrow Funds or [Redacted] Escrow Amount, as the case may be, in its

possession or control until it has received instructions in writing confirmed by the persons in interest or until directed by an award, order or judgment of any court of competent jurisdiction, whereupon it will make or not make, as the case may be, such disposition in accordance with such instructions or such award, order or judgment; and

- (f) the Escrow Agent will not, by reason of this Agreement, be required to initiate, defend or otherwise prosecute any legal proceeding unless and until it is indemnified, to its satisfaction, equally as to 50% by the Purchaser and 50% by the Seller, including, if the Escrow Agent considers necessary, by way of advance deposit with the Escrow Agent of amounts representing costs and expenses that the Escrow Agent estimates it may incur in connection with such litigation.

## **6.2 Indemnification of the Escrow Agent**

The Purchaser and the Seller, equally each as to 50%, severally agree to pay or cause to be paid all of the reasonable fees and expenses charged and incurred by the Escrow Agent in carrying out its duties and obligations hereunder. The Purchaser and the Seller, equally each as to 50%, severally agree to indemnify, defend and hold the Escrow Agent harmless from and against any and all Losses suffered or incurred by it as a result of or arising directly or indirectly out of or in connection with its acting as escrow agent under this Agreement except where such Losses result from the Escrow Agent's own wilful misconduct, gross negligence or bad faith. In acting hereunder, the Escrow Agent shall be fully protected in relying upon, and shall be entitled to rely upon, the procedures set out in this Agreement or an opinion of counsel or other advisor reasonably satisfactory to the Escrow Agent as to the fulfilment of its duties and obligations hereunder. The Escrow Agent may employ such experts, advisors, agents or agencies as it may reasonably require for the purpose of discharging its duties under this Agreement and shall not be responsible for any act or omission with respect to its or such parties' administration of this Agreement except for its or their wilful misconduct, gross negligence or bad faith.

## **6.3 Resignation and Successorship**

(a) At any time after the date hereof, the Escrow Agent may deliver to the Purchaser and the Seller written notice of its intention to resign as escrow agent hereunder, in which case a successor escrow agent shall be mutually appointed by the Purchaser and the Seller. The Escrow Agent's resignation shall only become effective upon the successor escrow agent accepting its appointment hereunder.

(b) The Purchaser and the Seller, acting together, may replace the Escrow Agent at any time upon giving five Business Days' advance written notice of such replacement, jointly signed by them, to the Escrow Agent.

(c) Any new escrow agent to be appointed hereunder will execute an instrument accepting such appointment hereunder and shall deliver one counterpart thereof to each party and the existing Escrow Agent, and thereupon such newly appointed Escrow Agent, without further act or notice, will become vested in all rights, powers and obligations of its predecessor for

execution of the mandate hereunder, with like effect as if originally named as the escrow agent herein and the predecessor escrow agent will forthwith deliver any and all Indemnity Escrow Funds and [Redacted] Escrow Funds and funds in the [Redacted] Escrow Account in its possession pursuant to this Agreement to the new escrow agent for the purposes and uses of this Agreement.

#### **6.4 Release of Obligations of Escrow Agent**

(a) Upon resignation or replacement of the Escrow Agent pursuant to Section 6.3, and upon delivery by the Escrow Agent of the Indemnity Escrow Funds, [Redacted] Escrow Funds and funds in the [Redacted] Escrow Account, if any, to the new escrow agent, the Escrow Agent, without further act or notice, will be forever released and discharged from all of its duties and obligations hereunder.

(b) Subject to Section 6.4(a), on and following the termination of the Escrow Agent's obligations hereunder pursuant to Section 7.2, the Escrow Agent shall be forever released and discharged from all of its duties and obligations as escrow agent hereunder; provided that, upon a termination of this Agreement pursuant to Section 7.2(b), the Escrow Agent shall forthwith release any remaining Indemnity Escrow Funds, [Redacted] Escrow Funds and funds in the [Redacted] Escrow Account as jointly directed by the Purchaser and the Seller in the written agreement of termination.

