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**ASSET PURCHASE AGREEMENT**

**among**

**Aker Biomarine Antarctic AS,  
a company incorporated under the laws of Norway,  
as Buyer,**

**and**

**Neptune Technologies & Bioressources Inc.,  
a company incorporated under the laws of the Province of Quebec,  
as Seller,**

**and, solely for the purpose of Section 7.11, Biodroga Nutraceuticals Inc.**

**dated as of August 7, 2017**

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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is entered into as of August 7, 2017 (the “Effective Date”) among **Aker Biomarine Antarctic AS**, a company incorporated under the laws of Norway (“Buyer”), and **Neptune Technologies & Bioresources Inc.**, a company incorporated under the laws of the Province of Quebec (“Seller”). Buyer and Seller are sometimes referred to herein individually as a “Party” and together, as the “Parties.”

**WHEREAS**, the Parties desire to enter into this Agreement pursuant to which (i) Seller proposes to sell to Buyer, and Buyer proposes to purchase from Seller, certain assets used or held primarily for use by Seller in the conduct of the Krill Business (as defined below), and Buyer proposes to assume certain of the liabilities and obligations of Seller with respect to the Krill Business, as more specifically set forth herein; and (ii) Seller shall retain the assets other than the Transferred Assets (as defined below); and

**WHEREAS**, the Parties desire to make and enter into certain representations, warranties and covenants in connection with the transactions contemplated hereby.

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, and covenants set forth herein, intending to be legally bound, the Parties agree as follows:

### **ARTICLE I**                    **DEFINITIONS; INTERPRETATION.**

**1.1**     **Definitions.** These terms shall, for all purposes of this Agreement, have the following meanings:

- (a)     “Acasti” means Acasti Pharma Inc.
- (b)     “Acasti License Agreement” means that certain Technology License Agreement, as lastly amended on March 7, 2013, by and between Acasti and Seller.
- (c)     “Acasti Revenue” means [redacted].
- (d)     “Action” means any action, claim, proceeding, arbitration, suit, investigation or regulatory inquiry or survey (whether civil, criminal, administrative or judicial), or any appeal therefrom (including any claim, audit, litigation, administrative proceeding or arbitration against any Person involving any matter related to employment including, but not limited to, claims of discrimination, claims of unpaid wages, claims of wrongful discharge, claims of unfair labor practices, workers’ compensation claims, and claims related to occupational safety and health law).
- (e)     “AECA” means Arms Export Control Act, as amended.
- (f)     “Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person, where “control” means the possession, directly or indirectly, through one or more intermediaries, of at least fifty percent (50%) of the outstanding voting securities or of the outstanding controlling interests.
- (g)     “AKBM Settlement Agreement” means that certain Settlement and License Agreement, effective as of September 30, 2016, by and among Seller, Buyer, Aker BioMarine AS, Old Aker BioMarine AS and Aker BioMarine Antarctic USA, Inc.
- (h)     “Approval” means any approval, authorization, consent, license, franchise, order, registration or permit of or by, filing with, or notice to, any Person.

- (i) “Assumed Contracts” means the Transferred Customer Contracts identified on Exhibit J.
- (j) “B2B Sales” has the meaning [redacted].
- (k) “Benefit Plans” means all employee benefit plans and all other employee benefit arrangements, obligations, customs, or practices (including but not limited to a payroll practice), whether or not legally enforceable, to provide benefits, other than salary and bonuses, as compensation for services rendered, to current or former directors, employees or agents of Seller or any of its affiliates, including employment agreements, severance agreements, executive compensation arrangements, incentive programs or arrangements, sick leave, vacation pay, severance pay policies, plant closing benefits, salary continuation for disability, consulting or other compensation arrangements, workers’ compensation, deferred compensation, bonus, stock option or purchase, hospitalization, medical insurance, life insurance, tuition reimbursement or scholarship programs, any plans providing benefits or payments in the event of a change of control, change in ownership, or sale of a substantial portion (including all or substantially all) of the assets of any business of Seller, other than multiemployer plans, maintained by Seller or any of its affiliates or to which Seller or any of its affiliates has contributed or is or was obligated to make payments, in each case with respect to any current or former employees, directors or agents of Seller or any of its affiliates before the date of this Agreement.
- (l) “Business Day” means any day except Saturday, Sunday or any day on which banks are authorized or required by Law to close in Montreal, Quebec and in New York City, New York.
- (m) [Redacted].
- (n) “Closing Consideration” means Thirty Four Million USD (\$34,000,000).
- (o) “Consumer” has the meaning [redacted].
- (p) “Consumer Deliverables” has the meaning [redacted].
- (q) “Contract” means any written or oral agreement, arrangement, lease, mortgage, contract, note, power of attorney, insurance policy covenant, understanding, commitment or instrument.
- (r) “Copyrights” means all copyrights, copyrightable works, all mask works and registrations and applications for any of the foregoing, and the right to sue for past infringement for any of the foregoing.
- (s) “Damages” means any loss, Liability, diminution of value, fine, penalty, judgment, award, cost or expense (including reasonable attorneys’ fees or any other reasonable out-of-pocket expenses incurred in connection with any Action) or damage.
- (t) “Earnout Consideration” means [redacted].
- (u) “Employees” means individuals employed by Seller or its Affiliates (including those who are actively employed or on leave, disability or other absence from employment, and including officers and directors).
- (v) “Environmental Law(s)” means any Laws concerning: (i) protection, preservation or restoration of the environment or natural resources; (ii) Hazardous Materials; or (iii) human health and safety.
- (w) “Environmental Matters” means all liabilities (including strict liability) and expenses of defense of a claim (whether or not such claim is ultimately defeated) relating to environmental health and

safety issues, including costs and expenses of reporting, investigating, removing or remediating Hazardous Materials of whatever kind or nature, foreseeable or unforeseeable, including all liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), or under any applicable law of any non-U.S. jurisdiction, and including attorneys' fees and disbursements and consultants' fees, to the extent any of which arise out of or relate to the existence of Hazardous Materials at, upon, about or beneath any owned or leased real property or any facilities to which Seller has sent Hazardous Materials or migrating or threatening to migrate to or from any owned or leased real property.

(x) "Environmental Permit" means any Permit required by or pursuant to any Environmental Law.

(y) "Excluded Trademark" means the Seller's rights in the trademark "OCEANO-3" and all goodwill, registrations and applications for such trademark, and the right to sue for past infringement thereof.

(z) "Government Entity" means any federal, state, provincial, local or foreign government, court, agency (administrative, arbitral, regulatory or otherwise), commission, department, Tax authority or other authority or instrumentality.

(aa) "Hazardous Materials" means any substance, pollutant, contaminant, or waste that is toxic, ignitable, reactive, or corrosive or that is now or hereafter regulated by any Laws relating to human health and safety or the protection of the environment or that is otherwise a danger to human health or safety or the environment, including asbestos, respirable dust and fibers, petroleum products, polychlorinated bi-phenyls, noise, nuisance odors, mold, radiation, heat or vibration.

(bb) "Identifiers" means internet domain names solely to the extent they reference, use or incorporate any Transferred Trademark in whole or in part.

(cc) "Inbound License Agreement" means any License Agreement pursuant to which Seller is granted any rights in Transferred Intellectual Property.

(dd) "Indebtedness" means at a particular time, without duplication: (i) any indebtedness for borrowed money or issued in substitution for or exchange of indebtedness for borrowed money; (ii) any indebtedness evidenced by any note, bond, debenture or other debt security; (iii) any indebtedness for the deferred purchase price of property or services with respect to which a Person is liable, contingently or otherwise, as obligor or otherwise (other than trade payables and other current liabilities incurred in the Ordinary Course which are not more than three months past due); (iv) any commitment by which a Person assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit); (v) any indebtedness guaranteed in any manner by a Person (including guarantees in the form of an agreement to repurchase or reimburse); (vi) any obligations under capitalized leases with respect to which a Person is liable, contingently or otherwise, as obligor, guarantor or otherwise, or with respect to which obligations a Person assures a creditor against loss; (vii) any indebtedness secured by a Lien on a Person's assets; (viii) accrued but unpaid dividends owed by Seller; and (ix) accrued interest to and including the Effective Date in respect of any of the obligations described in the foregoing clauses (i) through (viii) of this definition and all premiums, penalties, charges, fees, expenses and other amounts due in connection with the payment and satisfaction in full of such obligations which will be paid or prepaid at the Closing.

(ee) "Indemnified Party" means any Person entitled to indemnification under Article VIII.

(ff) “Indemnifying Party” means any Person required to indemnify an Indemnified Party under Article VIII.

(gg) “Independent Contractors” means individuals engaged as independent contractors in connection with the Krill Business immediately prior to the Closing.

(hh) “Intellectual Property” means, interchangeably and collectively as context requires, the following: (i) Copyrights; (ii) Patents; (iii) Trademarks; (iv) Trade Secrets; (v) all rights in Identifiers; and (vi) all moral rights and/or rights of attribution and/or integrity in any of the foregoing.

(ii) “Intra-company License Agreement” means any License Agreement pursuant to which any rights in Intellectual Property are granted: (i) by Seller to any of its Affiliates; or (ii) to Seller by any Affiliate of Seller.

(jj) “IP Transfer Costs” means all transfer and registration costs arising out of and directly related to the transfer of the Transferred Patents and the Transferred Trademarks.

(kk) “ITAR” means International Traffic Arms Regulations, as amended.

(ll) “Krill Business” means the krill business of Seller.

(mm) “Krill Oil Extraction” has the meaning **[redacted]**.

(nn) “Laws” means all federal, state, provincial, local or foreign laws (including common law), codes, statutes, ordinances, orders, judgments, arbitration awards, decrees, administrative or judicial promulgations, injunctions, determinations, rules, regulations, Permits of, and agreements with, all Government Entities, including, to the extent applicable, any of the foregoing regarding: (i) human health and safety; (ii) soil, land surface or subsurface strata, surface waters, groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource; or (iii) any hazardous substances, oils, pollutants, contaminants, chemicals, materials or wastes, and/or the disposal thereof.

(oo) “Liability” means any debt, liability, commitment or obligation of any kind, character or nature whatsoever, secured or unsecured, accrued, fixed, absolute, contingent or otherwise, and whether due or to become due.

(pp) “License Agreement” means any agreement (including any outstanding decrees, orders, judgments, settlement agreements or stipulations) pursuant to which a Person is granted any rights in any Intellectual Property, including any right to distribute, promote, market or sell any Intellectual Property.

(qq) “Licensed Intellectual Property” means Intellectual Property in which Seller is granted any rights pursuant to an Inbound License Agreement.

(rr) “Licensed Product” has the meaning **[redacted]**.

(ss) “Liens” means all mortgages, liens, pledges, hypothecs, security interests, charges, claims (including any claims or encumbrances of any Government Entity), restrictions, leases, possessory rights, options, rights of first refusal, covenants, easements, title and survey matters and any other encumbrance, right or interest of any kind or character, whether vested or contingent, including any: (i) interest of joint tenants, tenants in common and tenants by the entirety; (ii) community or other marital property interest; or (iii) interests arising from any divorce decree, separation agreement, prenuptial agreement or other similar domestic relations order or agreement.

