



Certificate of Arrangement

Canada Business Corporations Act

Certificat d'arrangement

Loi canadienne sur les sociétés par actions

EXFO Inc.

197586-2

Corporate name(s) of CBCA applicants / Dénomination(s)
sociale(s) de la ou des sociétés LCSA requérantes

Corporation number(s) / Numéro(s) de la ou
des sociétés

I HEREBY CERTIFY that the arrangement set out in the attached articles of arrangement has been effected under section 192 of the *Canada Business Corporations Act*.

JE CERTIFIE que l'arrangement mentionné dans les clauses d'arrangement annexées a pris effet en vertu de l'article 192 de la *Loi canadienne sur les sociétés par actions*.

Raymond Edwards

Director / Directeur

2021-08-27

Date of Arrangement (YYYY-MM-DD)
Date de l'arrangement (AAAA-MM-JJ)



Canada Business Corporations Act (CBCA)
FORM 14.1
ARTICLES OF ARRANGEMENT
(Section 192)

1- Name of the applicant corporation(s) EXFO Inc.	Corporation number 197586-2
2 - Name of the corporation(s) the articles of which are amended, if applicable	Corporation number
3 - Name of the corporation(s) created by amalgamation, if applicable	Corporation number
4 - Name of the dissolved corporation(s), if applicable	Corporation number
5 - Name of the other bodies corporate involved, if applicable 11172239 CANADA INC.	Corporation number or jurisdiction 1117223-9
6 - In accordance with the order approving the arrangement, the plan of arrangement attached hereto, involving the above named body(ies) corporate, is hereby effected. In accordance with the plan of arrangement, ☐ a. the articles of the corporation(s) indicated in item 2, are amended. If the amendment includes a name change, indicate the change below: ☐ b. the following bodies corporate and/or corporations are amalgamated (for CBCA corporations include the corporation number): ☐ c. the corporation(s) indicated in item 4 is(are) liquidated and dissolved: 	
7 - I hereby certify that I am a director or an authorized officer of one of the applicant corporations.	
Signature:  Print name: <u>BENOIT RINGUETTE</u>	
Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both (subsection 250(1) of the CBCA).	

SCHEDULE A TO ARTICLES OF ARRANGEMENT OF
EXFO Inc.

PLAN OF ARRANGEMENT

**UNDER SECTION 192
OF THE CANADA BUSINESS CORPORATIONS ACT**

**ARTICLE 1.
INTERPRETATION**

Section 1.1 Definitions

Unless indicated otherwise, where used in this Plan of Arrangement, capitalized terms used but not defined shall have the meanings specified in the Arrangement Agreement and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

“Arrangement” means the arrangement under Section 192 of the CBCA in accordance with the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations to this Plan of Arrangement made in accordance with the terms of the Arrangement Agreement or made at the direction of the Court in the Final Order with the prior consent of the Corporation and the Purchaser, each acting reasonably.

“Arrangement Agreement” means the arrangement agreement dated June 7, 2021 among the Purchaser, the Corporation and G. Lamonde Investissements Financiers Inc. (including the schedules thereto), as it may be amended, modified or supplemented from time to time in accordance with its terms.

“Arrangement Resolution” means the special resolution approving this Plan of Arrangement to be considered at the Meeting, substantially in the form of Schedule B to the Arrangement Agreement.

“Articles of Arrangement” means the articles of arrangement of the Corporation in respect of the Arrangement, required by the CBCA to be sent to the Director after the Final Order is made, which shall include the Plan of Arrangement and otherwise be in a form and content satisfactory to the Corporation and the Purchaser, each acting reasonably.

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Montreal, Québec.

“CBCA” means the *Canada Business Corporations Act*.

“Certificate of Arrangement” means the certificate of arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement.

“Circular” means the notice of the Meeting and accompanying management information circular, including all schedules, appendices and exhibits thereto, to be sent to the Shareholders in connection with the Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the terms of the Arrangement Agreement.

“Consideration” means \$6.25 in cash per Subordinate Voting Share, without interest.

“Corporation” means EXFO Inc.

“Corporation DSUs” means the outstanding deferred stock units issued under the DSU Plan.

“Corporation PSUs” means the outstanding performance share units issued pursuant to the LTIP.

“Corporation RSUs” means the outstanding restricted stock units issued pursuant to the LTIP.

“Corporation SARs” means the outstanding stock appreciation rights issued pursuant to the SAR Plan.

“Court” means the Superior Court of Québec.

“Depository” means AST Trust Company (Canada) in its capacity as depository for the Arrangement, or such other person as the Corporation and the Purchaser agree to engage as depository for the Arrangement.

“Director” means the Director appointed pursuant to Section 260 of the CBCA.

“Dissent Rights” has the meaning specified in Section 3.1.

“Dissenting Holder” means a registered SVS Shareholder who has duly exercised its Dissent Rights and has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, but only in respect of the Subordinate Voting Shares in respect of which Dissent Rights are validly exercised by such holder.

“DSU Plan” means the deferred stock unit plan of the Corporation effective as of January 12, 2005 and amended as of January 10, 2018.

“Effective Date” means the date shown on the Certificate of Arrangement giving effect to the Arrangement.

“Effective Time” means 12:01 a.m. (Montreal time) on the Effective Date, or such other time as the parties agree to in writing before the Effective Date.

“Final Order” means the final order of the Court in a form acceptable to the Corporation and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Corporation and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Corporation and the Purchaser, each acting reasonably) on appeal.

“Governmental Entity” means (i) any international, multinational, national, federal, provincial, state, territorial, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, commissioner, board, bureau, minister, ministry, governor in council, cabinet, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent or authority of any of the foregoing; (iii) any quasi-governmental or private body including any tribunal, commission, regulatory agency or self-regulatory organization exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing; or (iv) any Securities Authority or stock exchange, including the Toronto Stock Exchange and the Nasdaq Global Select Market.

“Interim Order” means the interim order of the Court in a form acceptable to the Corporation and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Meeting, as such order may be amended by the Court with the consent of the Corporation and the Purchaser, each acting reasonably.

“Law” means, with respect to any Person, any and all applicable national, federal, provincial, state, municipal or local law (statutory, civil, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated or applied by a Governmental Entity that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, all policies, guidelines, notices and protocols of any Governmental Entity, as amended.

“Letter of Transmittal” means the letter of transmittal sent to holders of Subordinate Voting Shares for use in connection with the Arrangement.

“Lien” means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachment, option, right of first refusal or first offer, occupancy right, restrictive covenant, assignment, lien (statutory or otherwise), defect of title or encumbrance of any kind.

“LTIP” means the long-term incentive plan of the Corporation dated as of May 25, 2000 and amended as of January 9, 2004, January 12, 2005, January 6, 2016, January 10, 2018 and January 9, 2019.

“Meeting” means the special meeting of Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of the Arrangement Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution and for any other purpose as may be set out in the Circular and agreed to in writing by the Purchaser.

“Multiple Voting Shares” means the multiple voting shares in the capital of the Corporation.

“MVS Shareholders” means the registered or beneficial holders of the Multiple Voting Shares, as the context requires.

“Parties” means the Corporation, the Purchaser and the Purchaser Parent and **“Party”** means any one of them.

