

**DGTL HOLDINGS INC.**

as the Purchaser

and

**ENGAGEMENT LABS INC.**

as the Company

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**ARRANGEMENT AGREEMENT**

**AUGUST 12, 2021**

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## ARRANGEMENT AGREEMENT

This Arrangement Agreement is dated August 12, 2021 between DGTL Holdings Inc., a corporation existing under the federal laws of Canada (the “**Purchaser**”) and Engagement Labs Inc., a corporation existing under the federal laws of Canada (the “**Company**”).

### WHEREAS:

- (a) The Purchaser proposes to acquire all of the issued and outstanding common shares of the Company;
- (b) The Purchaser and the Company intend that the acquisition of the Company be carried out under the arrangement provisions of Section 192 of the *Canada Business Corporations Act*;
- (c) The boards of directors of each of the Purchaser and the Company have unanimously determined that the Arrangement is in the best interests of the Purchaser and the Company, respectively, and fair to their respective shareholders, and have resolved to support the Arrangement and enter into this Agreement; and
- (d) The Purchaser has entered into the Purchaser Voting Agreements with the Company Locked-up Shareholders, pursuant to which, among other things, such Company Locked-up Shareholders agree, subject to the terms and conditions thereof, to vote the Common Shares now held or hereafter acquired by them in favour of the Arrangement Resolution, and to not, directly or indirectly, trade the Purchaser Shares issued to such Company Locked-up Shareholders for a period of one year from the Effective Date.

**THIS AGREEMENT WITNESSES** that in consideration of the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which are hereby mutually acknowledged), the Parties hereto do hereby covenant and agree as follows:

### Article 1 INTERPRETATION

#### Section 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

“**Acquisition Agreement**” means any letter of intent, memorandum of understanding or other Contract, agreement in principle, acquisition agreement, merger agreement or similar agreement or understanding with respect to any Acquisition Proposal but does not include a confidentiality and standstill agreement entered into pursuant to Section 5.3(4)(a);

**“Acquisition Proposal”** means, excluding the Arrangement and the other transactions contemplated by this Agreement and any transaction involving only the Purchaser, after the date of this Agreement whether or not in writing, any:

- (a) *bona fide* proposal, inquiry or offer with respect to: (i) any direct or indirect acquisition by any person or group of persons of Common Shares (or securities convertible into or exchangeable or exercisable for Common Shares) representing 20% or more of the Common Shares then outstanding (assuming, if applicable, the conversion, exchange or exercise of such securities convertible into or exchangeable or exercisable for Common Shares); (ii) any plan of arrangement, amalgamation, merger, share exchange, consolidation, recapitalization, liquidation, dissolution or other business combination in respect of the Company or any of its Subsidiaries; or (iii) any direct or indirect acquisition by any person or group of persons of any assets of the Company and/or any interest in one or more of its Subsidiaries (including shares or other equity interests of Subsidiaries) that are or that hold the Company Assets or that individually or in the aggregate constitute or hold 20% or more of the fair market value of the assets of the Company (or any lease, license, royalty, joint venture, long-term supply agreement or other arrangement having a similar economic effect), whether in a single transaction or a series of related transactions;
- (b) public announcement of or of an intention, to do any of the foregoing; or
- (c) modification or proposed modification of any such proposal, inquiry or offer, in each case whether by plan of arrangement, amalgamation, merger, consolidation, recapitalization, liquidation, dissolution or other business combination, sale of assets, joint venture, take-over bid, tender offer, share exchange, exchange offer or otherwise, including any single or multi-step transaction or series of transactions, directly or indirectly involving the Company or any of its Subsidiaries.

**“Affiliate”** has the meaning specified in National Instrument 45-106 – *Prospectus and Registration Exemptions*.

**“Agreement”** means this arrangement agreement, including all schedules annexed hereto, together with the Company Disclosure Letter, as the same may be amended, supplemented or otherwise modified from time to time by mutual agreement in accordance with the terms hereof.

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

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

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

**“Associate”** or **“associate”** has the meaning specified in the *Securities Act* (Ontario).

**“Authorization”** means, with respect to any Person, any order, permit, approval, consent, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.

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

**“Business Intellectual Property”** means the Licensed Intellectual Property and the Owned Intellectual Property.

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

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

**“Claim”** or **“claim”** means (i) any suit, action, dispute, investigation, claim, arbitration, order, summons, citation, directive, ticket, charge, demand or prosecution, whether legal or administrative; or (ii) any appeal or application for review; at Law or in equity or by any Governmental Entity.