- (tt) “Neptune Branded Products” has the meaning [redacted].
- (uu) “NKO Trademark License Agreement” means that certain Trademark License Agreement to be entered into at Closing by and between Seller and Buyer [redacted].
- (vv) “Order” means any order, judgment, preliminary or permanent injunction, temporary restraining order, award, citation, decree, consent decree or writ.
- (ww) “Ordinary Course” means the ordinary course of the Krill Business, consistent with past practice in nature, scope and magnitude.
- (xx) “Organizational Documents” means the articles of association, articles of incorporation, or certificate of incorporation, as applicable, and bylaws or memorandum of association, as applicable, and all amendments and supplements to any of the foregoing.
- (yy) “Outbound License Agreement” means any License Agreement pursuant to which Seller grants rights in Transferred Intellectual Property to another Person, including Acasti.
- (zz) “Patent” means any patent and any continuations, divisionals, continuations-in-part, renewals, reissues and published applications or unpublished applications filed of record in any jurisdiction for any of the foregoing, and the right to sue for past infringement thereof.
- (aaa) “Permits” means all Approvals, permits (including environmental, construction and operation permits), certificates, exemptions, classifications, registrations and other similar documents, rights and authorizations issued by any Government Entity.
- (bbb) “Permitted Liens” means: (i) liens imposed by Law for Taxes, assessments or charges or claims by Government Entities that are not yet due or are being properly contested (provided such contest tolls collection of such taxes and the lien thereof and provided that reasonably acceptable reserves are being maintained); (ii) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s, landlords’ and other like liens imposed by Law or Contract, arising in the Ordinary Course and securing obligations that are not due and payable and (iii) Liens listed and described in Section 1.1(bbb) of the Seller Disclosure Letter.
- (ccc) “Person” means an individual, a sole proprietorship, a partnership, a corporation, an association, an institution, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization, or a Government Entity or any other legal entity.
- (ddd) “Private Label Use” has the meaning [redacted].
- (eee) “Products” means all products manufactured, marketed, sold or licensed by Seller relating to the Krill Business, as such products hereafter may be modified from time to time by Buyer, and “Product” shall mean any of them.
- (fff) “Related Party” means (a) any current or former officer, director or equity owner of Seller; (b) any parent, spouse, child, brother, sister or other family relation (by blood or marriage) of any current or former officer, director or equity owner of Seller; (c) any corporation, partnership or other entity of which any current or former officer, director or equity owner of Seller or any such family relation is an officer, director, partner, trustee or greater than 10% equity owner or beneficiary; or (d) any Affiliate of Seller.
- (ggg) “Retailers” has the meaning [redacted].

(hhh) “Retained Business” means [redacted].

(iii) “Retained Business Patent License Agreement” means that certain Patent License Agreement entered into as of the date hereof by and between Buyer and Seller substantially in the form attached hereto as Exhibit D.

(jjj) “Royalty Payment (AKBM)” means all outstanding royalties under the AKBM Settlement Agreement, amounting to [redacted].

(kkk) “Seller’s Knowledge” means the knowledge of a particular fact or other matter being possessed as of the applicable date by any of Jim Hamilton, Mario Paradis, Jacqueline Khayat and Mike Temeroo, in each case after due inquiry, which inquiry shall include, as applicable, the obligation to consult with employees who are responsible for or involved in the day-to-day operations with Transferred Customers.

(lll) “Supply Agreement” means the Supply Agreement to be entered into by and between Seller and Buyer and executed and delivered at Closing, substantially in the form set forth on Exhibit C.

(mmm) “Taxes” means all taxes, assessments, charges, duties, fees, levies or other governmental charges (including interest, penalties or additions associated therewith), including income, franchise, capital stock, real property, personal property, tangible, withholding, employment, payroll, social security, unemployment compensation, disability, transfer, sales, use, excise, gross receipts, value-added and all other taxes of any kind imposed by any Government Entity, whether disputed or not, and any charges, interest or penalties imposed or that may be imposed thereon by any Government Entity.

(nnn) “Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

(ooo) “Termination Letter re: AKBM Settlement Agreement” means that certain Termination Letter re: AKBM Settlement and License Agreement to be entered into by and between Buyer and Seller at Closing, in substantially the form attached hereto as Exhibit E.

(ppp) “Trademarks” means all trademarks, service marks, trade names, trade dress, designs, logos, emblems, signs or insignia, slogans, and other similar designations of source or origin, together with all goodwill symbolized by any of the foregoing, registrations and applications for any of the foregoing, and the right to sue for past infringement thereof.

(qqq) “Trade Secrets” means any and all trade secrets and other confidential information, including such rights in know-how, customer lists, prospect lists, business plans, inventions, proprietary processes, formulae, algorithms, models and methodologies.

(rrr) “Transferred Business” means any business conducted by Seller relating to krill, other than the Retained Business.

(sss) “Transferred Copyrights” means all registered Copyrights owned by Seller relating to the Krill Business and set forth on Exhibit H, and all rights of Seller therein.

(ttt) “Transferred Customer Contracts” means the Contracts with Transferred Customers identified on Exhibit K.

(uuu) “Transferred Customers” means the existing and prospective customers identified on Exhibit J, which exhibit sets forth the existing and prospective customer accounts.

(vvv) “Transferred Identifiers” means all Identifiers owned by Seller relating to the Krill Business and set forth on Exhibit M, and all rights of Seller therein.

(www) “Transferred Intellectual Property” means the Transferred Patents, Transferred Trademarks, Transferred Copyrights, Transferred Identifiers and Transferred Trade Secrets and all other Intellectual Property owned by Seller and used in the Krill Business.

(xxx) “Transferred Inventory” means krill meal, krill oil, krill oil-based work-in-progress and other items listed on Exhibit I.

(yyy) “Transferred Patents” means the Patents owned by Seller relating to the Krill Business which cover the manufacturing, composition and use of krill products and set forth on Exhibit M, and all rights of Seller therein.

(zzz) “Transferred Trademarks” means the Trademarks owned by Seller relating to the Krill Business and set forth on Exhibit L, and all rights of Seller therein

(aaaa) “Transferred Trade Secrets” means all Trade Secrets maintained by Seller relating to the Krill Business, and all rights of Seller therein.

(bbbb) “USD” means United States Dollars.

(cccc) “Work-in-Progress” or “WIP” means krill oil which is required to be reworked in order to meet the NKO krill oil specifications.

(dddd) “WSJ Prime Lending Rate” means, as of any day, the “U.S. Prime Rate” published in *The Wall Street Journal’s* “Money Rate” table on the last business day immediately prior to the day as of which such rate is being determined. If such table or rate is not published as of such business day, then the “Wall Street Journal Prime Lending Rate” shall be deemed to be a reference to the prime lending rate of Bank of America in effect on the last business day immediately prior to such date. If Bank of America does not then exist or does not then publish its prime lending rate, then the “Wall Street Journal Prime Lending Rate” shall be the prime lending rate of Buyer’s principal banking institution on the last business day immediately prior to the day as of which such rate is being determined.

**1.2 Terms Defined Elsewhere.** In addition to the terms defined in Section 1.1, each of the following terms is defined in the section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Agreement.....	Preamble
Arbitrator .....	9.6(b)
Assumed Liabilities .....	2.4
Assumption Agreement .....	4.2(a)(ii)
Basket .....	8.5(c)(i)
Bill of Sale .....	4.2(a)(i)
Buyer.....	Preamble
Buyer Claims Period.....	8.5(a)
Buyer Parties.....	8.1
Cap Amount.....	8.5(c)(ii)(C)
Claim Notice .....	8.3

Closing .....	4.1
Closing Consideration Payments .....	3.2
Designated Representatives .....	9.6(a)
Earnout Statement.....	3.2(b)(i)
Effective Date .....	Preamble
Excluded Assets.....	2.3
Excluded Liabilities .....	2.5
Financials.....	5.5
ICC.....	9.6(b)
Party(ies).....	Preamble
Principal Tribunal .....	9.6(e)
Proposed Assignment .....	7.6
Proposed Contract.....	7.6
Proposed Sales Arrangement .....	7.6
Proposed Tax Allocation .....	3.4
Purchase Price.....	3.1
Purchaser Designated Representative .....	9.6(a)
Quality Assurance Agreement .....	7.14(a)
Required Approval.....	7.6
[Redacted].....	7.11(b)
[Redacted].....	7.11(a)
[Redacted].....	7.14(a)
Rules .....	9.6(b)
Seller .....	Preamble
Seller Claims Period .....	8.5(d)
Seller Designated Representative .....	9.6(a)
Seller Disclosure Schedule .....	Article V
Seller Insurance Policies .....	5.12(a)
Seller Parties .....	8.2
Third Party Action .....	8.4(a)
Third Party Action Notice .....	8.4(a)
Transferred Assets .....	2.2
USPTO.....	5.11(k)(i)

**1.3 Interpretation.** Unless the context of this Agreement otherwise clearly requires: (a) references to the plural include the singular, and references to the singular include the plural; (b) references to any gender include the other genders; (c) the words “include,” “includes” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”; (d) the terms “hereof”, “herein”, “hereunder”, “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) the terms “day” and “days,” if not capitalized, mean and refer to calendar day(s); and (f) the terms “year” and “years” mean and refer to calendar year(s). Unless otherwise set forth herein, each reference in this Agreement to any document, instrument or agreement (including this Agreement): (i) includes and incorporates all schedules and other attachments thereto; (ii) includes all documents, instruments or agreements issued or executed in replacement thereof; and (iii) means such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified or supplemented from time to time in accordance with its terms and in effect at any given time. Unless otherwise specified, all Article, Section and Schedule references herein are to Articles, Sections and Schedules of this Agreement. The Seller Disclosure Schedule shall set forth items, the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more of Seller’s representations or warranties or one or more of its covenants, in each case making

reference to the particular section of this Agreement requiring such disclosure or to which exception is being taken.

## **ARTICLE II**                    **THE ASSET PURCHASE.**

**2.1**    **Agreement to Purchase and Sell.** Subject to the terms, conditions and other provisions of this Agreement, at the Closing, Seller is granting, selling, assigning, transferring and delivering to Buyer (or an Affiliate of Buyer designated by Buyer), and Buyer (or an Affiliate of Buyer designated by Buyer) is purchasing from Seller, all right, title and interest of Seller in and to all of the Transferred Assets, free and clear of all Liens except for Permitted Liens, and Buyer (or an Affiliate of Buyer designated by Buyer) is assuming the Assumed Liabilities.

**2.2**    **Assets.** The term “Transferred Assets” shall include only the following assets, properties and rights of Seller:

- (a)    the Transferred Customers;
- (b)    the Assumed Contracts;
- (c)    the Transferred Intellectual Property;
- (d)    the Transferred Inventory;
- (e)    all Permits relating to the ownership or operation of the Transferred Assets or the Krill Business including the Permits set forth on Schedule 2.2(e), to the extent transferable to Buyer pursuant to applicable Law;
- (f)    all original books and records, files, documents, instruments and agreements (whether in machine or human-readable format) relating to the Transferred Assets, including all documentation relating to the Transferred Intellectual Property, sales records, accounting records, mailing lists, customer lists and records, contractor and candidate lists and records, but excluding records regarding any Excluded Assets;
- (g)    all other intangible assets (including all Liability claims, Contract rights and warranty or product liability claims against third parties) relating to the Transferred Assets.

In the event that Buyer discovers after Closing that assets relating to the Krill Business should have been, but were not, included in the exhibits setting forth the Transferred Assets listed in this Section 2.2, Buyer may, but shall not be obligated to, require that such assets be transferred to Buyer promptly after providing notice of such determination to Seller and Seller shall transfer and deliver such assets in a prompt and commercially reasonable manner.