“Person” includes any individual, partnership, association, body corporate, organization, trust, estate, trustee, executor, administrator, legal representative, government (including Governmental Entity), syndicate or other entity, whether or not having legal status.

“Plan of Arrangement” means this plan of arrangement proposed under Section 192 of the CBCA, and any amendments or variations made in accordance with the terms of the Arrangement Agreement or made at the direction of the Court in the Final Order with the prior consent of the Corporation and the Purchaser, each acting reasonably.

“PSU Agreement” means an agreement evidencing the terms of any Corporation PSU.

“Purchaser” means 11172239 Canada Inc.

“Rolling Shareholder” means Mr. Philippe Morin or a holding company to be held directly or indirectly by him that holds Subordinate Voting Shares.

“RSU Agreement” means an agreement evidencing the terms of any Corporation RSU.

“SAR Plan” means the Stock Appreciation Rights Plan of the Corporation established on August 4, 2001 and amended as of January 12, 2010.

“Securities Authority” means the Autorité des marchés financiers (Québec), the United States Securities and Exchange Commission and any other applicable securities commission or regulatory authority of a province or territory of Canada, the United States or any other jurisdiction with authority in respect of the Parties and/or the Subsidiaries.

“Securityholders” means, collectively, the Shareholders and the holders of Corporation DSUs, Corporation SARs, Corporation PSUs and Corporation RSUs.

“Shareholders” means the SVS Shareholders and the MVS Shareholders.

“Subordinate Voting Shares” means the subordinate voting shares in the capital of the Corporation.

“SVS Shareholders” means the registered or beneficial holders of the Subordinate Voting Shares, as the context requires.

“Tax Act” means the *Income Tax Act* (Canada).

Section 1.2 Certain Rules of Interpretation.

In this Plan of Arrangement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.
- (2) **Currency.** All references to dollars or to \$ are references to United States dollars.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases and References, etc.** The words “including,” “includes” and “include” mean “including (or includes or include) without limitation,” and “the aggregate of,” “the total of,” “the sum of,” or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of.” Unless stated otherwise, “Article” and “Section” followed by a number or letter mean and refer to the specified Article or Section of this Plan of Arrangement. The terms “Plan of Arrangement,” “hereof,” “herein” and similar expressions refer to this Plan of Arrangement (as it may be amended, modified or supplemented from time to time) and not to any particular article, section or other portion hereof and include any instrument supplementary or ancillary hereto.
- (5) **Statutes.** Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.
- (6) **Computation of Time.** For purposes of this Plan of Arrangement, a period of time is to be computed as beginning on the day following the event that began the period and ending at 4:30 p.m. (Montreal time) on the last day of the period, if the last day of the period is a Business Day, or at 4:30 p.m. on the next Business Day if the last day of the period is not a Business Day.
- (7) **Time References.** References to time are to local time, Montreal, Québec.

ARTICLE 2. THE ARRANGEMENT

Section 2.1 Arrangement

This Plan of Arrangement constitutes an arrangement under Section 192 of the CBCA and is made pursuant to, and is subject to the provisions of, the Arrangement Agreement.

Section 2.2 Binding Effect

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Corporation, the Purchaser, all Securityholders (including Dissenting Holders), any agent or transfer agent therefor and the Depositary at and after the Effective Time, without any further act or formality required on the part of any Person, except as expressly provided in this Plan of Arrangement.

Section 2.3 Arrangement

Pursuant to the Arrangement, each of the following events shall occur and shall be deemed to occur sequentially as set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time:

- (1) each Corporation DSU outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the DSU Plan, shall, without any further action by or on behalf of a holder of Corporation DSUs, be deemed to be assigned and transferred by such holder to the Corporation in exchange for a cash payment from the Corporation equal to the Consideration, less applicable withholdings, and each such Corporation DSU shall immediately be cancelled and all obligations in respect of the Corporation DSUs shall be deemed to be fully satisfied;
- (2) each Corporation SAR outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the SAR Plan, shall, without any further action by or on behalf of a holder of Corporation SARs, be deemed to be assigned and transferred by such holder to the Corporation in exchange for a cash payment from the Corporation equal to the amount (if any) by which the Consideration exceeds the exercise price of such Corporation SAR determined on the date of grant, less applicable withholdings (for greater certainty, where such amount is negative, neither the Corporation nor the Purchaser shall be obligated to pay the holder of such Corporation SAR any amount in respect of such Corporation SAR), and each such Corporation SAR shall immediately be cancelled and all obligations in respect of the Corporation SARs shall be deemed to be fully satisfied;
- (3) (i) each holder of Corporation DSUs and Corporation SARs shall cease to be a holder of such Corporation DSUs and Corporation SARs; (ii) such holder's name shall be removed from each applicable register except for Corporation SARs for which there is no register; (iii) the DSU Plan and SAR Plan and all agreements relating to such Corporation DSUs and Corporation SARs shall be terminated and shall be of no further force and effect; and (iv) such holder shall thereafter have only the right to receive the consideration to which they are entitled pursuant to Section 2.3(1) and Section 2.3(2), as applicable, at the time and in the manner specified in such Sections;
- (4) each outstanding Subordinate Voting Share held by a Dissenting Holder in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred without any further act or formality by the holder thereof to the Purchaser (free and clear of all Liens), and:

- (a) such Dissenting Holder shall cease to have any rights as a SVS Shareholder other than the right to be paid the fair value of its Subordinate Voting Shares by the Purchaser in accordance with Article 3;
 - (b) the name of such holder shall be removed from the register of holders of Subordinate Voting Shares maintained by or on behalf of the Corporation; and
 - (c) the Purchaser shall be recorded as the holder of the Subordinate Voting Shares so transferred and shall be deemed to be the legal and beneficial owner thereof (free and clear of all Liens);
- (5) each outstanding Subordinate Voting Share (other than (i) Subordinate Voting Shares held by any Dissenting Holder who has validly exercised such holder's Dissent Right and (ii) Subordinate Voting Shares owned or beneficially controlled by (x) the Purchaser, (y) the Rolling Shareholder (to the extent an agreement is reached between the Purchaser or any of its affiliates and the Rolling Shareholder prior to Closing such that the Rolling Shareholder will, effective upon Closing, become a shareholder of the Purchaser) or (z) any of their respective affiliates) shall be transferred without any further act or formality by the holder thereof to the Purchaser (free and clear of all Liens) in exchange for the Consideration per Subordinate Voting Share, and
- (a) the holder of such Subordinate Voting Share shall cease to have any rights as a SVS Shareholder other than the right to be paid the Consideration per Subordinate Voting Share in accordance with this Plan of Arrangement;
 - (b) the name of such holder shall be removed from the register of holders of Subordinate Voting Shares maintained by or on behalf of the Corporation; and
 - (c) the Purchaser shall be recorded as the holder of the Subordinate Voting Shares so transferred and shall be deemed to be the legal and beneficial owner thereof (free and clear of all Liens); and
- (6) (i) the LTIP relating to Corporation RSUs and Corporation PSUs shall be amended, restated or supplemented as is necessary to take into account the privatization of the Corporation, including for purposes of modifying the method, conditions and restrictions of exercise of Corporation RSUs and Corporation PSUs, adding a cash settlement feature with respect to the Corporation RSUs and modifying the valuation methodology, and (ii) each Corporation RSU and Corporation PSU outstanding immediately prior to the Effective Time shall, without any further action by or on behalf of the holder thereof, remain outstanding and governed by the terms of the LTIP and any RSU Agreement and PSU Agreement, as applicable, in each case as amended, restated or supplemented in accordance with clause (i) of this paragraph.