### **ARTICLE 7** **MISCELLANEOUS**

#### **7.1 Method of Distribution and Delivery**

All distributions made by the Escrow Agent pursuant to this Agreement shall be made by wire transfer to an account specified in writing by the party entitled to such distribution, or as otherwise directed in writing by the party entitled to such distribution.

#### **7.2 Termination**

This Agreement and the obligations of all of the parties hereto shall terminate upon the earlier to occur of (a) the distribution by the Escrow Agent of all of the Indemnity Escrow Funds, [Redacted] Escrow Funds and funds in the [Redacted] Escrow Account in accordance with the terms hereof and (b) the written agreement of the Seller and the Purchaser, which agreement shall specify the entitlement of each of the Purchaser and the Seller to any Indemnity Escrow Funds, [Redacted] Escrow Funds and funds in the [Redacted] Escrow Account, if any, on the date of such agreement.

#### **7.3 Confirmation of Parent and Bach**

Parent and Bach agree to the distribution of the Indemnity Escrow Funds, the [Redacted] Escrow Funds and the [Redacted] Escrow Amount in accordance with the terms and conditions of this Agreement.

#### 7.4 **Notices**

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

If to any Seller Party:

c/o Global Railway Industries Ltd.  
155 boul. Montréal-Toronto  
(Highway 2-20)  
Lachine, QC H8S 1B4

Attention: Chief Executive Officer  
Fax No.: 514.634.4358

If to the Purchaser:

Wabtec Corporation  
1001 Air Brake Avenue  
Wilmerding, PA 15148

Attention: Legal Department  
Fax No.: 412.825.1305

If to the Escrow Agent:

■

Attention: ■  
E-mail: ■  
Facsimile:

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

(c) Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this Section 7.4.

## **7.5     Reporting**

The parties to this Agreement shall, for the purposes of any federal, provincial or state income tax, file tax returns and otherwise report to the Canada Revenue Agency and any other relevant taxation authorities on a basis that is consistent with the Seller being regarded as being the beneficial owner of the Indemnity Escrow Funds, [Redacted] Escrow Funds and [Redacted] Escrow Amount until such time as any Indemnity Escrow Funds, [Redacted] Escrow Funds or the [Redacted] Escrow Amount are returned to the Purchaser. The Escrow Agent shall not be responsible for including any portion of the interest earned on the Indemnity Escrow Funds or [Redacted] Escrow Funds in its income for tax purposes.

## **7.6     Amendments and Waivers**

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

## **7.7     Successors and Assigns**

This Agreement shall enure to the benefit of and shall be binding on and enforceable by and against the parties and, where the context so permits, their respective successors and permitted assigns. The Seller may assign all or any portion of its right, title, interest and obligations under this Agreement, in whole or in part, to one or more of its Affiliates; provided that, if such assignment takes place, the Seller shall continue to be liable jointly and severally with the assignee for any obligations hereunder. Purchaser may assign its right, title, interest and obligations under this Agreement, in whole or in part, to one or more Affiliates of Purchaser; provided that, if such assignment takes place, Purchaser shall continue to be liable jointly and severally with the assignee for any obligations hereunder. This Agreement shall not otherwise be assignable by any party hereto except with the prior written consent of the other parties.

## **7.8     Survival**

Notwithstanding the termination of this Agreement, the provisions of Section 6.4(b), shall survive such termination and continue in full force and effect for the benefit of each party hereto, as applicable.