### **2.3**    **Excluded Assets.**

Notwithstanding anything herein to the contrary, the Transferred Assets will not include any assets other than the assets expressly set forth in Section 2.2, including, without limitation, the following assets, properties and rights of Seller (collectively, the “Excluded Assets”):

- (a)    all cash, restricted cash and cash equivalents and bank accounts of Seller;
- (b)    all Contracts other than the Assumed Contracts;
- (c)    all Patents owned by Seller other than the Transferred Patents;

- (d) the Excluded Trademark and all other Trademarks owned by Seller other than the Transferred Trademarks;
- (e) all Trade Secrets maintained by Seller other than the Transferred Trade Secrets;
- (f) all tangible and intangible assets of the Seller other than the Transferred Assets;
- (g) all Benefit Plans of Seller;
- (h) all Permits relating to the ownership or operation of the Transferred Assets or the Krill Business that Seller is prohibited by applicable Law from transferring to Buyer and all Permits not relating to the ownership or operation of the Transferred Assets or the Krill Business;
- (i) all books and records solely relating to the Excluded Assets and personnel;
- (j) the Organizational Documents of Seller and the minute books, equity ownership records and corporate seals of Seller; and
- (k) the rights that accrue to Seller under this Agreement and any other agreements between Seller and Buyer to be delivered pursuant to this Agreement.

**2.4 Assumed Liabilities.** In connection with the purchase by Buyer (or an Affiliate of Buyer designated by Buyer) of the Transferred Assets, at and effective as of the Closing, Buyer (or an Affiliate of Buyer designated by Buyer) is assuming the following Liabilities relating to the Krill Business (collectively, the “Assumed Liabilities”), and no other Liabilities:

- (a) all Liabilities of Seller under the Assumed Contracts arising after the Closing; and
- (b) a pro-rated portion of any maintenance fees for Transferred Intellectual Property for the post-Closing period covered by such maintenance fees.

**2.5 Excluded Liabilities.**

Notwithstanding anything herein to the contrary, the Assumed Liabilities will not include, and in no event will Buyer assume, agree to pay, discharge or satisfy, or otherwise have any responsibility for, any Liability of Seller or any of its Affiliates of any kind, whether known, unknown, contingent or otherwise other than those expressly described in Section 2.4 (collectively, the “Excluded Liabilities”), including all Liabilities of Seller of any kind:

- (a) for all accounts payable and accrued expenses of the Seller;
- (b) for accrued payroll, compensation or payroll-related expenses of Seller or any of its Affiliates regarding any Employee or Independent Contractor including any leased employees of the Seller;
- (c) for any Taxes of Seller or any of its Affiliates (including all Taxes (whether assessed or unassessed) regarding Seller’s assets, including the Transferred Assets, attributable to taxable years or periods ending on or prior to the Closing), including any payroll Taxes with respect to any Employee or Independent Contractor including any leased employees of the Seller;
- (d) pertaining to any Excluded Asset;

(e) under any Contract other than the Assumed Contracts, including, without limitation, the Inbound License Agreements and the Outbound License Agreements;

(f) **[Redacted]**;

(g) arising out of or related to any Benefit Plan of Seller;

(h) related to Seller's Employees or personnel of Seller terminated by Seller;

(i) under the Assumed Contracts arising prior to the Closing;

(j) related to or arising from any failure by Seller or its Affiliates, prior to the Closing, to comply with any Law applicable to the Krill Business;

(k) any Action asserted by a third party or Government Entity against Seller or its Affiliates arising out of events occurring prior to the Closing or in any way related to the ownership and operation of the Krill Business prior to the Closing;

(l) related to Environmental Matters or Intellectual Property arising out of events occurring prior to the Closing;

(m) related to any Indebtedness of Seller or its Affiliates;

(n) arising from the design, manufacture and sale of Products by Seller or, on Seller's behalf, prior to Closing including all warranty and guarantee claims by any customers of Seller and any product liability, personal injury or other similar claims by any customer of Seller; and

(o) relating to the fees and expenses of Seller's agents, representatives, financial advisors, accountants, appraisers and legal counsel in connection with the transactions contemplated by this Agreement.

**2.6 Transferred Customers.** For greater certainty, subject to the representations of Seller in Section 5.10 (Transferred Customers) and the covenants of Seller in Section 7.7 (Transfer of Customer Accounts), Seller does not guarantee or warrant the successful transfer of the Transferred Customers nor does it guarantee or warrant any amount of future sales or revenue derived by the Buyer from such Transferred Customers.

### **ARTICLE III CONSIDERATION.**

**3.1 Consideration.** The consideration for the Transferred Assets (the "Purchase Price") is comprised of the following: (a) the Closing Consideration; (b) the Earnout Consideration, paid in accordance Section 3.2(b); (c) the Royalty Payment (AKBM); (d) the rights granted to Seller under the Retained Business Patent License Agreement and the NKO Trademark License Agreement; and (e) the assumption by Buyer of the Assumed Liabilities. The Closing Consideration Payments and the Royalty Payment (AKBM) payable at Closing will be made as set forth in Section 3.2(a). The Earnout Consideration will be paid as set forth in Section 3.2(b). The assumption by Buyer (or an Affiliate of Buyer designated by Buyer) of the Assumed Liabilities will occur pursuant to the Assumption Agreement.

### **3.2 Consideration Payments.**

(a) At the Closing, in reliance upon the representations, warranties and covenants set forth herein and in consideration of the Seller's sale, assignment, transfer and delivery of the Transferred Assets to Buyer (or an Affiliate of Buyer designated by Buyer), Buyer shall pay the Closing

Consideration as follows (collectively, the “Closing Consideration Payments”): the Closing Consideration, plus the Royalty Payment (AKBM) payable at Closing, shall be paid in the aggregate by Buyer to Seller by wire transfer of immediately available funds to a bank account specified in advance by Seller.

(b) Earnout Consideration Payment. In accordance with and subject to the terms and conditions set forth in this Section 3.2(b), and net of any offsets specifically provided for in Section 8.6, the aggregate amount of Earnout Consideration, if any, to be paid by Buyer to Seller following the Effective Date, shall be calculated and paid as follows: **[redacted]**.

**3.3 Closing Costs**. Other than the IP Transfer Costs, which shall be borne by Buyer, all national, federal, state, provincial or local transfer Taxes in any country, including excise, sales, use, value added, real property transfer, stamp, documentary, filing, recordation, notarial and other similar taxes and fees that may be imposed or assessed as a result of the transactions contemplated by this Agreement (if any), excluding income Taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties shall be split equally by the Buyer and the Seller, with Seller having the responsibility to file and remit any such Taxes to the applicable Government Entity. In the event either Party makes any payments which are the responsibility of the other Party (including Tax payments), the other Party shall provide reimbursement thereof for such amounts within 15 days after notice thereof. The Parties agree to cooperate and timely sign and deliver such resale or other certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce) such Taxes. For the avoidance of doubt, if a Tax authority rejects any such certificate or form in which an exemption or reduction in Taxes is claimed, Buyer and Seller shall each be responsible as set forth above for the additional Taxes due and payable to the Tax authority related thereto.

**3.4 Tax Allocation of Purchase Price**.

Within 120 days after the Closing, Buyer shall provide to Seller a proposed tax allocation of the Purchase Price (the “Proposed Tax Allocation”). The Proposed Tax Allocation shall be prepared in accordance with the applicable provisions of the applicable Tax code. If Seller does not object to the Proposed Tax Allocation within 30 days after its receipt thereof by providing an objection notice to Buyer in accordance with Section 9.7, then the Proposed Tax Allocation shall be final and binding between the Parties. If Seller objects to the Proposed Tax Allocation and provides an objection notice to Buyer within 30 days after its receipt thereof, then Seller and Buyer shall cooperate in good faith to resolve their differences, provided that if after 30 days, Seller and Buyer are unable to agree, each party will make their own determination on the tax allocation.

**3.5 Late Payments**. If either Party defaults in any payment due from it under this Agreement and such payment is not made within ten (10) days following the date of written demand therefor by the non-breaching Party, then the delinquent amount shall bear interest at a rate of equal to the WSJ Prime Lending Rate in effect on the due date of such payment plus two percent (2%) per annum (or, if less, at the maximum rate permitted under applicable law) from the due date of such payment until the date on which paid in full.

**ARTICLE IV THE CLOSING**.

**4.1 Closing**. The closing of the transactions contemplated by this Agreement (the “Closing”) is occurring simultaneously with the execution of this Agreement. Solely for accounting purposes, the Closing shall be effective as of 12:01 a.m., Eastern daylight time, on the Effective Date.

**4.2 Closing Deliveries**. At the Closing:

(a) Seller is delivering (executed as applicable) to Buyer (or an Affiliate of Buyer designated by Buyer) or Seller shall cause the delivery to Buyer (or an Affiliate of Buyer designated by Buyer) of:

- (i) possession of the Transferred Assets and a Bill of Sale from Seller in the form of Exhibit A (the “Bill of Sale”);
- (ii) an Assumption Agreement in the form of Exhibit B (the “Assumption Agreement”);
- (iii) the Supply Agreement;
- (iv) the Retained Business Patent License Agreement;
- (v) the NKO Trademark License Agreement;
- (vi) the Termination Letter re: AKBM Settlement Agreement;
- (vii) a certificate of the secretary of Seller, dated as of the Effective Date, certifying (a) that the copies of Seller’s Organizational Documents attached thereto are true, complete and correct and in full force and effect; and (b) that the resolutions of the board of directors of Seller approving this Agreement and the transactions contemplated hereby that are attached to such certificate are true, complete and correct and in full force and effect;
- (viii) a Certificate of Status issued by the Province of Quebec with respect to Seller dated as of a date within five (5) Business Days prior to the Effective Date;
- (ix) all Approvals set forth on Section 5.4 of the Seller Disclosure Schedule, if any, in a form acceptable to Buyer;
- (x) a direction of payment relating to the disbursement of the Closing Consideration Payments;
- (xi) a payoff letter executed by Bank and Clients plc;
- (xii) a payoff letter executed by Investissement Québec; and
- (xiii) such other documents as are required under this Agreement.

(b) Buyer is delivering (executed as applicable) to Seller:

- (i) the Closing Consideration Payments, in accordance with Section 3.2;
- (ii) the Royalty Payment (AKBM Settlement);
- (iii) the Bill of Sale;
- (iv) the Assumption Agreement;
- (v) the Supply Agreement;
- (vi) the Retained Business Patent License Agreement;

- (vii) the NKO Trademark License Agreement;
- (viii) the Termination Letter re: AKBM Settlement Agreement;
- (ix) a certificate of the secretary of Buyer, dated as of the Effective Date, certifying that the resolutions of the board of directors of Buyer approving this Agreement and the transactions contemplated hereby that are attached to such certificate are true, complete and correct and in full force and effect;
- (x) a certificate of good standing issued by the Brønnøysund Register of Norway with respect to Buyer dated as of a date within five (5) Business Days prior to the Effective Date; and
- (xi) such other documents as are required under this Agreement.