ARTICLE 3. DISSENT RIGHTS

Section 3.1 Dissent Rights

- (1) SVS Shareholders may exercise dissent rights ("**Dissent Rights**") in connection with the Arrangement pursuant to and in the manner set forth in Section 190 of the CBCA, as modified by the Interim Order, Final Order and this Section 3.1; provided that notwithstanding subsection 190(5) of the CBCA, the written objection to the Arrangement Resolution referred to in subsection 190(5) of the CBCA must be received by the Corporation at its registered office no later than 5:00 p.m. (local time in place of receipt) two Business Days immediately preceding the date of the Meeting (as it may be adjourned or postponed from time to time).

- (2) Dissenting Holders who duly exercise their Dissent Rights shall be deemed to have transferred the Subordinate Voting Shares held by them and in respect of which Dissent Rights have been validly exercised to the Purchaser free and clear of all Liens, as provided in Section 2.3(4) and, if they:
 - (a) are ultimately entitled to be paid fair value for such Subordinate Voting Shares, shall be entitled to be paid the fair value of such Subordinate Voting Shares by the Purchaser which fair value notwithstanding anything to the contrary in Part XV of the CBCA, shall be determined as of the close of business on the day before the Arrangement Resolution was adopted and will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holders not exercised their Dissent Rights in respect of such Subordinate Voting Shares; or
 - (b) are ultimately not entitled, for any reason, to be paid fair value for such Subordinate Voting Shares, shall be deemed to have participated in the Arrangement on the same basis as SVS Shareholders who have not exercised Dissent Rights in respect of such Subordinate Voting Shares and shall be entitled to receive the Consideration per Subordinate Voting Share to which holders of Subordinate Voting Shares who have not exercised Dissent Rights are entitled under Section 2.3(5) hereof (less any amounts withheld pursuant to Section 4.3).

Section 3.2 Recognition of Dissenting Holders

- (1) In no case shall the Corporation, the Purchaser or any other Person be required to recognize a Person exercising Dissent Rights unless such Person is the registered SVS Shareholder in respect of which such rights are sought to be exercised.
- (2) In no case shall the Corporation, the Purchaser or any other Person be required to recognize any SVS Shareholder who exercises Dissent Rights as a SVS Shareholder after the Effective Time.
- (3) SVS Shareholders who withdraw, or are deemed to withdraw, their right to exercise Dissent Rights shall be deemed to have participated in the Arrangement, as of the Effective Time, and shall be entitled to receive the Consideration per Subordinate Voting Share to which SVS Shareholders who have not exercised Dissent Rights are entitled under Section 2.3(5) hereof (less any amounts withheld pursuant to Section 4.3).
- (4) In addition to any other restrictions under Section 190 of the CBCA, none of the following shall be entitled to Dissent Rights: (a) holders of Corporation DSUs, Corporation SARs, Corporation RSUs or Corporation PSUs, and (b) SVS Shareholders who have failed to exercise all the voting rights carried by the Subordinate Voting Shares held by such holder against the Arrangement Resolution.

ARTICLE 4. CERTIFICATES AND PAYMENTS

Section 4.1 Payment of Consideration

- (1) Prior to the filing of the Articles of Arrangement, the Purchaser shall deposit, or arrange to be deposited, for the benefit of the SVS Shareholders (other than the Dissenting Holders and (i) the Purchaser, (ii) the Rolling Shareholder (to the extent an agreement is reached between the Purchaser or any of its affiliates and the Rolling Shareholder prior to Closing such that the Rolling Shareholder will, effective upon Closing, become a shareholder of the Purchaser) or (iii) any of their respective affiliates), cash with the Depositary in the aggregate amount equal to the payments in respect thereof required by this Plan of Arrangement, with the amount per Subordinate Voting Share in respect of which Dissent Rights have been exercised being deemed to be the Consideration per Subordinate Voting Share for this purpose, net of applicable withholdings for the

benefit of the SVS Shareholders. The cash deposited with the Depositary by or on behalf of the Purchaser shall be held in an interest-bearing account, and any interest earned on such funds shall be for the account of the Purchaser.

- (2) Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Subordinate Voting Shares that were transferred pursuant to Section 2.3(5), together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the SVS Shareholders represented by such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, the cash which such holder has the right to receive under the Arrangement for such Subordinate Voting Shares, less any amounts withheld pursuant to Section 4.3, and any certificate so surrendered shall forthwith be cancelled.
- (3) As soon as practicable after the Effective Date, the Corporation shall pay the amounts, net of applicable withholdings, to be paid to each holder of Corporation DSUs and Corporation SARs, either (i) in accordance with the normal payroll practices and procedures of the Corporation, or (ii) in the event that payment in accordance with the normal payroll practices and procedures of the Corporation is not practicable for any such holder, by cheque (delivered to such holder of Corporation DSUs and Corporation SARs, as applicable, as reflected on the register maintained by or on behalf of the Corporation in respect of the Corporation DSUs and Corporation SARs).
- (4) Until surrendered as contemplated by this Section 4.1, each certificate that immediately prior to the Effective Time represented Subordinate Voting Shares shall be deemed after the Effective Time to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this Section 4.1, less any amounts withheld pursuant to Section 4.3. Any such certificate formerly representing Subordinate Voting Shares not duly surrendered on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former SVS Shareholder of any kind or nature against or in the Corporation or the Purchaser. On such date, all cash to which such former holder was entitled shall be deemed to have been surrendered to the Purchaser or the Corporation, as applicable, and shall be paid over by the Depositary to the Purchaser or as directed by the Purchaser.
- (5) Any payment made by way of cheque by the Depositary (or the Corporation, if applicable) in accordance with this Plan of Arrangement that has not been deposited or has been returned to the Depositary (or the Corporation) or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable consideration for the Subordinate Voting Shares, Corporation DSUs and Corporation SARs in accordance with this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Corporation, as applicable, for no consideration.
- (6) No holder of Subordinate Voting Shares, Corporation DSUs and/or Corporation SARs shall be entitled to receive any consideration with respect to such Subordinate Voting Shares, Corporation DSUs and/or Corporation SARs other than any cash payment to which such holder is entitled to receive in accordance with Section 2.3 and this Section 4.1.

Section 4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more Subordinate Voting Shares that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed and who was listed immediately prior to the Effective Time as the registered holder thereof on the share register maintained by or on behalf of the Corporation, the Depositary shall issue in exchange for such lost, stolen or destroyed certificate, a cheque (or other form of immediately available

funds) representing the cash amount to which such holder is entitled to receive for such Subordinate Voting Shares under this Plan of Arrangement in accordance with such holder's Letter of Transmittal. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom such cash is to be delivered shall, as a condition precedent to the delivery of such cash, give a bond satisfactory to the Purchaser and the Depositary (each acting reasonably) in such sum as the Purchaser may direct, or otherwise indemnify the Corporation, the Purchaser and the Depositary in a manner satisfactory to the Corporation, the Purchaser and the Depositary (each acting reasonably) against any claim that may be made against the Corporation, the Purchaser or the Depositary with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4.3 Withholding Rights

Each of the Corporation, the Purchaser and the Depositary shall be entitled to deduct and withhold from any amount payable to any Person under this Plan of Arrangement, such amounts as the Corporation, the Purchaser or the Depositary determine, acting reasonably, are required or permitted, or reasonably believe to be required, to be deducted and withheld with respect to such payment under the Tax Act, the United States *Internal Revenue Code of 1986* or any provision of any other Law and shall remit such deduction and withholding to the appropriate Governmental Entity. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made.