## **7.9     Further Assurances**

Each of the parties hereto shall, from time to time hereafter and upon any reasonable request of the other, at the expense of the requesting party (other than in respect of any Joint Direction or Joint Notice, for which each party shall bear its own expenses), promptly execute and deliver or cause to be executed and delivered all such documents, including, without limitation, all such consents, Joint Directions required hereunder, Joint Notices required hereunder and other assurances and do or cause to be done all such other acts and things as any other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or

other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

**7.10 Counterparts**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

***[Remainder of page left intentionally blank.]***

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

**SELLER PARTIES:**

**CAD RAILWAY INDUSTRIES LTD.**

\_\_\_\_\_  
Name:

Title:

**GLOBAL RAILWAY INDUSTRIES LTD.**

\_\_\_\_\_  
Name:

Title:

**BACH-SIMPSON CORPORATION.**

\_\_\_\_\_  
Name:

Title:

**PURCHASER:**

**WESTINGHOUSE AIR BRAKE  
TECHNOLOGIES CORPORATION**

\_\_\_\_\_  
Name:

Title:

**ESCROW AGENT:**

■

\_\_\_\_\_  
Name:

Title:

**SCHEDULE G**

**FORM OF BUYER-SELLER AGREEMENT**

[Redacted: Terms of agreement confidential.]

**SCHEDULE H**  
**FORM OF ENVIRONMENTAL INSURANCE**

[Redacted]

## **SCHEDULE I**

### **PRE-CLOSING REORGANIZATION DESCRIPTION**

The Pre-Closing Reorganization shall be comprised of the direct transfer in one step of the Shares to CADRI from Parent, the direct transfer in one step of all of the issued and outstanding securities of GBI Industries, Inc. (the "GBI Securities") from the Acquired Company to Parent, shall conform to the attached plan dated July 6, 2010 prepared by KPMG LLP and shall be implemented by way of documentation which conforms to the following drafting criteria and principles:

1. All steps and transactions comprising the Pre-Closing Reorganization shall be duly authorized by all required board and shareholder action of all relevant parties.
2. All steps and transactions to be implemented by way of agreements and transfers which are duly executed and delivered by all parties thereto.
3. Transaction documentation to provide for and implement the effective and complete transfer and assignment of the Shares and the GBI Securities, free and clear of all Encumbrances, to include all required transfers, updated securities registers and replacement certificates.
4. Transaction documentation shall not impose or create obligations or liabilities which become Assumed Liabilities of the Purchaser upon completion of the Stock Closing.
5. Parties to the transaction documentation shall be limited to the Acquired Company and Parent (in the case of the transfer of the GBI Securities) and the Parent and CADRI (in the case of the transfer of the Shares).

[Redacted: Terms of KPMG LLP plan confidential.]

## **SCHEDULE J**

### **PRE-CLOSING ASSET TRANSFER DESCRIPTION**

The Pre-Closing Asset Transfer shall be comprised of the direct transfer in one step of all Acquired Assets from Bach to CADRI, shall conform to the attached plan dated July 6, 2010 prepared by KPMG LLP and shall be implemented by way of documentation which conforms to the following drafting criteria and principles:

1. All steps and transactions comprising the Pre-Closing Asset Transfer shall be duly authorized by all required board and shareholder action of all relevant parties, including a special resolution of the shareholders of Bach.
2. All steps and transactions to be implemented by agreements and transfers which are duly executed and delivered by all parties thereto.
3. Transaction documentation to provide for and implement the effective and complete transfer and assignment of all Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances.
4. All Contracts comprising part of the Acquired Assets to be assigned and transferred. The Seller Parties shall use reasonable commercial efforts to obtain any applicable third party consents described in Section 4.1(c) of the Disclosure Schedule.
5. Transaction documentation shall not impose or create obligations or liabilities which become Assumed Liabilities of the Purchaser upon completion of the Asset Closing.
6. Notwithstanding any contrary provisions of the above noted KPMG plan, assets transferred from Bach to CADRI shall be limited to the Acquired Assets and shall exclude the Excluded Assets, and liabilities assumed by CADRI shall exclude the Excluded Liabilities.
7. Parties to the transaction documentation shall be limited to CADRI and Bach.
8. CADRI and Bach shall elect under section 22 of the *Income Tax Act* (Canada) in respect of all accounts receivable and book debts forming part of the Acquired Assets transferred from Bach to CADRI.

[Redacted: Terms of KPMG LLP plan confidential.]

**SCHEDULE K**  
**ENVIRONMENTAL ACTION PLAN**

[Redacted]