**“Common Shares”** means the common shares in the capital of the Company.

**“Company”** means Engagement Labs Inc., a corporation formed under the federal laws of Canada.

**“Company Assets”** means collectively the assets of the Company as reported in the Company Financial Statements.

**“Company Board”** means the board of directors of the Company as constituted from time to time.

**“Company Board Recommendation”** has the meaning specified in Section 2.4(2).

**“Company Change in Recommendation”** has the meaning specified in Section 7.2(1)(d)(ii).

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

**“Company Data Room”** means the material contained as of 11:59 p.m. on August 12, 2021 in the virtual data room established by the Company and its financial advisors, the index of documents of which is appended to the Company Disclosure Letter.

**“Company Disclosure Letter”** means the disclosure letter dated the date of this Agreement and delivered by the Company to the Purchaser with this Agreement.

**“Company Employees”** means the employees of the Company or the Company Subsidiaries.

**“Company Fairness Opinion”** means an opinion of IJW&Co., Montreal, Quebec, to the effect that, as of the date of such opinion, and subject to the assumptions, limitations and qualifications set forth therein, the Consideration to be received by the Company Shareholders is fair, from a financial point of view to such holders.

**“Company Filings”** means all documents publicly filed under the profile of the Company on the System for Electronic Document Analysis Retrieval (SEDAR) since May 15, 2008.

**“Company Financial Statements”** has the meaning set forth in Schedule C, Section (12) below of this Agreement.

**“Company Locked-up Shareholders”** means Bruce Lev, G. Scott Paterson, Gilman Anderson, Steven Brown and Gilbert Boyer in respect of Common Shares that they own or control, directly or indirectly.

**“Company Material Contract”** means any Contract to which the Company or any of its Subsidiaries is party or by which it or any of its assets, rights or properties are bound, that, if terminated or modified, would have a Material Adverse Effect and is deemed, without limitation, to include the following:

- (a) any lease of real property by the Company or any of its Subsidiaries, as tenant, with third parties;
- (b) any Contract under which the Company or any of its Subsidiaries is obliged to make payments, or receives payments in excess of \$25,000 in the aggregate;



- (c) any partnership, limited liability company agreement, joint venture, alliance agreement or other similar agreement or arrangement relating to the formation, creation, operation, management, business or control of any partnership or Joint Venture;
- (d) any shareholders or stockholders agreements, registration rights agreements, voting trusts, proxies or similar agreements, arrangements or commitments with respect to any shares or other equity interests of the Company or any of its Subsidiaries or any other Contract relating to disposition, voting or dividends with respect to any shares or other equity securities of the Company or any of its Subsidiaries;
- (e) any Contract under which indebtedness of the Company or any of its Subsidiaries for borrowed money is outstanding or may be incurred or pursuant to which any property or asset of the Company or any of its Subsidiaries is mortgaged, pledged or otherwise subject to a Lien securing indebtedness in excess of \$25,000, any Contract under which the Company or any of its Subsidiaries has directly or indirectly guaranteed any liabilities or obligations of any person or any Contract restricting the incurrence of indebtedness by the Company or any of its Subsidiaries or the incurrence of Liens on any properties or securities of the Company or any of its Subsidiaries or restricting the payment of dividends or other distributions;
- (f) any Contract that purports to limit in any material respect the right of the Company or any of its Subsidiaries to (i) engage in any line of business or (ii) compete with any person or operate or acquire assets in any location;
- (g) any Contract providing for the sale or exchange of, or option to sell or exchange, any Company Assets or any property or asset with a fair market value in excess of \$25,000, or for the purchase or exchange of, or option to purchase or exchange, any Company Assets or any property or asset with a fair market value in excess of \$25,000, in each case entered into in the past 12 months or in respect of which the applicable transaction has not been consummated;
- (h) any Contract entered into in the past 12 months or in respect of which the applicable transaction has not yet been consummated for the acquisition or disposition, directly or indirectly (by merger or otherwise), of assets or shares (or other equity interests) of another person for aggregate consideration in excess of \$25,000, in each case other than in the ordinary course of business;
- (i) any Contract providing for indemnification by the Company or any of its Subsidiaries, other than Contracts which provide for indemnification obligations of less than \$25,000;
- (j) any standstill or similar Contract currently restricting the ability of the Company or any of its Subsidiaries to offer to purchase or purchase the assets

or equity securities of another person other than in the ordinary course of business; or

(k) any other Contract that is material to the Company or any of its Subsidiaries.