Section 4.4 Calculations

All aggregate amounts of cash consideration to be received under this Plan of Arrangement will be calculated to the nearest cent (\$0.01). All calculations and determinations made in good faith by the Corporation, the Purchaser or the Depositary, as applicable, for the purposes of this Plan of Arrangement shall be conclusive, final and binding, absent manifest error.

Section 4.5 No Liens

Any exchange or transfer of securities in accordance with this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

Section 4.6 Paramountcy

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Subordinate Voting Shares, Corporation DSUs, Corporation SARs, Corporation RSUs and Corporation PSUs issued or outstanding prior to the Effective Time, (b) the rights and obligations of the Securityholders, the Corporation, the Purchaser, the Depositary and any transfer agent or other depositary therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement and, in respect of the Corporation RSUs and Corporation PSUs, in the LTIP and applicable RSU Agreement or PSU Agreement, in each case, as amended, restated or supplemented in accordance with this Plan of Arrangement, and (c) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Subordinate Voting Shares, Corporation DSUs, Corporation SARs, Corporation RSUs or Corporation PSUs shall be deemed to have been settled, compromised, released and determined without liability except as set forth in this Plan of Arrangement and, in respect of the Corporation RSUs and Corporation PSUs, in the LTIP and applicable RSU Agreement or PSU Agreement, in each case, as amended, restated or supplemented in accordance with this Plan of Arrangement.

ARTICLE 5. AMENDMENTS

Section 5.1 Amendments

- (1) The Corporation and the Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) approved by the Corporation and the Purchaser, each acting reasonably, (iii) filed with the Court and, if made following the Meeting, approved by the Court, and (iv) communicated to the Securityholders if and as required by the Court.
- (2) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Corporation or the Purchaser at any time prior to the Meeting (provided that the Corporation or the Purchaser, as applicable, shall have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (3) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Meeting shall be effective only if (i) it is consented to in writing by each of the Corporation and the Purchaser (in each case, acting reasonably), and (ii) if required by the Court, approved by the Shareholders in the manner directed by the Court.
- (4) Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any Shareholders or (ii) is an amendment contemplated in Section 5.1(5).
- (5) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Securityholder.
- (6) This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

ARTICLE 6. FURTHER ASSURANCES

Section 6.1 Further Assurances

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out in this Plan of Arrangement.

COUR SUPÉRIEURE
(Chambre commerciale)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

N° : 200-11-027440-216

DATE : Le 20 août 2021

SOUS LA PRÉSIDENTE DE L'HONORABLE CLÉMENT SAMSON, J.C.S.

**DANS L'AFFAIRE DE L'ARRANGEMENT PROPOSÉ EN VERTU DE L'ARTICLE 192
DE LA *LOI CANADIENNE SUR LES SOCIÉTÉS PAR ACTIONS*, L.R.C. 1985, ch. C-
44, DANS SA VERSION MODIFIÉE**

EXFO INC.

Demanderesse

et

11172239 CANADA INC.

et

G. LAMONDE INVESTISSEMENTS FINANCIERS INC.

LE DIRECTEUR

Mises en cause

ORDONNANCE DÉFINITIVE¹

¹ Les termes clés qui ne sont pas définis autrement aux présentes ont le sens qui leur est attribué dans la Circulaire, dont copie est communiquée en tant que pièce P-5 de la Demande.

- [1] **À LA LECTURE DE** la Demande pour ordonnance provisoire et définitive présentée par EXFO inc. (« **EXFO** » ou la « **Demanderesse** ») conformément à la *Loi canadienne sur les sociétés par actions*, L.R.C. 1985, ch. C-44, dans sa version modifiée (la « **LCSA** »), ainsi que des pièces, les déclarations sous serment de M. Pierre Plamondon et de M. Bertrand Gély au soutien de celle-ci (la « **Demande** ») et du plan d'argumentation d'EXFO pour la délivrance d'une Ordonnance définitive;
- [2] **CONSIDÉRANT** que la Cour est satisfaite que la Demande a été dûment signifiée au Directeur nommé en vertu de la LCSA et que celui-ci a confirmé par écrit qu'il ne comparaitra pas ni ne fera de représentation relativement à la Demande;
- [3] **CONSIDÉRANT** les dispositions de la LCSA;
- [4] **CONSIDÉRANT** les représentations des procureurs d'EXFO et de 11172239 Canada Inc. (l'« **Acheteur** »);
- [5] **CONSIDÉRANT** l'ordonnance rendue par le Tribunal le 15 juillet 2021 (« **l'Ordonnance provisoire** »);
- [6] **CONSIDÉRANT** que, les raisons suivantes,
- a) le Tribunal est satisfait que l'Arrangement (tel que ci-après défini) satisfait aux conditions de la LCSA,
 - b) qu'il poursuit un objectif commercial légitime,
 - c) qu'il répond de façon équitable et équilibrée aux objections de ceux dont les droits sont visés,
 - d) et qu'il est équitable et raisonnable;

Les exigences législatives de la LSCA sont respectées

- [7] D'abord, un avis donné au Directeur nommé en vertu de l'article 260 de la LSCA a été donné et le Directeur, par lettre du 19 août 2021, a indiqué ne pas désirer participer à l'audience sur la présente demande.
- [8] L'échange de titres moyennant de l'argent a pour conséquence que le Plan d'arrangement est un arrangement au sens de la LSCA.
- [9] La demanderesse n'est pas insolvable comme en font foi les états financiers au 31 août 2020, ceux intérimaires de février et mai 2021 ainsi que suivant la déclaration de Monsieur Plamondon du 16 août 2021 (par. 36 et 37).

- [10] L'opération ne peut être autrement menée de manière pratique par une autre disposition de la LSCA à cause de l'obligation rattachée au fait que toutes les actions doivent être rachetées et que les étapes doivent menées dans un ordre et à des moments précis.
- [11] Les modalités de l'Ordonnance provisoire ont été respectées à la satisfaction du Tribunal, notamment la convocation à l'assemblée des actionnaires, le quorum et le résultat du vote.

L'arrangement est présenté de bonne foi

- [12] Pour qu'il soit considéré présentée de bonne foi, un plan d'arrangement doit viser des fins commerciales valables, notamment en vue d'une continuité d'affaire².