## **ARTICLE V      REPRESENTATIONS AND WARRANTIES OF SELLER.**

Seller represents and warrants to Buyer as follows, subject to the disclosures specifically set forth in the Seller disclosure schedule attached hereto (the “Seller Disclosure Schedule”):

**5.1      Organization.** Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of its jurisdiction of incorporation. Seller has full corporate power and authority: (a) to own or lease and to operate and use the Transferred Assets; (b) to perform its obligations under all Contracts relating to the Krill Business by which it is bound; and (c) to carry on the Krill Business currently being conducted. For the purpose of the Krill Business, Seller is not required to be qualified or licensed to do business in any jurisdiction other than the jurisdictions listed on Section 5.1 of the Seller Disclosure Schedule. Seller has made available to Buyer true and complete copies of Seller’s Organizational Documents, each as amended to date, which Organizational Documents are in full force and effect. The transactions contemplated hereunder will not cause Seller to be in violation of any provision of its Organizational Documents. Except as set forth on Section 5.1 of the Seller Disclosure Schedules, Seller has no subsidiaries or any direct or indirect ownership interest in any other Person. Seller has not conducted any business of the Krill Business under or otherwise used, in connection with the Krill Business, any fictitious name, assumed name, trade name or other name.

**5.2      Authorization.** Seller has the right, power and capacity to execute and deliver this Agreement and any other agreement entered into in connection with this Agreement to which it is a party, and to perform its obligations under this Agreement and any other agreement entered into in connection with this Agreement to which it is a party, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any other agreement entered into in connection with this Agreement by Seller, and the performance by Seller of its obligations hereunder and thereunder, and the consummation of the transactions provided for herein and therein have been duly and validly authorized and approved by all necessary corporate action on the part of Seller. This Agreement and any other agreement entered into in connection with this Agreement have been duly executed and delivered by Seller and constitute a valid and binding agreement of Seller, enforceable against Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting the enforceability of creditors’ rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

**5.3      Non-Contravention.** Subject to receipt of the Approvals described in Section 5.4 of the Seller Disclosure Schedule, neither the execution and delivery of this Agreement or any other agreement entered into in connection with this Agreement by Seller, nor the consummation of the transactions contemplated hereby or thereby, does or would, after the giving of notice or the lapse of time or both: (a) conflict with,

result in a breach of, constitute a default under, or violate the Organizational Documents of Seller, or any Law applicable to Seller except for such conflicts, breaches, defaults or violations which do not have a material adverse effect on the Krill Business or the Transferred Assets; (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of any rights or obligations under, create in any Person the right to accelerate any rights or obligations under or amend, modify, cancel or refuse to perform under, or require any notice under any Contract or other arrangement to which Seller is a party or by which Seller or any of Seller's assets or properties are bound; or (c) result in the creation of, or give any Person the right to create, any Lien, other than Permitted Liens, or upon any right, property or asset of Seller, including any Transferred Assets.

**5.4 No Consents.** Except as otherwise set forth on Section 5.4 of the Seller Disclosure Schedule, no Approval of any Government Entity or other Person is required in connection with the execution, delivery and consummation of this Agreement, or any other agreement entered into in connection with this Agreement, by Seller other than those Approvals, orders, consents or filings where any failure to obtain or perform would not have a material adverse effect on the Krill Business or the Transferred Assets.

**5.5 Financials; Accounts Receivable.** Section 5.5 of the Seller Disclosure Schedule contains true and complete copies of Seller's audited financial statements as of and for the fiscal years ended February 28, 2015, February 29, 2016 and March 31, 2017 (collectively, the "Financials"). All of the Financials have been prepared in accordance with the International Financial Reporting Standards in effect, as adopted by the Canadian Accounting Standards Board, and present fairly the financial position of Seller as of the applicable date and results of operations for the period then ended subject to normal year-end adjustments and the absence of footnotes. Except as described on Section 5.5 of the Seller Disclosure Schedule, all accounts receivable of Seller arising from the operation of the Krill Business reflected in the Financials and all accounts receivable of Seller arising from the operation of the Krill Business that have arisen after March 31, 2017 (except accounts receivable that have been collected since such date) are valid and enforceable claims, and constitute bona fide accounts receivable resulting from the sale of Products in the Ordinary Course, subject only to any reserve for bad debts set forth in the Financials. The accounts receivable are subject to no valid defense, offsets, returns, allowances or credits of any kind, and are fully collectible within 90 days after the Closing.

**5.6 Tax Matters.** There are no Liens for Taxes upon the Transferred Assets except for statutory Liens for current Taxes not yet due. No federal, state, local or foreign audits, review or other Actions exist regarding any Taxes which may result in a Lien on the Transferred Assets, and Seller has not received any notice of such an audit, review or other Action, which may result in a Lien on the Transferred Assets.

**5.7 Legal Proceedings.** Other than as disclosed in the Financials, there are no pending Actions relating to or involving the Seller, the Transferred Assets or the Krill Business and Seller has not received written notice of any threatened Actions and, to Seller's Knowledge, no Actions have otherwise been threatened, against, relating to or involving Seller, the Transferred Assets or the Krill Business which, if determined adversely to the Seller, would have a material adverse effect on the Transferred Assets or the Krill Business. Seller has not received written notice of any threatened Actions that present a claim to restrain or prohibit the transactions contemplated herein and, to Seller's Knowledge, no Actions have otherwise been threatened that present a claim to restrain or prohibit the transactions contemplated herein. There are no outstanding or prior judgments, orders, injunctions, decrees, stipulations or awards (of a court, administrative agency, or by arbitration, or pursuant to a grievance or other procedure) against or relating to Seller, the Transferred Assets or the Krill Business.

**5.8 Compliance with Laws; Permits.** Seller (a) has materially complied with, is in material compliance with and has operated the Krill Business in material compliance with all applicable Laws, and

(b) Section 5.8 of the Seller Disclosure Schedule lists all material Permits required for the operation of the Krill Business as it is presently being conducted. Seller has obtained and maintained, and is in material compliance with, all such Permits, which are all in full force and effect.

#### **5.9 Transferred Inventory.**

(a) Seller is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good and marketable title to all of the Transferred Inventory, free and clear of any and all Liens, other than Permitted Liens.

(b) The information provided on Exhibit I attached hereto, including information about volume, product specifications, and shelf life, if applicable, of Transferred Inventory is true and accurate. The Transferred Inventory (a) is in conformity with the information applicable to such Transferred Inventory as set forth on Exhibit I; and (b) has been manufactured and stored in all material respects in accordance with (i) the applicable product specifications set forth on Exhibit I and (ii) applicable Law. Neither the aggregate value of the Transferred Assets in Canada nor the annual gross revenues from sales in or from Canada generated by such assets exceeds \$88,000,000 Canadian Dollars, in each case as determined in accordance with the Competition Act (Canada)'s Notifiable Transactions Regulations.

#### **5.10 Transferred Customers.**

(a) The information with respect to the Transferred Customers set forth on Exhibit J is true, accurate and not misleading. Except as set forth on Section 5.10(a) of the Seller Disclosure Schedule, the relationships of Seller with the Transferred Customers are bona fide, reasonable commercial working relationships and: (i) all amounts owing from or to the Transferred Customers, if not in dispute, have been paid in accordance with their respective terms; (ii) none of the Transferred Customers within the last twelve months has threatened in writing or, to Seller's Knowledge, has otherwise threatened to cancel, or otherwise terminate, the relationship of such person with Seller or, following the transactions contemplated under this Agreement, with Buyer; (iii) none of the Transferred Customers during the last twelve months has decreased materially or threatened in writing or, to Seller's Knowledge, otherwise threatened to decrease or limit materially, its relationship with Seller or, to Seller's Knowledge, intends to decrease or limit materially its purchases from, sales to or business with, Seller or, following the transactions contemplated under this Agreement, with Buyer; (iv) to Seller's Knowledge, no event or condition exists, that makes it reasonably likely that there will be a reduction in Transferred Customers or interference with the relationship between any Transferred Customers and Seller; and (v) other than Biodroga Nutraceuticals Inc. and Acasti, none of the Transferred Customers are a Related Party, and no Related Party has any direct or indirect ownership interest in any Transferred Customers. Seller is in material compliance with all applicable privacy policies or related programs or other notices that concern the use of personal information relating to the Transferred Customers.

(b) Section 5.10(b) of the Seller Disclosure Schedule sets forth, as of the date hereof, a complete and accurate list of the each Contract of Seller with the Transferred Customers. Seller has disclosed to Buyer all material terms of all Contracts between Seller and any customer of the Transferred Business. Except as set forth on Section 5.10(b) of the Seller Disclosure Schedule, all Contracts of Seller contain only Seller's standard terms and conditions.

(c) Seller has delivered a complete and accurate copy of each Transferred Customer Contract to Buyer, including all amendments, modifications, supplements, exhibits and restatements thereto. Each Transferred Customer Contract is in full force and effect and is legal, valid, binding and enforceable against Seller and, to Seller's Knowledge, all other parties thereto in accordance with its terms. There does not exist under any Transferred Customer Contract any default or condition or event that, after

notice or lapse of time or both, would constitute a default on the part of Seller, or to Seller's Knowledge, on the part of any other party to such Transferred Customer Contract.

### **5.11 Intellectual Property.**

(a) Section 5.11(a) of the Seller Disclosure Schedule sets forth a complete and correct list of all Patents, Trademarks and Identifiers, which are related to or used in the Krill Business, and all other unregistered Intellectual Property owned by the Seller and material to the Krill Business (with Trade Secrets listed in general title only), identifying for each, as applicable: (i) the serial number, registration number or application number; (ii) the status of any issuance, renewal, maintenance or other payments required to be made with respect thereto within six months after the date hereof; and (iii) the recordation Reel/Frame of any assignments recorded at the United States Patent and Trademark Office. All required filings and fees for registered Transferred Intellectual Property have been timely filed with and paid to the relevant Government Entities and authorized registrars, and all such Transferred Intellectual Property registrations are otherwise in good standing. Seller will timely provide upon Closing Buyer with true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Transferred Intellectual Property registrations.

(b) Except as disclosed on Section 5.11(b) of the Seller Disclosure Schedule, there are no Inbound License Agreements.

(c) Except as disclosed on Section 5.11(c) of the Seller Disclosure Schedule, there are no Outbound License Agreements.

(d) The Inbound License Agreements and Outbound License Agreements shall hereinafter be individually referred to as "IP License Agreements" and collectively referred to as "IP License Agreements." Each IP License Agreement is a valid obligation of Seller, is in full force and effect and, to Seller's Knowledge, all other parties thereto, enforceable in accordance with its terms (except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditors' rights generally and subject to general principles of equity), and, to Seller's Knowledge, there exists no event or condition (including the consummation of the transactions contemplated by this Agreement) that will result in a violation or breach thereof, or constitute any default thereunder. Seller has provided Buyer with true and complete copies of all IP License Agreements, including all modifications, amendments and supplements thereto and waivers thereunder.

(e) Other than the Acasti License Agreement, there are no Intra-company License Agreements.

(f) Seller owns all right, title and interest in and to the Transferred Intellectual Property, free and clear of all Liens other than Permitted Liens. The Transferred Intellectual Property has been duly maintained and is subsisting, is valid, is in full force and effect and has not been cancelled, expired or abandoned.

(g) None of the Transferred Intellectual Property, any Licensed Intellectual Property or any other product, service or technology used, sold, licensed, offered for sale or license, or currently proposed to be developed, used, sold, licensed or offered for sale or license by Seller in connection with the Krill Business and the Transferred Assets, or any advertising, promotional, marketing or web site content used in connection therewith, infringes or misappropriates any Intellectual Property rights of any Person.