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

**“Company Option Plan”** means the stock option plan of the Company, approved by the Company Shareholders on December 29, 2020.

**“Company Optionholders”** means the holders of Company Options.

**“Company Options”** means the outstanding options to purchase Common Shares issued pursuant to the Company Option Plan, as listed in Section (6) of the Company Disclosure Letter.

**“Company Restricted Share Award Plan”** means the restricted share award plan of the Company, approved by the Company Shareholders on December 29, 2020.

**“Company Restricted Share Unit Plan”** means the restricted share unit plan of the Company, approved by the Company Shareholders on December 29, 2020.

**“Company RSA Holders”** means holders of Company RSAs.

**“Company RSAs”** means the outstanding restricted share awards granted redeemable for Common Shares pursuant to the Company Restricted Share Award Plan, as listed in Section (6) of the Company Disclosure Letter.

**“Company RSUs”** means the restricted share units granted redeemable for Common Shares pursuant to the Company Restricted Share Unit Plan.

**“Company Securityholders”** means, collectively, the Company Shareholders, the Company Optionholders and the Company RSA Holders

**“Company Shareholders”** means the registered or beneficial holders of the Common Shares, as the context requires.

**“Company Representative”** has the meaning specified in Section 5.1(1).

**“Company Termination Fee”** has the meaning specified in Section 8.2(1)(a).

**“Company Termination Fee Event”** has the meaning specified in Section 8.2(1)(b).

**“Company Warrants”** means the common share purchase warrants of the Company which upon exercise entitle the holder to receive Common Shares.

**“Concurrent Financing”** means the financing of Purchaser Subscription Receipts to be priced within the context of the market for gross proceeds of a minimum of US\$2,000,000.

**“Confidentiality Agreement”** means that certain mutual confidentiality agreement made as of June 22, 2020 between the Purchaser and the Company.

**“Consideration”** means 5,320,000 Consideration Shares PLUS the number of Common Shares issued upon the exercise of any Company Options or Company RSAs prior to the Effective Date multiplied by the Exchange Ratio, MINUS that number of Consideration Shares equal to the number of Dissenting Shares multiplied by the Exchange Ratio, which will be issued on a pro rata basis to all Company Shareholders other than Dissenters, pursuant to the Plan of Arrangement, in exchange for all of the Common Shares other than Dissenting Shares that are issued and outstanding at the Effective Time.

**“Consideration Shares”** means the Purchaser Shares to be issued in exchange for Common Shares pursuant to the Arrangement.

**“Constating Documents”** means articles of incorporation, amalgamation, or continuation, as applicable, by-laws and all amendments to such articles or by-laws.

**“Contract”** means, with respect to any Person, any legally binding agreement, commitment, engagement, contract, franchise, licence, obligation or undertaking (written or oral) to which such Person is a party or by which it is bound or affected or to which any of its respective properties or assets is subject.

**“Court”** means the Ontario Superior Court of Justice (Commercial List).

**“Depository”** means Computershare Investor Services Inc., or any other depository or trust company, bank or financial institution agreed to between the Purchaser and the Company for the purpose of, among other things, exchanging Common Shares for Purchaser Shares in connection with the Arrangement.

**“Director”** shall have such meaning as ascribed to such term in the CBCA.

**“Disabling Code”** means any clock, timer, counter, computer virus, worm, Software lock, drop dead device, Trojan horse routine, trap door, time bomb, or any other codes, designs, routines or instructions that may be used to access, modify, replicate, distort, delete, damage or disable any hardware or Software, including Internal IT Systems, the books and records and any other data or information.

**“Dissent Rights”** means the rights of dissent in respect of the Arrangement described in the Plan of Arrangement.

**“Dissenter”** means a Company Shareholder who has duly exercised a Dissent Right and who is ultimately entitled to be paid the fair value of the Common Shares held by such Company Shareholder.

**“Dissenting Shares”** has the meaning ascribed thereto in the Plan of Arrangement.

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

**“Effective Time”** means the time on the Effective Date at which a Certificate of Arrangement is issued by Corporations Canada, or such other time as the Parties agree to in writing before the Effective Date.

**“Employee Plans”** means all employee benefit, health, dental or other medical, life, disability or other insurance (whether insured or self-insured) welfare, mortgage insurance, employee loan, employee assistance, supplemental unemployment benefit, bonus, profit sharing, option, incentive, incentive compensation, deferred compensation, share purchase, share compensation, share appreciation, pension, retirement, savings, supplemental retirement, severance or termination pay, and any other material plans, programs, practices, policies, agreements or arrangements (whether written or unwritten) for the benefit of employees, former employees, directors or former directors of a Party or its Subsidiaries, or their respective dependents or beneficiaries, which are maintained by or binding upon a Party or its Subsidiaries or in respect of which a Party or its Subsidiaries has any actual or potential liability, other than benefit plans established pursuant to statute.