L'arrangement est équitable et raisonnable

- [13] Comme le précise la jurisprudence³, le Tribunal doit être convaincu que l'arrangement poursuit un objectif commercial légitime et répond de façon équitable et équilibrée aux objections de ceux dont les droits sont visés.
- [14] Un arrangement sera équitable et équilibré si, aux yeux d'une personne d'affaire intelligente et honnête, il est acceptable. Compte tenu du prix offert pour chacune des actions par rapport à sa valeur moyenne, le Tribunal est d'avis qu'une personne d'affaire intelligente et honnête aurait vraisemblablement accepté l'offre formulée.
- [15] Un autre indice qui amène le Tribunal à conclure au caractère équitable et équilibré est le fait que le vote en regard de l'arrangement fut fortement majoritaire (plus de 90 %).
- [16] Également, la présence d'une opinion favorable d'un expert comptable externe quant au caractère équitable de l'arrangement est un élément de preuve de poids qui milite en faveur de l'appréciation de cette norme. Le prix offert pour les actions se situe à l'intérieur de la fourchette estimée par l'expert-comptable.
- [17] **CONSIDÉRANT** que conformément à l'Ordonnance provisoire, tous les porteurs d'actions avec droit de vote multiple (les « **Actions avec droit de vote multiple** ») et d'actions avec droit de vote subalterne (les « **Actions avec droit de vote subalterne** ») (collectivement les porteurs des Actions avec droit de vote multiple et les porteurs des Actions avec droit de vote subalterne, les « **Actionnaires** »), les titulaires de DPVA, que leurs droits soient ou non acquis (les « **Titulaires de DPVA** »), les titulaires de DDVA, d'UAS ou d'UAR, que leurs droits soient ou non acquis (collectivement, les « **Titulaires d'unités** » et, avec les Actionnaires et les Titulaires de DPVA collectivement, les « **Porteurs de titres** »), l'Acheteur et G. Lamonde Investissements Financiers inc. sont réputés être des parties mises en

² 8440522 Canada inc. (Re), 2013 ONSC 2509, par. 48.

³ BCE inc. c. Détenteurs de débentures de 1976, 2008 CSC 69, par. 138.

cause aux présentes procédures et qu'ils sont donc liés par les modalités de la présente Ordonnance;

POUR CES MOTIFS, LA COUR :

- [18] PRONONCE** l'ordonnance définitive demandée dans la Demande;
- [19] DÉCLARE** que la Demande a été signifiée conformément à l'Ordonnance provisoire, que cette signification est valide et suffisante, et qu'elle constitue une signification en bonne et due forme de la Requête;
- [20] DÉCLARE** que les termes de l'arrangement (l' « **Arrangement** »), tel que plus amplement décrit dans le plan d'arrangement joint comme Annexe A à la présente Ordonnance (le « **Plan d'arrangement** »), ont été dûment adoptés conformément à l'Ordonnance provisoire;
- [21] DÉCLARE** que l'Arrangement satisfait aux conditions de la LCSA, qu'il poursuit un objectif commercial légitime, qu'il répond de façon équitable et équilibrée aux objections de ceux dont les droits sont visés, et qu'il est équitable et raisonnable;
- [22] DÉCLARE** que l'Arrangement tel qu'envisagé dans le Plan d'arrangement est par les présentes approuvé et ratifié et **ORDONNE** que l'Arrangement, tel qu'il pourrait être amendé conformément à l'Ordonnance provisoire, prenne effet conformément aux modalités du Plan d'arrangement à la Date de prise d'effet, au sens attribué à ce terme dans le Plan d'Arrangement;
- [23] ORDONNE** l'exécution provisoire de la présente ordonnance définitive nonobstant tout appel qui pourrait en être fait et sans qu'il soit nécessaire de fournir une caution;
- [24] DÉCLARE** que le Tribunal demeure saisi de cette affaire afin de résoudre toute difficulté qui pourrait survenir dans le cadre de la mise en œuvre de l'Arrangement ou relativement à celui-ci;
- [25] LE TOUT, SANS FRAIS.**



CLÉMENT SAMSON, j.c.s.

M^{es} Alain Riendeau et Brandon Farber
Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.
Procureurs d'EXFO inc.

M^e Ian Gosselin
Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.
Procureur de 11172239 Canada Inc.

Date d'audience : Le 20 août 2021

SCHEDULE A
PLAN OF ARRANGEMENT
UNDER SECTION 192
OF THE CANADA BUSINESS CORPORATIONS ACT
ARTICLE 1.
INTERPRETATION

Section 1.1 Definitions

Unless indicated otherwise, where used in this Plan of Arrangement, capitalized terms used but not defined shall have the meanings specified in the Arrangement Agreement and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

“Arrangement” means the arrangement under Section 192 of the CBCA in accordance with the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations to this Plan of Arrangement made in accordance with the terms of the Arrangement Agreement or made at the direction of the Court in the Final Order with the prior consent of the Corporation and the Purchaser, each acting reasonably.

“Arrangement Agreement” means the arrangement agreement dated June 7, 2021 among the Purchaser, the Corporation and G. Lamonde Investissements Financiers Inc. (including the schedules thereto), as it may be amended, modified or supplemented from time to time in accordance with its terms.

“Arrangement Resolution” means the special resolution approving this Plan of Arrangement to be considered at the Meeting, substantially in the form of Schedule B to the Arrangement Agreement.

“Articles of Arrangement” means the articles of arrangement of the Corporation in respect of the Arrangement, required by the CBCA to be sent to the Director after the Final Order is made, which shall include the Plan of Arrangement and otherwise be in a form and content satisfactory to the Corporation and the Purchaser, each acting reasonably.

“Business Day” means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Montreal, Québec.

“CBCA” means the *Canada Business Corporations Act*.

“Certificate of Arrangement” means the certificate of arrangement to be issued by the Director pursuant to subsection 192(7) of the CBCA in respect of the Articles of Arrangement.

“Circular” means the notice of the Meeting and accompanying management information circular, including all schedules, appendices and exhibits thereto, to be sent to the Shareholders in connection with the Meeting, as amended, supplemented or otherwise modified from time to time in accordance with the terms of the Arrangement Agreement.

“Consideration” means \$6.25 in cash per Subordinate Voting Share, without interest.

“Corporation” means EXFO Inc.

“Corporation DSUs” means the outstanding deferred stock units issued under the DSU Plan.

“Corporation PSUs” means the outstanding performance share units issued pursuant to the LTIP.

“Corporation RSUs” means the outstanding restricted stock units issued pursuant to the LTIP.

“Corporation SARs” means the outstanding stock appreciation rights issued pursuant to the SAR Plan.

“Court” means the Superior Court of Québec.

“Depository” means AST Trust Company (Canada) in its capacity as depository for the Arrangement, or such other person as the Corporation and the Purchaser agree to engage as depository for the Arrangement.

“Director” means the Director appointed pursuant to Section 260 of the CBCA.

“Dissent Rights” has the meaning specified in Section 3.1.

“Dissenting Holder” means a registered SVS Shareholder who has duly exercised its Dissent Rights and has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights, but only in respect of the Subordinate Voting Shares in respect of which Dissent Rights are validly exercised by such holder.

“DSU Plan” means the deferred stock unit plan of the Corporation effective as of January 12, 2005 and amended as of January 10, 2018.

“Effective Date” means the date shown on the Certificate of Arrangement giving effect to the Arrangement.

"Effective Time" means 12:01 a.m. (Montreal time) on the Effective Date, or such other time as the parties agree to in writing before the Effective Date.