(h) Except as disclosed on Section 5.11(h) of the Seller Disclosure Schedule, there are no Actions (including any oppositions, interferences or re-examinations) settled, pending or threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by Seller in connection with the Krill Business; (ii) challenging the validity, enforceability, registrability or ownership of any Transferred Intellectual Property or Seller's rights with respect to any Transferred Intellectual Property; or (iii) by Seller or any other Person alleging any infringement, misappropriation, dilution or violation by any Person of any Transferred Intellectual Property. Seller is not subject to any outstanding or prospective order from a Government Entity (including any motion or petition therefor) that does or would restrict or impair the use of any Transferred Intellectual Property.

(i) Seller takes and has consistently taken commercially reasonable measures to protect the confidentiality of the Transferred Intellectual Property and the Licensed Intellectual Property, including requiring all employees and third Persons having access thereto to execute written non-disclosure agreements, assignment of invention agreements, and agreements which include certain provisions restricting solicitation of employees, customers and prospective customers and engaging in business that is competitive with the Krill Business. No Transferred Trade Secrets included in the Transferred Intellectual Property or the Licensed Intellectual Property have been disclosed by Seller or authorized to be disclosed by Seller to any third Person other than pursuant to a written non-disclosure agreement and to Seller's Knowledge no third Person that is a party to any non-disclosure agreement with Seller is in breach or default thereof.

(j) Neither this Agreement, nor the consummation of the transactions contemplated by this Agreement, will result in any third Person being granted rights of access to, use of, or the placement in or release from escrow of, any Transferred Intellectual Property or, to Seller's Knowledge, any Licensed Intellectual Property.

(k) The following representations and warranties apply to the Transferred Patents:

(i) To Seller's Knowledge, none of the inventors, assignors or assignees of the Transferred Patents or their counsel: (A) intentionally failed to disclose any material prior art references to the United States Patent & Trademark Office ("USPTO") or any foreign patent office requiring such disclosure in connection with the prosecution of the Transferred Patents; (B) made any material misstatements or misrepresentations to the USPTO or any foreign patent office in connection with the prosecution of the Transferred Patents; or (C) engaged in any act or omission inconsistent with the duty of candor to the USPTO or any foreign patent office in connection with the prosecution of the Transferred Patents.

(ii) To the extent small entity fees were paid to the USPTO for the Transferred Patents, such reduced fees were appropriate because the payor qualified to pay small entity fees at the time of such payment, and had not licensed rights in the Transferred Patents to an entity that was not a small entity.

(iii) Except as disclosed on Section 5.11(h) of the Seller Disclosure Schedule, the Transferred Patents have not been and are not the subject of any pending, past or, to Seller's Knowledge, threatened litigation, reexamination, reissue, interference, or inter partes review (including any invalidity proceeding), or other legal proceeding before the USPTO, any foreign patent office or any tribunal of competent jurisdiction.

**5.12 Insurance.** Section 5.12 of the Seller Disclosure Schedule sets forth a true and complete list of all:

(a) (i) current insurance policies and binders relating to the Krill Business or Transferred Assets maintained by or for the benefit of Seller; and (ii) all occurrence-based insurance policies relating to the Krill Business or Transferred Assets maintained by or for the benefit of Seller at any time since February 28, 2015 ((i) and (ii) collectively, the “Seller Insurance Policies”); and

(b) all claims made under any of the Seller Insurance Policies since February 28, 2015.

All Seller Insurance Policies are in full force and effect and no premiums due and payable thereon are delinquent, and Seller has complied, and is in compliance with, in all material respects, the provisions of the Seller Insurance Policies. No notice of cancellation, termination or revocation or other notice that any such insurance policy is no longer in full force or effect or that the issuer of any policy is not willing or able to perform its obligations thereunder has been received by Seller. There are no pending material claims by Seller against any Seller Insurance Policy as to which the applicable insurer has denied liability. There are no pending material claims against any Seller Insurance Policy that have not been properly and timely submitted by Seller pursuant to the terms and conditions of such policy.

**5.13 Absence of Changes.** From and after March 31, 2017, Seller has conducted the Krill Business in the Ordinary Course, and there has not been any event, occurrence or development which, individually or in the aggregate, was, or could reasonably be expected to be, materially adverse to the financial condition, prospects or results of operations of the Krill Business. From and after March 31, 2017, there has not been:

(a) any acceleration or delay in the collection of notes or accounts receivable of Seller related to the Krill Business in advance of or beyond their regular due dates or the dates when the same would have been collected in the Ordinary Course;

(b) any delay or acceleration in the payment of any account payable or other Liability of Seller related to the Krill Business beyond or in advance of its due date or the date when such account payable or other Liability would have been paid in the Ordinary Course;

(c) except as set forth on Section 5.13(c) of the Seller Disclosure Schedule, any material change in the prices at which any Products are sold or distributed, or any offering of any rebates, discounts, commissions, incentives or inducements for the purchase of any Products that are materially different from those rebates, discounts, commissions, incentives or inducements offered by Seller in the Ordinary Course; or

(d) any variation in any material respect in the levels of raw materials, supplies, work-in-process, finished goods, goods on consignment or other materials included in the inventory of Seller from the levels customarily maintained in the related to the Krill Business.

**5.14 Environmental Matters.** There are no pending Actions or, to Seller’s Knowledge, threatened in connection with the Krill Business or the Transferred Assets: (a) alleging any non-compliance with Environmental Law or any Environmental Permit; or (b) alleging or seeking any Liabilities or Damages arising under Environmental Law. The Products do not contain any Hazardous Materials.

**5.15 Business Activity Restriction.** Except as set forth in Section 5.15 of the Seller Disclosure Schedule: (a) there is no non-competition or other similar agreement, commitment or Order to which Seller or any of its Affiliates is a party or subject to that has or could reasonably be expected to have the effect of prohibiting or impairing the conduct of the Krill Business by Buyer; (b) as relates solely to the Krill Business, the Seller has not entered into any agreement (other than as contemplated by this Agreement) under which Seller is restricted from selling, licensing or otherwise distributing any of its technology or products to, or providing services to, customers or potential customers or any class of

customers, in any geographic area, during any period of time; and (c) no Affiliate of Seller is a party to any agreement, which, by virtue of such person's relationship with Seller, restricts Seller or any successor from, directly or indirectly, engaging in the Krill Business.

**5.16 Absence of Undisclosed Liabilities.** Seller has no Indebtedness or any other Liability (whether accrued, absolute, contingent, unliquidated or otherwise, whether or not known to Seller, whether due or to become due and regardless of when asserted) of any nature arising out of transactions entered into at or prior to the date hereof or any action or inaction taken at or prior to the date hereof or any facts existing at or prior to the date hereof other than: (a) Liabilities set forth or reserved against and disclosed on Seller's audited consolidated financial statements for the thirteen-month period ended March 31, 2017; (b) Liabilities which have arisen after March 31, 2017 in the Ordinary Course (none of which is a liability arising out of any noncompliance with applicable Law, breach of contract, breach of warranty, tort, infringement, claim or lawsuit); and (c) Liabilities incurred in connection with this Agreement or any other agreement entered into in connection with this Agreement by Seller and the transactions contemplated hereby or thereby; which in the whole would impair the conduct of the Krill Business or the Transferred Assets from and after Closing, it being understood that the Assumed Liabilities shall not be deemed to impair the conduct of the Krill Business or the Transferred Assets.

**5.17 No Brokers.** There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Seller or any Affiliate of Seller who is or might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

**5.18 Solvency.** Seller is, after giving effect to the transactions contemplated hereby, solvent, able to pay its debts as they become due in the usual course of business, has capital sufficient to pay such debts, now owns property having a value, both at fair valuation and at present fair saleable value, greater than the amount required to pay its debts as they become due in the usual course of business, and will not be rendered insolvent by the execution, delivery or performance of this Agreement or by the completion of the transactions contemplated hereunder.

**5.19 Export Controls.**

(a) Seller has at all times conducted its import and export transactions in accordance with: (i) all applicable U.S. import, export, re-export and deemed controls, including the AECA, ITAR, the Export Administration Act, as amended, and Export Administration Regulations, as amended, and Foreign Assets Control Regulations if and to the extent applicable; and (ii) all other applicable import/export controls in other countries in which Seller conducts the Krill Business, either directly or indirectly.

(b) None of the Intellectual Property of Seller relating to the Krill Business has at any time been subject to the jurisdiction of the AECA or ITAR or their equivalent in any other jurisdiction.

(c) All Intellectual Property of Seller relating to the Krill Business, including any software, technology and items, are correctly deemed "unclassified" and have been correctly classified as either "EAR99", or in one of the Categories on the Commerce Control List, within an Export Control Classification Number for the purpose of export control regulations.

(d) None of the Intellectual Property of Seller relating to the Krill Business has at any time contained, incorporated, called to, or used any encryption or other "information security" functionality as that term is defined in 15 C.F.R. Part 772, including any third party encryption or other "information security" functionality. If the Intellectual Property relating to the Krill Business has at any time contained, incorporated, called to, or used any encryption or other "information security" functionality, all such Products have either: (i) undergone all reviews required by the U.S. Government prior to export; or

(ii) been evaluated by Seller and a determination has been made that no U.S. Government review is required prior to export.

(e) Seller has not, without grant of an export control license or other authorization, exported, re-exported, transferred or released any Intellectual Property of Seller relating to the Krill Business to a denied person, Specially Designated National, restricted or embargoed person, or other restricted party as identified by the U.S. Government either at the time of export, re-export, transfer or deemed export or thereafter.

(f) No disclosures of export control or economic sanctions violations have been made by Seller to any Government Entity and there is no action, inquiry or investigation by any Government Entity with respect to export control or economic sanctions violations that is pending or, to Seller's Knowledge, has been asserted or threatened with respect to the Intellectual Property of the Seller relating to the Krill Business.

#### **5.20 Warranties; Seller Product Defects.**

(a) Section 5.20(a) of the Seller Disclosure Schedule sets forth a list of all:

- (i) Products which have been recalled, withdrawn or suspended; and
- (ii) Actions against Seller from and after March 31, 2017 (whether such Actions have since been completed or remain pending) seeking the recall, withdrawal, suspension or seizure of Seller or seeking to enjoin Seller from engaging in activities pertaining to any Products.

(b) There are no pending Actions relating to any Liability which exists for any return claim, warranty claim or other obligation to provide parts and service on, or to repair or replace, any Products and Seller has not received written notice of any such threatened Actions and, to Seller's Knowledge, no Actions have otherwise been threatened, against, relating to or involving any Liability which exists for any return claim, warranty claim or other obligation to provide parts and service on, or to repair or replace, any Products.

(c) All Products designed, manufactured or sold by Seller prior to the Closing are free of inherent defects. To Seller's Knowledge, there are no losses, damages, injuries or other Liabilities incurred by any customer of Seller that may relate to any defects, inherent or otherwise, in the design or manufacture of the Products.

**5.21 Disclosure.** No representation or warranty or other statement made by Seller in this Agreement contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading. Except as expressly set forth in this Article V, the Seller makes no representation or warranty, and there is no condition, in each case, express or implied, at law, by statute or in equity, in respect of the Krill Business or the Transferred Assets.