**“Environmental Laws”** means applicable Laws aimed at or relating to control of, or exposure to, hazardous substances; releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances., and all other Laws relating to the manufacturing, processing, distribution, use, treatment, storage, disposal, handling or transport of hazardous substances.

**“Exchange Ratio”** means 5,320,000 Purchaser Shares divided by the number of Common Shares outstanding immediately prior to the Effective Time.

**“Final Order”** means the final order of the Court pursuant to Section 192 of the CBCA in a form acceptable to the Company and the Purchaser, each acting reasonably, approving the Arrangement, as such order may be amended by the Court (with the consent of both the Company and the Purchaser, each acting reasonably) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to both the Company and the Purchaser, each acting reasonably) on appeal.

**“Financing Condition”** means completion of the Concurrent Financing on or before October 8, 2021.

**“Five Percent Shareholders”** means shareholders of the Company that own, or control, directly or indirectly, more than five per cent of the outstanding Common Shares,

**“Governmental Entity”** means (i) any international, multinational, national, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the above, (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, (iv) any Securities Authority, or (v) any stock exchange.

**“IFRS”** means generally accepted accounting principles as set-out in the Canadian Institute of Chartered Accountants Handbook – Accounting for an entity that prepares its financial statements in accordance with International Financial Reporting Standards, at the relevant time, applied on a consistent basis.

**“Infringe”** means infringe (whether directly, contributorily, by inducement or otherwise), misappropriate, violate or otherwise conflict with or harm (whether direct, contributory, by inducement or otherwise) and **“Infringed”** and **“Infringement”** have a corresponding meaning.

**“Intellectual Property”** means, individually and collectively, howsoever created and wherever located:

- (a) all domestic and foreign patents and applications thereof and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;
- (b) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data, schematics and customer lists, and all documentation relating to any of the foregoing;
- (c) all copyrights in all works (including Software) and database right, copyright registrations and applications thereof, and all works of authorship and moral rights, and all other rights corresponding thereto throughout the world;
- (d) all trade names, domain names, corporate names, trade dress, distinguishing guises, logos, slogans, brand names, trademarks (whether registered or common law and whether used with wares or services and including the goodwill attaching to such trademarks) and registrations and applications for registration thereof;
- (e) all Software (in source code and object code form) and databases, and any proprietary rights in such Software and databases;

- (f) all integrated circuit design, mask work, or topography registrations or applications thereof;
- (g) all industrial designs and applications for and registration of industrial designs, design patents and industrial design registrations;
- (h) other intellectual or industrial property whatsoever
- (i) all income, royalties, damages and payments now and hereafter due and/or payable with respect to any of the foregoing, including damages and payments for past or future Infringements thereof; and
- (j) all rights to sue for past, present and future Infringements of any of the foregoing.

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

**“Internal IT Systems”** means all hardware, Software and internal networks and communications technologies and services that are owned, leased or licensed by the Company.

**“Joint Venture”** means a joint venture, partnership or other similar arrangement, whether in corporate, partnership, contractual or other legal form, in which the Company directly or indirectly holds voting shares, equity interests or other rights of participation but which is not a Subsidiary of the Company, and any Subsidiary of any such entity.

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

**“Licensed Intellectual Property”** means all Intellectual Property used by the Company except for the Owned Intellectual Property.

**“Lien”** means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachments, option, right of first refusal or first offer, occupancy right, covenant, assignment, lien (statutory or otherwise), defect of title, or restriction or adverse right or claim, or other third-party interest or encumbrance of any kind, in each case, whether contingent or absolute.

“**Matching Period**” has the meaning specified in Section 5.4(1)(e).