"Final Order" means the final order of the Court in a form acceptable to the Corporation and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Corporation and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Corporation and the Purchaser, each acting reasonably) on appeal.

"Governmental Entity" means (i) any international, multinational, national, federal, provincial, state, territorial, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, commissioner, board, bureau, minister, ministry, governor in council, cabinet, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent or authority of any of the foregoing; (iii) any quasi-governmental or private body including any tribunal, commission, regulatory agency or self-regulatory organization exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing; or (iv) any Securities Authority or stock exchange, including the Toronto Stock Exchange and the Nasdaq Global Select Market.

"Interim Order" means the interim order of the Court in a form acceptable to the Corporation and the Purchaser, each acting reasonably, providing for, among other things, the calling and holding of the Meeting, as such order may be amended by the Court with the consent of the Corporation and the Purchaser, each acting reasonably.

"Law" means, with respect to any Person, any and all applicable national, federal, provincial, state, municipal or local law (statutory, civil, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement, whether domestic or foreign, enacted, adopted, promulgated or applied by a Governmental Entity that is binding upon or applicable to such Person or its business, undertaking, property or securities, and to the extent that they have the force of law, all policies, guidelines, notices and protocols of any Governmental Entity, as amended.

"Letter of Transmittal" means the letter of transmittal sent to holders of Subordinate Voting Shares for use in connection with the Arrangement.

"Lien" means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachment, option, right of first refusal or first offer, occupancy right,

restrictive covenant, assignment, lien (statutory or otherwise), defect of title or encumbrance of any kind.

"LTIP" means the long-term incentive plan of the Corporation dated as of May 25, 2000 and amended as of January 9, 2004, January 12, 2005, January 6, 2016, January 10, 2018 and January 9, 2019.

"Meeting" means the special meeting of Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of the Arrangement Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution and for any other purpose as may be set out in the Circular and agreed to in writing by the Purchaser.

"Multiple Voting Shares" means the multiple voting shares in the capital of the Corporation.

"MVS Shareholders" means the registered or beneficial holders of the Multiple Voting Shares, as the context requires.

"Parties" means the Corporation, the Purchaser and the Purchaser Parent and **"Party"** means any one of them.

"Person" includes any individual, partnership, association, body corporate, organization, trust, estate, trustee, executor, administrator, legal representative, government (including Governmental Entity), syndicate or other entity, whether or not having legal status.

"Plan of Arrangement" means this plan of arrangement proposed under Section 192 of the CBCA, and any amendments or variations made in accordance with the terms of the Arrangement Agreement or made at the direction of the Court in the Final Order with the prior consent of the Corporation and the Purchaser, each acting reasonably.

"PSU Agreement" means an agreement evidencing the terms of any Corporation PSU.

"Purchaser" means 11172239 Canada Inc.

"Rolling Shareholder" means Mr. Philippe Morin or a holding company to be held directly or indirectly by him that holds Subordinate Voting Shares.

"RSU Agreement" means an agreement evidencing the terms of any Corporation RSU.

"SAR Plan" means the Stock Appreciation Rights Plan of the Corporation established on August 4, 2001 and amended as of January 12, 2010.

"Securities Authority" means the Autorité des marchés financiers (Québec), the United States Securities and Exchange Commission and any other applicable securities commission or regulatory authority of a province or territory of Canada, the United States or any other jurisdiction with authority in respect of the Parties and/or the Subsidiaries.

"Securityholders" means, collectively, the Shareholders and the holders of Corporation DSUs, Corporation SARs, Corporation PSUs and Corporation RSUs.

"Shareholders" means the SVS Shareholders and the MVS Shareholders.

"Subordinate Voting Shares" means the subordinate voting shares in the capital of the Corporation.

"SVS Shareholders" means the registered or beneficial holders of the Subordinate Voting Shares, as the context requires.

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

Section 1.2 Certain Rules of Interpretation.

In this Plan of Arrangement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.
- (2) **Currency.** All references to dollars or to \$ are references to United States dollars.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases and References, etc.** The words "including," "includes" and "include" mean "including (or includes or include) without limitation," and "the aggregate of," "the total of," "the sum of," or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of." Unless stated otherwise, "Article" and "Section" followed by a number or letter mean and refer to the specified Article or Section of this Plan of Arrangement. The terms "Plan of Arrangement," "hereof," "herein" and similar expressions refer to this Plan of Arrangement (as it may be amended, modified or supplemented from time to time) and not to any particular article, section or other portion hereof and include any instrument supplementary or ancillary hereto.
- (5) **Statutes.** Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.

- (6) **Computation of Time.** For purposes of this Plan of Arrangement, a period of time is to be computed as beginning on the day following the event that began the period and ending at 4:30 p.m. (Montreal time) on the last day of the period, if the last day of the period is a Business Day, or at 4:30 p.m. on the next Business Day if the last day of the period is not a Business Day.
- (7) **Time References.** References to time are to local time, Montreal, Québec.

ARTICLE 2. THE ARRANGEMENT

Section 2.1 Arrangement

This Plan of Arrangement constitutes an arrangement under Section 192 of the CBCA and is made pursuant to, and is subject to the provisions of, the Arrangement Agreement.

Section 2.2 Binding Effect

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Corporation, the Purchaser, all Securityholders (including Dissenting Holders), any agent or transfer agent therefor and the Depositary at and after the Effective Time, without any further act or formality required on the part of any Person, except as expressly provided in this Plan of Arrangement.

Section 2.3 Arrangement

Pursuant to the Arrangement, each of the following events shall occur and shall be deemed to occur sequentially as set out below without any further authorization, act or formality, in each case, unless stated otherwise, effective as at five minute intervals starting at the Effective Time:

- (1) each Corporation DSU outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the DSU Plan, shall, without any further action by or on behalf of a holder of Corporation DSUs, be deemed to be assigned and transferred by such holder to the Corporation in exchange for a cash payment from the Corporation equal to the Consideration, less applicable withholdings, and each such Corporation DSU shall immediately be cancelled and all obligations in respect of the Corporation DSUs shall be deemed to be fully satisfied;
- (2) each Corporation SAR outstanding immediately prior to the Effective Time (whether vested or unvested), notwithstanding the terms of the SAR Plan, shall, without any further action by or on behalf of a holder of Corporation SARs, be deemed to be assigned and transferred by such holder to the Corporation in

exchange for a cash payment from the Corporation equal to the amount (if any) by which the Consideration exceeds the exercise price of such Corporation SAR determined on the date of grant, less applicable withholdings (for greater certainty, where such amount is negative, neither the Corporation nor the Purchaser shall be obligated to pay the holder of such Corporation SAR any amount in respect of such Corporation SAR), and each such Corporation SAR shall immediately be cancelled and all obligations in respect of the Corporation SARs shall be deemed to be fully satisfied;