#### **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER.**

Buyer represents and warrants to Seller as follows:

**6.1 Organization.** Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of incorporation.

**6.2 Authority.** Buyer has the right, power and capacity to execute and deliver this Agreement and any other agreement entered into in connection with this Agreement to which it is a party, and to perform its obligations under this Agreement and any other agreement entered into in connection with this Agreement to which it is a party, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any other agreement entered into in connection with this Agreement by Buyer, and the performance by Buyer of its obligations hereunder and thereunder, and the consummation of the transactions provided for herein and therein have been duly and validly authorized and approved by all necessary corporate action on the part of Buyer. This Agreement and any other agreement entered into in connection with this Agreement have been duly executed and delivered by Buyer, and each constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws affecting the enforceability of creditors' rights generally, general equitable principles and the discretion of courts in granting equitable remedies.

**6.3 Non-Contravention.** Neither the execution and delivery of this Agreement or any other agreement entered into in connection with this Agreement by Buyer, nor the consummation of the transactions contemplated hereby or thereby, does or would, after the giving of notice or the lapse of time or both, conflict with, result in a breach of, constitute a default under, or violate the Organizational Documents of Buyer, or any Law applicable to Buyer.

**6.4 No Consents.** No Approval of any Government Entity or other Person is required in connection with the execution, delivery and consummation of this Agreement, or any other agreement entered into in connection with this Agreement, by Buyer.

**6.5 No Brokers.** There is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Buyer or any Affiliate of Buyer who is or might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

**6.6 Legal Proceedings.** There are no pending Actions that present a claim to restrain or prohibit the transactions contemplated herein. Buyer has not received written notice of any threatened Actions and, to Buyer's knowledge, no Actions have otherwise been threatened, that present a claim to restrain or prohibit the transactions contemplated herein.

**6.7 Disclosure.** No representation or warranty or other statement made by Buyer in this Agreement contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading. The Buyer acknowledges that it has conducted to its satisfaction an independent investigation of the financial condition, liabilities, results of operations and projected operations of the Krill Business and the nature and condition of Transferred Assets and, in making the determination to proceed with the transactions contemplated by this Agreement, has relied solely on the results of its own independent investigation and the representations, warranties, conditions and statements in Article V.

## **ARTICLE VII ADDITIONAL COVENANTS.**

### **7.1 Further Assurances; Post-Closing Cooperation.**

(a) From and after the Effective Date, from time to time and without further consideration, each Party will execute and deliver such instruments and take such other commercially reasonable action reasonably requested by the other Party in order to effect the transactions contemplated by this Agreement.

(b) Following the Closing, unless otherwise prohibited by Law, each Party will afford each other Party, its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data relating to the Krill Business and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party in connection with: (i) the preparation of Tax Returns; (ii) compliance with the requirements of any Government Entity; (iii) any actual or threatened Action (other than Actions arising from disputes among any Parties); or (iv) for any other legitimate or proper business purpose.

(c) Following the Closing, during the pendency of any of the Transferred Patents, Seller shall, and shall cause its representatives including the inventors of the Transferred Patents, (i) to provide to Buyer any information they become aware of regarding potential infringement by third parties of the Transferred Intellectual Property; and (ii) to assist Buyer as it may reasonably request, at the Buyer's expense (solely to the extent of reasonable out-of-pocket expenses actually incurred by Seller), in the enforcement, prosecution, and/or opposition actions and proceedings of Transferred Patents in all relevant jurisdictions, including, but not limited to, making available to Buyer any relevant information and/or documents to assist Buyer in such actions and proceedings. In addition, Seller agrees not to, and shall not, oppose or otherwise hinder any such litigation efforts or requests from Buyer, including, without limitation, discovery requests or subpoenas issued by Buyer against Seller or its personnel.

(d) Following the Closing, each Party will: (i) afford the other timely notice in writing of any pending or threatened Tax audits or assessments relating to Taxes of the Transferred Assets or the Assumed Liabilities for taxable periods for which the other may have a Liability under Section 5.6 hereof; (ii) cooperate fully in the preparing for any audits of, or disputes with Tax authorities regarding, any Tax Returns to the extent relating to the Transferred Assets or the Assumed Liabilities; and (iii) furnish the other Party with copies of all correspondence received from any Tax authority in connection with any Tax audit or information request with respect to any such taxable period.

## **7.2 IP Assistance and Transfer Costs.**

(a) Buyer agrees to pay all IP Transfer Costs. The Parties agree to cooperate and timely sign and deliver any and all certificates or forms as may be necessary or appropriate to effect the transfer and registration of the Transferred Intellectual Property.

(b) **[Redacted]**.

## **7.3 Publicity; Confidentiality.**

(a) Neither Seller nor any of its Affiliates shall issue any press release or announcement, use any of Buyer's (or its Affiliates') products or its name or Trademarks in promotional activity, or otherwise publicly announce or comment on this Agreement without Buyer's prior written consent, provided that Seller's prior distribution of this Agreement to its stockholders to obtain approval of this Agreement and the transactions hereunder was permitted. The Buyer and the Seller shall issue a joint press release concerning this Agreement and the transactions contemplated hereby and shall use commercially reasonable efforts to reach mutual agreement on the content of such joint press release. Buyer or Seller, as applicable, shall not: (a) make any public disclosure of the transactions contemplated by this Agreement; or (b) publicly disclose the existence of and/or particulars of any negotiations related thereto, including, but not limited to, the terms, conditions, consideration to be paid or other facts related to this Agreement and the related transactions, except to the extent that public disclosure is required by applicable Law including the rules applicable to companies listed on the main list of the Toronto Stock Exchange or NASDAQ, in which case, to the extent practicable, the Parties hereby agree to use commercially reasonable efforts to reach mutual agreement on disclosure language prior to Buyer or Seller's, as applicable, making any such disclosure.

(b) Seller recognizes and acknowledges that it and its representatives have in the past, currently has, and in the future may have, access to non-public information of the Krill Business and/or Buyer and its Affiliates that are valuable, special and unique assets of the Krill Business and/or Buyer and its Affiliates. The Seller agrees that it will not, and will use commercially reasonable efforts to cause its representatives to not, disclose such information to any Person, at any time following the Closing, for any purpose or reason whatsoever, except (i) to representatives of Buyer, and (ii) to counsel and other advisors, provided that such advisors (other than counsel) agree to the confidentiality provisions of this Section, unless (A) such information is or becomes known to the public generally through no fault of the Seller, (B) disclosure is required by Law or the order of any Government Entity under color of law, provided, that prior to disclosing any information pursuant to this clause (B), the Seller shall give prior written notice thereof to Buyer and provide Buyer with reasonable opportunity to contest such disclosure, unless otherwise prohibited by the terms of such Law, regulation, order or request, or (C) the disclosing party reasonably believes that such disclosure is required in connection with the defense of a lawsuit against the disclosing party. In the event of a breach or threatened breach by the Seller of the provisions of this Section 7.3(b), Buyer shall be entitled to seek an injunction restraining the Seller from disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting Buyer from pursuing any other remedy provided for under this Agreement or otherwise for such breach or threatened breach.

(c) Because of the difficulty of measuring economic loss as a result of a breach of the foregoing covenants in this Section 7.3, and because of the immediate and irreparable damage that would be caused for which there may be no other adequate remedy, the parties hereto agree that, in the event of a breach or threatened breach by any of them of the foregoing covenants, the covenants may be enforced against them by injunction or restraining order.

**7.4 Expenses.** Except as otherwise set forth in this Agreement, the Parties shall pay all of their own expenses relating to the transactions contemplated by this Agreement, including, the fees and expenses of their own agents, representatives, financial advisors, accountants, appraisers and legal counsel.

**7.5 Bulk Sales.** Seller shall comply with the “bulk sales” or similar Laws of all jurisdictions, to the extent applicable to it in connection with the transactions contemplated hereby.

**7.6 [Redacted].**

**7.7 [Redacted].**

**7.8 Funds Received in Respect of Transferred Assets or Excluded Assets.** From and after the Effective Date:

(a) Seller shall promptly transfer and deliver to Buyer without holdback, set-off, deduction, or offset any cash or other property, if any, that Seller may receive related to the Transferred Assets (including under all Assumed Contracts for services rendered on or after the Closing); and

(b) Buyer shall promptly transfer and deliver to Seller without holdback, set-off, deduction, or offset any cash or other property, if any, that Buyer may receive related to the Excluded Assets.

**7.9 Claims Under Insurance Policies.** After the Effective Date, insurance claims relating to the Transferred Assets or Krill Business, shall, to the extent permitted by Buyer’s insurance policies, be covered by Buyer’s insurance. Notwithstanding the foregoing, after the Effective Date, Seller shall, at the Buyer’s expense (solely to the extent of reasonable out-of-pocket expenses actually incurred by Seller), cooperate in all respects with Buyer in respect of claims made after the Effective Date under Seller Insurance Policies relating to the Transferred Assets or Krill Business that provide occurrence-based

coverage for events occurring prior to the Effective Date, including by making and pursuing any appropriate claims under or in connection with such insurance policies as Buyer may request. Seller agrees not to limit, modify or otherwise compromise Buyer's ability to make claims under any such insurance policies, but rather to assist and facilitate Buyer with obtaining the full benefits of such insurance policies, either directly or as a pass-through from Seller.

**7.10 [Redacted].**

**7.11 [Redacted].**

**7.12 [Redacted].**

**7.13 [Redacted].**

**7.14 [Redacted].**

**7.15 Disposition of Seller Frozen Krill.** Seller covenants and agrees (i) that it shall not rework or otherwise process any frozen krill retained by Seller after the Closing into krill oil, krill meal or any krill oil-based work in progress; and (ii) that it shall be permitted only to sell such frozen krill as-is on the market. The Seller and Buyer further acknowledge and agree that, in the event that Seller receives a purchase order for refined krill oil from Acasti on or prior to October 31, 2017, Seller shall have the right to produce, from frozen krill retained by the Seller after the Closing, such refined krill oil to be used by Acasti for its clinical trial needs (the "Acasti RKO"). Upon receipt of such purchase order from Acasti on or prior to October 31, 2017, Seller shall produce the quantity of Acasti RKO requested by Acasti and sell the Acasti RKO to Buyer at a price equal to **[redacted]** of Acasti RKO, and, subject to Acasti having undertaken to purchase such volumes of the Acasti RKO from Buyer on the terms set out in the following sentences of this Section 7.15, Buyer hereby irrevocably agrees to purchase such quantities of Acasti RKO from the Seller. Buyer further undertakes that, following such sale to Buyer from Seller, it shall sell all purchased Acasti RKO to Acasti at a price equal to **[redacted]** of Acasti RKO. The parties acknowledge and agree that Buyer shall pay Seller for the Acasti RKO on the same payment terms and conditions (other than the price per kg) as those agreed to between Buyer and Acasti. The parties further acknowledge and agree that Buyer's obligation to pay for the Acasti RKO purchased from Seller is subject to the actual payment by Acasti to Buyer for all purchased Acasti RKO in accordance with this Section 7.15.

**7.16 Release of Liens.** Seller covenants and agrees that it shall obtain the release of all Liens set forth on Schedule 1.1(bbb) of the Seller Disclosure Letter and provide evidence of such release to Buyer as promptly as possible and no later than forty five (45) calendar days after the Closing Date.