- (3) (i) each holder of Corporation DSUs and Corporation SARs shall cease to be a holder of such Corporation DSUs and Corporation SARs; (ii) such holder's name shall be removed from each applicable register except for Corporation SARs for which there is no register; (iii) the DSU Plan and SAR Plan and all agreements relating to such Corporation DSUs and Corporation SARs shall be terminated and shall be of no further force and effect; and (iv) such holder shall thereafter have only the right to receive the consideration to which they are entitled pursuant to Section 2.3(1) and Section 2.3(2), as applicable, at the time and in the manner specified in such Sections;
- (4) each outstanding Subordinate Voting Share held by a Dissenting Holder in respect of which Dissent Rights have been validly exercised shall be deemed to have been transferred without any further act or formality by the holder thereof to the Purchaser (free and clear of all Liens), and:
 - (a) such Dissenting Holder shall cease to have any rights as a SVS Shareholder other than the right to be paid the fair value of its Subordinate Voting Shares by the Purchaser in accordance with Article 3;
 - (b) the name of such holder shall be removed from the register of holders of Subordinate Voting Shares maintained by or on behalf of the Corporation; and
 - (c) the Purchaser shall be recorded as the holder of the Subordinate Voting Shares so transferred and shall be deemed to be the legal and beneficial owner thereof (free and clear of all Liens);
- (5) each outstanding Subordinate Voting Share (other than (i) Subordinate Voting Shares held by any Dissenting Holder who has validly exercised such holder's Dissent Right and (ii) Subordinate Voting Shares owned or beneficially controlled by (x) the Purchaser, (y) the Rolling Shareholder (to the extent an agreement is reached between the Purchaser or any of its affiliates and the Rolling Shareholder prior to Closing such that the Rolling Shareholder will, effective upon Closing, become a shareholder of the Purchaser) or (z) any of their respective affiliates) shall be transferred without any further act or formality by the holder thereof to the

Purchaser (free and clear of all Liens) in exchange for the Consideration per Subordinate Voting Share, and

- (a) the holder of such Subordinate Voting Share shall cease to have any rights as a SVS Shareholder other than the right to be paid the Consideration per Subordinate Voting Share in accordance with this Plan of Arrangement;
 - (b) the name of such holder shall be removed from the register of holders of Subordinate Voting Shares maintained by or on behalf of the Corporation; and
 - (c) the Purchaser shall be recorded as the holder of the Subordinate Voting Shares so transferred and shall be deemed to be the legal and beneficial owner thereof (free and clear of all Liens); and
- (6) (i) the LTIP relating to Corporation RSUs and Corporation PSUs shall be amended, restated or supplemented as is necessary to take into account the privatization of the Corporation, including for purposes of modifying the method, conditions and restrictions of exercise of Corporation RSUs and Corporation PSUs, adding a cash settlement feature with respect to the Corporation RSUs and modifying the valuation methodology, and (ii) each Corporation RSU and Corporation PSU outstanding immediately prior to the Effective Time shall, without any further action by or on behalf of the holder thereof, remain outstanding and governed by the terms of the LTIP and any RSU Agreement and PSU Agreement, as applicable, in each case as amended, restated or supplemented in accordance with clause (i) of this paragraph.

ARTICLE 3. DISSENT RIGHTS

Section 3.1 Dissent Rights

- (1) SVS Shareholders may exercise dissent rights ("**Dissent Rights**") in connection with the Arrangement pursuant to and in the manner set forth in Section 190 of the CBCA, as modified by the Interim Order, Final Order and this Section 3.1; provided that notwithstanding subsection 190(5) of the CBCA, the written objection to the Arrangement Resolution referred to in subsection 190(5) of the CBCA must be received by the Corporation at its registered office no later than 5:00 p.m. (local time in place of receipt) two Business Days immediately preceding the date of the Meeting (as it may be adjourned or postponed from time to time).
- (2) Dissenting Holders who duly exercise their Dissent Rights shall be deemed to have transferred the Subordinate Voting Shares held by them and in respect of which Dissent Rights have been validly exercised to the Purchaser free and clear of all Liens, as provided in Section 2.3(5) and, if they:

- (a) are ultimately entitled to be paid fair value for such Subordinate Voting Shares, shall be entitled to be paid the fair value of such Subordinate Voting Shares by the Purchaser which fair value notwithstanding anything to the contrary in Part XV of the CBCA, shall be determined as of the close of business on the day before the Arrangement Resolution was adopted and will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holders not exercised their Dissent Rights in respect of such Subordinate Voting Shares; or
- (b) are ultimately not entitled, for any reason, to be paid fair value for such Subordinate Voting Shares, shall be deemed to have participated in the Arrangement on the same basis as SVS Shareholders who have not exercised Dissent Rights in respect of such Subordinate Voting Shares and shall be entitled to receive the Consideration per Subordinate Voting Share to which holders of Subordinate Voting Shares who have not exercised Dissent Rights are entitled under Section 2.3(6) hereof (less any amounts withheld pursuant to Section 0).

Section 3.2 Recognition of Dissenting Holders

- (1) In no case shall the Corporation, the Purchaser or any other Person be required to recognize a Person exercising Dissent Rights unless such Person is the registered SVS Shareholder in respect of which such rights are sought to be exercised.
- (2) In no case shall the Corporation, the Purchaser or any other Person be required to recognize any SVS Shareholder who exercises Dissent Rights as a SVS Shareholder after the Effective Time.
- (3) SVS Shareholders who withdraw, or are deemed to withdraw, their right to exercise Dissent Rights shall be deemed to have participated in the Arrangement, as of the Effective Time, and shall be entitled to receive the Consideration per Subordinate Voting Share to which SVS Shareholders who have not exercised Dissent Rights are entitled under Section 2.3(6) hereof (less any amounts withheld pursuant to Section 4.3).
- (4) In addition to any other restrictions under Section 190 of the CBCA, none of the following shall be entitled to Dissent Rights: (a) holders of Corporation DSUs, Corporation SARs, Corporation RSUs or Corporation PSUs, and (b) SVS Shareholders who have failed to exercise all the voting rights carried by the Subordinate Voting Shares held by such holder against the Arrangement Resolution.

ARTICLE 4.
CERTIFICATES AND PAYMENTS

Section 4.1 Payment of Consideration

- (1) Prior to the filing of the Articles of Arrangement, the Purchaser shall deposit, or arrange to be deposited, for the benefit of the SVS Shareholders (other than the Dissenting Holders and (i) the Purchaser, (ii) the Rolling Shareholder (to the extent an agreement is reached between the Purchaser or any of its affiliates and the Rolling Shareholder prior to Closing such that the Rolling Shareholder will, effective upon Closing, become a shareholder of the Purchaser) or (iii) any of their respective affiliates), cash with the Depositary in the aggregate amount equal to the payments in respect thereof required by this Plan of Arrangement, with the amount per Subordinate Voting Share in respect of which Dissent Rights have been exercised being deemed to be the Consideration per Subordinate Voting Share for this purpose, net of applicable withholdings for the benefit of the SVS Shareholders. The cash deposited with the Depositary by or on behalf of the Purchaser shall be held in an interest-bearing account, and any interest earned on such funds shall be for the account of the Purchaser.
- (2) Upon surrender to the Depositary for cancellation of a certificate which immediately prior to the Effective Time represented outstanding Subordinate Voting Shares that were transferred pursuant to Section 2.3(6), together with a duly completed and executed Letter of Transmittal and such additional documents and instruments as the Depositary may reasonably require, the SVS Shareholders represented by such surrendered certificate shall be entitled to receive in exchange therefor, and the Depositary shall deliver to such holder, the cash which such holder has the right to receive under the Arrangement for such Subordinate Voting Shares, less any amounts withheld pursuant to Section 4.3, and any certificate so surrendered shall forthwith be cancelled.
- (3) As soon as practicable after the Effective Date, the Corporation shall pay the amounts, net of applicable withholdings, to be paid to each holder of Corporation DSUs and Corporation SARs, either (i) in accordance with the normal payroll practices and procedures of the Corporation, or (ii) in the event that payment in accordance with the normal payroll practices and procedures of the Corporation is not practicable for any such holder, by cheque (delivered to such holder of Corporation DSUs and Corporation SARs, as applicable, as reflected on the register maintained by or on behalf of the Corporation in respect of the Corporation DSUs and Corporation SARs).
- (4) Until surrendered as contemplated by this Section 4.1, each certificate that immediately prior to the Effective Time represented Subordinate Voting Shares shall be deemed after the Effective Time to represent only the right to receive upon such surrender a cash payment in lieu of such certificate as contemplated in this

Section 4.1, less any amounts withheld pursuant to Section 4.3. Any such certificate formerly representing Subordinate Voting Shares not duly surrendered on or before the sixth anniversary of the Effective Date shall cease to represent a claim by or interest of any former SVS Shareholder of any kind or nature against or in the Corporation or the Purchaser. On such date, all cash to which such former holder was entitled shall be deemed to have been surrendered to the Purchaser or the Corporation, as applicable, and shall be paid over by the Depositary to the Purchaser or as directed by the Purchaser.

- (5) Any payment made by way of cheque by the Depositary (or the Corporation, if applicable) in accordance with this Plan of Arrangement that has not been deposited or has been returned to the Depositary (or the Corporation) or that otherwise remains unclaimed, in each case, on or before the sixth anniversary of the Effective Time, and any right or claim to payment hereunder that remains outstanding on the sixth anniversary of the Effective Time shall cease to represent a right or claim of any kind or nature and the right of the holder to receive the applicable consideration for the Subordinate Voting Shares, Corporation DSUs and Corporation SARs in accordance with this Plan of Arrangement shall terminate and be deemed to be surrendered and forfeited to the Purchaser or the Corporation, as applicable, for no consideration.
- (6) No holder of Subordinate Voting Shares, Corporation DSUs and/or Corporation SARs shall be entitled to receive any consideration with respect to such Subordinate Voting Shares, Corporation DSUs and/or Corporation SARs other than any cash payment to which such holder is entitled to receive in accordance with Section 2.3 and this Section 4.1.

Section 4.2 Lost Certificates

In the event any certificate which immediately prior to the Effective Time represented one or more Subordinate Voting Shares that were transferred pursuant to Section 2.3 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed and who was listed immediately prior to the Effective Time as the registered holder thereof on the share register maintained by or on behalf of the Corporation, the Depositary shall issue in exchange for such lost, stolen or destroyed certificate, a cheque (or other form of immediately available funds) representing the cash amount to which such holder is entitled to receive for such Subordinate Voting Shares under this Plan of Arrangement in accordance with such holder's Letter of Transmittal. When authorizing such payment in exchange for any lost, stolen or destroyed certificate, the Person to whom such cash is to be delivered shall, as a condition precedent to the delivery of such cash, give a bond satisfactory to the Purchaser and the Depositary (each acting reasonably) in such sum as the Purchaser may direct, or otherwise indemnify the Corporation, the Purchaser and the Depositary in a manner satisfactory to the Corporation, the Purchaser and the Depositary (each acting reasonably) against any claim that may be made against the

Corporation, the Purchaser or the Depositary with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4.3 Withholding Rights

Each of the Corporation, the Purchaser and the Depositary shall be entitled to deduct and withhold from any amount payable to any Person under this Plan of Arrangement, such amounts as the Corporation, the Purchaser or the Depositary determine, acting reasonably, are required or permitted, or reasonably believe to be required, to be deducted and withheld with respect to such payment under the Tax Act, the United States *Internal Revenue Code of 1986* or any provision of any other Law and shall remit such deduction and withholding to the appropriate Governmental Entity. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes hereof as having been paid to the Person in respect of which such withholding was made.

Section 4.4 Calculations

All aggregate amounts of cash consideration to be received under this Plan of Arrangement will be calculated to the nearest cent (\$0.01). All calculations and determinations made in good faith by the Corporation, the Purchaser or the Depositary, as applicable, for the purposes of this Plan of Arrangement shall be conclusive, final and binding, absent manifest error.

Section 4.5 No Liens

Any exchange or transfer of securities in accordance with this Plan of Arrangement shall be free and clear of any Liens or other claims of third parties of any kind.

Section 4.6 Paramountcy

From and after the Effective Time: (a) this Plan of Arrangement shall take precedence and priority over any and all Subordinate Voting Shares, Corporation DSUs, Corporation SARs, Corporation RSUs and Corporation PSUs issued or outstanding prior to the Effective Time, (b) the rights and obligations of the Securityholders, the Corporation, the Purchaser, the Depositary and any transfer agent or other depositary therefor in relation thereto, shall be solely as provided for in this Plan of Arrangement and, in respect of the Corporation RSUs and Corporation PSUs, in the LTIP and applicable RSU Agreement or PSU Agreement, in each case, as amended, restated or supplemented in accordance with this Plan of Arrangement, and (c) all actions, causes of action, claims or proceedings (actual or contingent and whether or not previously asserted) based on or in any way relating to any Subordinate Voting Shares, Corporation DSUs, Corporation SARs, Corporation RSUs or Corporation PSUs shall be deemed to have been settled, compromised, released and determined without liability except as set forth in this Plan of Arrangement and, in respect of the Corporation RSUs and Corporation

PSUs, in the LTIP and applicable RSU Agreement or PSU Agreement, in each case, as amended, restated or supplemented in accordance with this Plan of Arrangement.

ARTICLE 5. AMENDMENTS

Section 5.1 Amendments

- (1) The Corporation and the Purchaser may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) approved by the Corporation and the Purchaser, each acting reasonably, (iii) filed with the Court and, if made following the Meeting, approved by the Court, and (iv) communicated to the Securityholders if and as required by the Court.
- (2) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Corporation or the Purchaser at any time prior to the Meeting (provided that the Corporation or the Purchaser, as applicable, shall have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (3) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Meeting shall be effective only if (i) it is consented to in writing by each of the Corporation and the Purchaser (in each case, acting reasonably), and (ii) if required by the Court, approved by the Shareholders in the manner directed by the Court.
- (4) Any amendment, modification or supplement to this Plan of Arrangement may be made following the granting of the Final Order without filing such amendment, modification or supplement with the Court or seeking Court approval, provided that (i) it concerns a matter which, in the reasonable opinion of the Parties, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the interest of any Shareholders or (ii) is an amendment contemplated in Section 5.1(5).
- (5) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former Securityholder.

- (6) This Plan of Arrangement may be withdrawn prior to the Effective Time in accordance with the terms of the Arrangement Agreement.

**ARTICLE 6.
FURTHER ASSURANCES**

Section 6.1 Further Assurances

Notwithstanding that the transactions and events set out in this Plan of Arrangement shall occur and shall be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the parties to the Arrangement Agreement shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out in this Plan of Arrangement.