## **ARTICLE VIII INDEMNIFICATION.**

**8.1 Indemnification Obligations of Seller.** From and after the Effective Date, Seller shall, in accordance with this Article VIII, indemnify, defend, protect and hold harmless Buyer and its assigns, successors and Affiliates (collectively, the "Buyer Parties") from, against and in respect of all Actions asserted against, and all Damages asserted against or suffered, sustained, incurred or paid by, any Buyer Party in connection with or arising out of:

(a) the inaccuracy of any representation or the breach of any warranty of Seller set forth in this Agreement;

(b) the nonfulfillment of any covenant or agreement on the part of Seller set forth in this Agreement or in any of the agreements executed in connection with the transactions contemplated herein; or

(c) the Excluded Assets; or

(d) the Excluded Liabilities.

**8.2 Indemnification Obligations of Buyer.** From and after the Effective Date, Buyer shall, in accordance with this Article VIII, indemnify, defend, protect and hold harmless Seller and its assigns, successors and Affiliates (collectively, the “Seller Parties”) from, against and in respect of all Actions asserted against, and all Damages asserted against or suffered, sustained, incurred or paid by, any Seller Party in connection with or arising out of:

(a) the inaccuracy of any representation or the breach of any warranty of Buyer set forth in this Agreement;

(b) the nonfulfillment of any covenant or agreement on the part of Buyer set forth in this Agreement or in any of the agreements executed in connection with the transactions contemplated herein;

(c) the Assumed Liabilities; or

(d) the ownership or operation of the Transferred Assets or the Krill Business operated by Buyer, solely with respect to the period after Closing.

**8.3 Notice of Claims.** The Indemnified Party shall notify the Indemnifying Party in writing of any Damages which an Indemnified Party shall have determined has given rise to a claim for indemnification under Article VIII. Such written notice (a “Claim Notice”) shall include an estimate of the Damages, if known, the method of computation thereof and a reference to the specific provisions of this Agreement in respect of which it seeks indemnification. As soon as practicable after the date of such Claim Notice, the Indemnified Party shall provide the Indemnifying Party or his or her agents access to all books and records in the possession or control of the Indemnified Party reasonably determined to be related to such claim. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim or the estimated amount of Damages described in such Claim Notice, or fails to notify the Indemnified Party within 30 days after delivery of such Claim Notice whether the Indemnifying Party disputes the claim or the estimated amount of Damages described in such Claim Notice, the estimated Damages in the amount specified in the Indemnified Party’s Claim Notice will be conclusively deemed a Liability of the Indemnifying Party and the Indemnifying Party shall pay the amount of such Damages to the Indemnified Party. If the Indemnifying Party has timely disputed its liability with respect to such claim or the estimated amount of Damages, the dispute shall be resolved, and the amount, if any, of Damages payable by the Indemnifying Party to the Indemnified Party shall be determined, in accordance with Section 9.6 below. The provisions of this Section 8.3 do not apply to Third Party Actions.

**8.4 Procedure for Third Party Claims.** (a) If any third Person shall commence an Action against any Indemnified Party with respect to any matter (a “Third Party Action”) which may give rise to a claim for indemnification under this Article VIII, then the Indemnified Party shall notify the Indemnifying Party in writing promptly after becoming aware of such Third Party Action describing in reasonable detail the Third Party Action (such notice being hereinafter called a “Third Party Action Notice”), which notice shall include a reference to the specific provisions of this Agreement in respect of which it seeks indemnification. It is agreed that no delay on the part of any Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from its obligations hereunder, except to the extent said Indemnifying Party is prejudiced by such failure to give notice.

(b) If the Indemnifying Party does not provide written notice to the Indemnified Party within 30 days after its receipt of the Third Party Action Notice disputing its responsibility to indemnify the Indemnified Party regarding the Third Party Action, the Damages resulting from the settlement or the final, non-appealable adjudication of such Third Party Action shall promptly be paid or reimbursed by the Indemnifying Party to the Indemnified Party. If the Indemnifying Party provides written notice to the Indemnified Party within 30 days after its receipt of the Third Party Action Notice disputing its responsibility to indemnify the Indemnified Party regarding the Third Party Action, any right of the Indemnified Party to recover from the Indemnifying Party hereunder shall depend on the resolution of the dispute in accordance with Section 9.6 hereof in a manner affirming the Indemnified Party's right to indemnity.

(c) The Indemnified Party and its counsel shall have the obligation to conduct the defense or settlement of the Third Party Action and shall act at all times in good faith. The Indemnified Party and its counsel shall, at the reasonable request of the Indemnifying Party, provide periodic updates to the Indemnifying Party in order to keep the Indemnifying Party reasonably informed as to its conduct of such defense or settlement. The Indemnified Party shall not compromise or settle such Third Party Action without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed) unless such settlement or compromise does not subject the Indemnifying Party to any monetary Liability, and includes a complete, unconditional release of the Indemnifying Party from all Liability with respect to such Third Party Action. The Indemnifying Party may employ its own counsel and participate in such defense or settlement at the Indemnifying Party's sole cost and expense, but the control of such defense and the settlement shall rest with the Indemnified Party. If the Indemnifying Party refuses to provide its consent to a compromise or settlement of such Third Party Action that the Indemnified Party is otherwise prepared to accept, then the Indemnifying Party shall be required to promptly acknowledge in writing its indemnity obligation in favor of the Indemnified Party regarding the final outcome of the Third Party Action. If the Indemnifying Party unreasonably withholds, conditions or delays its consent or fails to provide the aforementioned acknowledgment to the Indemnified Party, then the Indemnified Party will be permitted to accept the compromise or settlement of such Third Party Action.

(d) Subject to the provisions set forth in this Section 8.4: (i) the Indemnifying Party shall be required to promptly pay or reimburse all Damages resulting from the settlement or the final, non-appealable adjudication of such Third Party Action; and (ii) the defense or settlement of the Third Party Action shall be at the sole cost and expense of the Indemnifying Party.

**8.5 Survival; Limitations.** (a) The period during which a claim by Buyer for indemnification may be asserted hereunder (the "Buyer Claims Period") with respect to:

- (i) a breach or inaccuracy of any of Sections 5.2 (Authorization), 5.3 (Non-Contravention), 5.9(a) (Title) or 5.17 (No Brokers) shall begin on the Effective Date and continue indefinitely;
- (ii) a breach or inaccuracy of Section 5.6 (Taxes) shall begin on the Effective Date and terminate on the date which is 30 days after the relevant Governmental Entities shall no longer be entitled to assess or reassess liability for Taxes against the Seller or the Buyer for that particular period (which date shall not be extended by any waiver given by the Buyer after the Effective Date without the consent of the Seller) and a breach or inaccuracy of Section 5.11 (Intellectual Property) shall begin on the Effective Date and terminate four years after the Effective Date;

- (iii) a breach or inaccuracy of any representation or warranty in Article V hereof other than those mentioned in clauses (i) or (ii) above shall begin on the Effective Date and shall terminate 21 months after the Effective Date; and
- (iv) Section 8.1(b), 8.1(c) and 8.1(d) shall begin on the Effective Date and continue indefinitely.

(b) Notwithstanding the foregoing, if, prior to the close of business on the last day of the Buyer Claims Period, an Indemnifying Party shall have been properly notified of a claim for indemnity hereunder and such claim shall not have been finally resolved or disposed of at such date, such claim shall continue to survive and shall remain a basis for indemnity hereunder until such claim is finally resolved or disposed of in accordance with the terms hereof. All representations and warranties herein shall survive the Closing until the last day of the Buyer Claims Period applicable thereto or until all unresolved claims relating thereto have been finally resolved.

(c) Notwithstanding anything herein to the contrary:

- (i) subject to the provisions set forth in this Article VIII, Seller shall have no obligation under Section 8.1(a) to indemnify the Buyer Parties unless and until the amount of Damages for which Seller shall be obligated to indemnify the Buyer Parties pursuant to Article VIII exceeds One Hundred Seventy Thousand USD \$(170,000) (the “Basket”), in which case Seller shall be liable for all of such Damages from the first dollar. The Basket shall not apply in the case of fraud or regarding any claims under Sections 5.2 (Authorization), 5.3 (Non-Contravention), 5.6 (Taxes), 5.9(a) (Title) or 5.17 (No Brokers).
- (ii) subject to the provisions set forth in this Article VIII, the maximum amount of Damages for which Seller shall be obligated to indemnify the Buyer Parties pursuant to Section 8.1(a) is an amount equal to the following respective amounts:
  - (A) in the case of fraud, no limitation on liability shall be applicable;
  - (B) with respect to (i) breaches of or inaccuracies in the representations and warranties in Sections 5.2 (Authority), 5.3 (Non-Contravention), 5.9(a) (Title) or 5.17 (No Brokers) the amounts actually received or otherwise earned by Seller under this Agreement and (ii) the nonfulfillment of any covenant or agreement on the part of Seller set forth in this Agreement (other than the covenants set forth in Section 7.11 of this Agreement) or in any of the agreements executed in connection with the transactions contemplated herein, the Purchase Price actually received or otherwise earned by Seller; and
  - (C) in the case of any breaches of or inaccuracies in the representations and warranties of Seller in any other Section of Article V, Thirteen Million Six Hundred Thousand USD (\$13,600,000) (the “Cap Amount”).
- (iii) all indemnification rights in this Article VIII are subject to the provisions of Section 8.6, Section 8.7, Section 8.8 and Section 8.9.

(d) The period during which a claim by Seller for indemnification may be asserted hereunder (the “Seller Claims Period”) with respect to:

- (i) a breach or inaccuracy of any of Sections 6.2 (Authority), 6.3 (Non-Contravention) or 6.5 (No Brokers) shall begin on the Effective Date and continue indefinitely;
- (ii) a breach or inaccuracy of any representation or warranty in Article VI hereof other than those mentioned in clause (i) above shall begin on the Effective Date and shall terminate 18 months after the Effective Date; and
- (iii) Section 8.2(b) and 8.2(c) shall begin on the Effective Date and continue indefinitely.

Notwithstanding the foregoing, if, prior to the close of business on the last day of the Seller Claims Period, an Indemnifying Party shall have been properly notified in writing of a claim for indemnity hereunder and such claim shall not have been finally resolved or disposed of at such date, such claim shall continue to survive and shall remain a basis for indemnity hereunder until such claim is finally resolved or disposed of in accordance with the terms hereof. All representations and warranties herein shall survive the Closing until the last day of the Seller Claims Period applicable thereto or until all unresolved claims relating thereto have been finally resolved.

**8.6 Direct Damages.** Except as expressly provided in this Agreement, no party shall be liable under this Article VIII or otherwise in respect of this Agreement for exemplary, special, indirect, punitive, remote or speculative damages (including, with respect to such excluded measures of damages, “multiple of profits” or “multiple of cash flows” or similar measures of damages) except to the extent any such party suffers such damages to an unaffiliated third party in connection with a third party claim, in which event such damages shall be recoverable.

**8.7 One Recovery.** A Party shall not be entitled to double recovery for any Claims even though they may have resulted from the breach of more than one of the representations, warranties, agreements and covenants made by the other Party in this Agreement or in any of the agreements executed in connection with the transactions contemplated herein.

**8.8 Duty to Mitigate.** Each Party shall use all commercially reasonable efforts to mitigate any loss or Claim under this Agreement or any Agreement relating hereto.

**8.9 Satisfaction of Indemnity Claims.** If a Seller Party is entitled to be indemnified by a Buyer Party (based on mutual agreement by the Parties or through a settlement or other resolution in accordance with Section 9.6) for any Damages pursuant to this Article VIII, then Buyer shall be required to pay such Damages in full to Seller by wire transfer of immediately available funds to a bank account specified in advance by Seller within five (5) Business Days thereafter. If a Buyer Party is entitled to be indemnified by Seller (based on mutual agreement by the Parties or through a settlement or other resolution in accordance with Section 9.6) for any Damages pursuant to this Article VIII, then Buyer may satisfy its claim for Damages by pursuing recovery from any or all of the following, until such claim has been satisfied in full: (a) a holdback, offset or reduction from Earnout Consideration otherwise due and payable to Seller, if any; and (b) Seller. Notwithstanding the foregoing, Buyer may also holdback from Earnout Consideration otherwise due and payable to Seller as set forth in Section 3.2(b).

## **ARTICLE IX MISCELLANEOUS.**

**9.1 Entire Understanding.** This Agreement (including the exhibits and schedules attached hereto and all documents delivered pursuant to Section 4.2) embodies the entire agreement and understanding of the Parties with respect to the transactions contemplated hereby and supersedes all other prior

commitments, arrangements or understandings, both oral and written, between the parties with respect to the subject matter hereof.

**9.2 Severability; Joint Drafting.** The provisions of this Agreement are intended to be interpreted and construed in a manner so as to make such provisions valid, binding and enforceable. In the event that any provision of this Agreement is determined to be partially or wholly invalid, illegal or unenforceable, then such provision shall be deemed to be modified or restricted to the extent necessary to make such provision valid, binding and enforceable, or, if such provision cannot be modified or restricted in a manner so as to make such provision valid, binding and enforceable, then such provision shall be deemed to be excised from this Agreement and the validity, binding effect and enforceability of the remaining provisions of this Agreement shall not be affected or impaired in any manner. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

**9.3 Waiver and Amendment.** No waiver, amendment, modification or change of any provision of this Agreement shall be effective unless and until made in writing and signed by the Parties. No waiver, forbearance or failure by any Party of its rights to enforce any provision of this Agreement shall constitute a waiver or estoppel of such Party's right to enforce any other provision of this Agreement or a continuing waiver by such Party of compliance with any provision.

**9.4 Headings.** The headings herein are for convenience only, do not constitute a part of this Agreement, and shall not be deemed to limit or affect any of the provisions hereof.

**9.5 Governing Law; JURY TRIAL WAIVER.**

(a) This Agreement shall be governed and construed in accordance with the Laws of the State of New York, without regard to principles of conflicts of Laws. The United Nations Convention on Contracts for International Sales of Goods shall not apply to this Agreement.

(b) EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, FOR ITSELF AND FOR ITS AFFILIATES, SUCCESSORS AND ASSIGNS, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**9.6 Dispute Resolution.**

(a) No Party to this Agreement shall be entitled to take any legal action with respect to any and all claims, disputes, demands or proceedings regarding or in any way arising under this Agreement or in connection with the Agreement or the transactions contemplated hereby, including the Agreement's enforcement or interpretation (the "Disputes") unless and until such Party has complied in good faith with the dispute resolution procedures as set forth below:

(i) Any Party may immediately initiate legal proceedings before any court of competent jurisdiction with respect to any Disputes where the exclusive remedy sought by such Party is equitable relief.

(ii) With respect to any other Dispute, the Seller and Buyer agree that they shall first attempt to promptly and in good faith resolve any Dispute through negotiations between representatives who have authority to settle the Dispute. It is the intent of the parties that Jim Hamilton or the successor to the office such Person holds with the Seller, or a representative

designated by such Person, on behalf of the Seller (the “Seller Designated Representative”), and Matts Johansen or the successor to the office he holds with the Buyer, or a representative designated by him, on behalf of the Buyer (the “Buyer Designated Representative”), will be the primary representatives of the parties to resolve any Dispute. Either the Seller or Buyer may give the other party written notice of any Dispute not resolved in the normal course of business. Within thirty (30) days after receipt of such notice, if no mutual resolution is achieved, the Seller Designated Representative and the Buyer Designated Representative (collectively, the “Designated Representatives”) shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt to resolve the Dispute, until the Designated Representatives conclude that the Dispute cannot be resolved. Negotiations extending beyond sixty (60) days after initial notice shall be deemed at an impasse, unless otherwise agreed by the Designated Representatives, after initial notice shall be deemed at an impasse, unless otherwise agreed by the Designated Representatives, after which time each Party may seek any form of remedy or relief that is otherwise available to such Party.

(b) The Disputes shall be finally resolved and decided by binding arbitration in New York, New York, pursuant to the then-applicable arbitration rules (the “Rules”) of the International Chamber of Commerce (the “ICC”). There shall be one (1) arbitrator (the “Arbitrator”) agreed to by the Parties within thirty (30) days of receipt by the respondent of the request for arbitration or in default thereof appointed by the ICC in accordance with the Rules. The arbitration shall be conducted in the English language; provided, however, that testimony and documents may be submitted in a foreign language accompanied by a certified English translation. The arbitral proceedings shall be confidential, and any information disclosed therein shall be treated by the Parties as confidential. The arbitration shall be completed and any award shall be made within two hundred and seventy (270) days of commencement.

(c) The availability of interim measures under Article 23 of the Rules shall be in addition to, and not in lieu of, the right of any party hereto to seek appropriate injunctive relief from a court of competent jurisdiction, in aid of or in connection with, any arbitration proceeding hereunder.

(d) The Parties hereto acknowledge that discovery will be appropriate to allow for access to information necessary for the resolution of a dispute asserted under this Section 9.6. Accordingly, each Party shall have the right to request documents, electronic information, or other tangible things from the other party during the course of the arbitration proceedings. In addition, each Party shall have the opportunity to conduct five (5) depositions, and, if mutually agreed by the Parties, additional depositions. Any disputes regarding discovery shall be promptly brought to the Arbitrator for resolution. In addition, each party hereto specifically reserves the right to request that the Arbitrator allow additional discovery prior to the presentation of evidence. Such a request will identify the types of discovery requested with an explanation of why the additional discovery is necessary or would be beneficial. The Parties shall each bear the costs and fees of their respective counsel and of the ICC, irrespective of the outcome of the arbitration.

(e) In the event of two or more arbitrations having been commenced under this Agreement, the Supply Agreement, the Retained Business Patent License Agreement, and the NKO Trademark License Agreement the tribunal in the arbitration first filed (the “Principal Tribunal”) may in its sole discretion, upon the application of any Party to the arbitrations, order that the proceedings be consolidated before the Principal Tribunal, which will have the jurisdiction to resolve all disputes forming part of the consolidation order, if (i) there are issues of fact and/or Law common to the arbitrations, (ii) the interests of justice and efficiency would be served by such a consolidation, and (iii) no prejudice would be caused to any party in any material respect as a result of such consolidation, whether through

undue delay or otherwise. Such application shall be made as soon as practicable and the party making such application shall give notice to the other parties to the arbitrations.

**9.7 Notices.** All notices permitted or required by this Agreement shall be in writing, and shall be deemed to have been delivered and received (a) when personally delivered, (b) on the third (3<sup>rd</sup>) business day after the date on which deposited in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (c) on the date on which transmitted by facsimile, email or other electronic means producing a valid confirmation of successful transmission or receipt, or (d) on the next business day after the date on which deposited with a regulated public carrier or nationally recognized overnight commercial delivery service (*e.g.*, Federal Express, DHL, *etc.*), addressed to the party for whom intended at the mailing address, email address, or facsimile number set forth below for such party, or such other mailing address, email address, or facsimile number, notice of which has been delivered in a manner permitted by this Section 9.7:

*If to Seller:*

**Neptune Technologies  
& Bioresources Inc.**  
545 Promenade du Centropolis Suite 100  
Laval, Quebec, Canada H7T 0A3  
Email: j.hamilton@neptunecorp.com and j-  
d.belanger@neptunecorp.com  
Attn: Jim Hamilton and Jean-Daniel  
Belanger

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

**Osler, Hoskin & Harcourt LLP**  
1000 De La Gauchetiere Street West  
Suite 2100  
Montreal, Quebec, Canada H3B 4W5  
Email: fparadis@osler.com  
Attn: François Paradis

*If to Buyer:*

**Aker Biomarine Antarctic AS**  
J.M. Johansens vei 99  
8340 Stamsund, Norway  
Email: Lars.Jacobsen@akerbiomarine.com  
Attn: Lars Jacobsen

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

Schjødt  
Ruseløkkveien 14  
Postboks 2444 Solli  
0201 Oslo, Norge  
Email: tofo@schjodt.no  
Attn: Tord Fondevik

Venable LLP  
1270 Avenue of the Americas  
24th Floor  
New York, NY 10020  
Email: ptvonmehren@venable.com  
Attn: Philip von Mehren

**9.8 Termination Right.** Subject to Section 5.5.3 of the Retained Patent License Agreement, in the event of Seller's breach of or failure to comply with any covenant under this Agreement, subject to any cure period applicable to such covenant as set forth in this Agreement, Buyer shall have the right, but not the obligation, to terminate any of the Supply Agreement, the Retained Business Patent License Agreement and/or the NKO Trademark License Agreement, provided that the termination of one such agreement shall not cause or imply the termination of any other agreement and that any termination rights shall not prevent Buyer from claiming any damages under this Agreement.

**9.9 Default.** For the purpose of this Agreement, Seller shall not be considered in default of its obligations or in breach of any covenants set forth herein for the purpose of Section 9.8 unless Seller has been informed in writing by Buyer of such default or breach (the "Notice of default") and Seller has not cured or remedied such default or breach within a period of 30 days following receipt of a Notice of

default; provided, however, that if the breach is found to have been intentional or purposeful, no such Notice of default or cure period shall apply.

**9.10 Assignment.** This Agreement may not be assigned (whether by operation of law or otherwise) by any Party without the prior written consent of the other Party. Any such assignment shall be declared null and void. Notwithstanding the foregoing, Buyer may assign its rights and obligations under this Agreement without the prior written consent of Seller: (a) to any of Buyer's Affiliates; or (b) incident to the transfer of all or substantially all of its business. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**9.11 Counterparts.** This Agreement may be executed in two or more counterparts, including by way of facsimile or .pdf transmission, with the same effect as if all parties hereto had signed the same document, and a facsimile or .pdf copy shall be considered *prima facie* evidence of the information contained in the facsimile or pdf transmission. The parties hereto hereby agree that facsimile and/or .pdf copies of signatures to this Agreement shall be treated as originals.

\* \* \*

*The remainder of this page is left blank intentionally. Signatures follow on next page.*

**IN WITNESS WHEREOF**, the undersigned have each executed and delivered this Asset Purchase Agreement as of the Effective Date.

BUYER:

AKER BIOMARINE ANTARCTIC AS

By: (s) *Matts Johansen*  
Name: Matts Johansen  
Title: Chief Executive Officer

SELLER:

NEPTUNE TECHNOLOGIES & BIORESSOURCES INC.

By: (s) *Jim Hamilton*  
Name: Jim Hamilton  
Title: Chief Executive Officer

By: (s) *Mario Paradis*  
Name: Mario Paradis  
Title: Chief Financial Officer

Solely for the purpose of Section 7.11:

BIODROGA NUTRACEUTICALS INC.

By: (s) *Jim Hamilton*  
Name: Jim Hamilton  
Title: Chief Executive Officer

By: (s) *Mario Paradis*  
Name: Mario Paradis  
Title: Chief Financial Officer