“**Material Adverse Effect**” when used in connection with a Party means any change, event, occurrence, effect, development, state of facts or circumstance that, either individually or in the aggregate, is or could reasonably be expected to be material and adverse to the business, financial condition or results of operations of that Party and would, or would be reasonably expected to, prevent or materially delay either Party from consummating the transactions contemplated by this Agreement by the Outside Date, other than changes, events, occurrences, statements of facts, effects, or circumstances that arise from or in connection with:

- (a) general political, economic, financial, currency exchange, securities, capital or credit market conditions internationally, Canada or the United States;
- (b) any act of terrorism, war (whether or not declared), armed hostilities, riots, insurrection, civil disorder, military conflicts or other armed conflict, in each case, whether occurring within or outside of Canada or the United States;
- (c) any natural disaster or epidemic, pandemic or disease outbreak (including the COVID-19 virus);
- (d) any change or proposed change in Law or IFRS or accounting rules or the interpretation thereof applicable to the industries or markets in which such Party operates;
- (e) prices for commodities, goods, services, or the availability or costs of hedges or other derivatives;
- (f) any change affecting the industries or markets in which such Party operates; and
- (g) any change in the trading price or any change in the trading volume of the Common Shares or Purchaser Shares, as applicable related to this Agreement and the Arrangement or the announcement thereof or primarily resulting from those causes identified in clauses (a) to (f) above;

provided, however, that with respect to clauses (b), (c), and (f), such matters do not have a materially disproportionate effect on such Party as a whole, relative to companies of similar size operating in the industries or markets in which such Party operates, and provided further, however, that references in certain sections of this Agreement to dollar amounts are not intended to be, and will be deemed not to be, illustrative or interpretative for the purpose of determining whether a “**Material Adverse Effect**” has occurred.

“**Misrepresentation**” means an untrue statement of a material fact or an omission to state a material fact required or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made.

**“Officer”** has the meaning specified in the *Securities Act* (Ontario).

**“Ordinary Course”** means, with respect to an action taken by a Party, that such action is consistent with the past practices of such Party, is taken in the ordinary course of the normal day-to-day operations of the business of such Party and is not materially adverse to such Party.

**“Outside Date”** means December 31, 2021 or such later date as may be agreed to in writing by the Parties.

**“Owned Intellectual Property”** means all Intellectual Property created, owned or developed in whole or in part by or on behalf of the Company.

**“Parties”** means the Company and the Purchaser and **“Party”** means any one of them.

**“Permit”** means any lease, license, permit, certificate, consent, order, grant, approval, classification, registration or other authorization of or from any Governmental Entity.

**“Permitted Liens”** means, in respect of the Company, any one or more of the following:

- (a) Liens for Taxes which are not delinquent;
- (b) inchoate or statutory Liens of contractors, subcontractors, mechanics, workers, suppliers, materialmen, carriers and others arising in the Ordinary Course, with respect to amounts which are not yet due and a claim for which has not been filed or registered pursuant to applicable Laws or of which notice in writing has not been given to the Company;
- (c) the right reserved to or vested in any Governmental Entity by any statutory provision or by the terms of any lease, licence, franchise, grant or permit of the Company, to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition of their continuance; and
- (d) easements, including rights of way for, or reservations or rights of others relating to, sewers, water lines, gas lines, pipelines, electric lines, telegraph and telephone lines and other similar services and any registered restrictions or covenants that run with the land, provided that there has been compliance with the material provisions thereof and that they do not in the aggregate materially detract from the ability to use any leased properties and would not reasonably be expected to materially and adversely affect the ability of the Company to carry on its business in the Ordinary Course.

**“Person”** includes any individual, partnership, limited partnership, limited liability partnership, joint venture, association, body corporate, corporation, company, unincorporated association, limited liability company, unlimited liability company, organization, trust, estate, trustee, executor, administrator, legal representative,



government (including Governmental Entity), syndicate or other entity, whether or not having legal status.

**“Personal Information”** means information about an identifiable natural person, but does not include the name, title, business address or telephone number of the Company Employee, that is to be disclosed to the Purchaser or that was disclosed to the Purchaser to permit the Purchaser to carry out its due diligence in connection with the Arrangement.

**“Plan of Arrangement”** means the plan of arrangement, substantially in the form of Schedule A, subject to any amendments or variations to such plan made in accordance with Section 8.1 or made at the direction of the Court in the Final Order with the prior written consent of the Company and the Purchaser, each acting reasonably.

**“PPP loan”** means a Paycheck Protection Program loan, a COVID-19 relief measure administered by the U.S. Small Business Administration.

**“Purchaser”** means DGTL Holdings Inc., a corporation formed under the federal laws of Canada.

**“Purchaser Board”** means the board of directors of the Purchaser as constituted from time to time.

**“Purchaser’s Representatives”** means the board of directors and the senior officers of the Purchaser or any other person as designated by the Purchaser Board.

**“Purchaser Compensation Warrants”** means 275,000 warrants of the Purchaser, each exercisable at a price per share equal to a 35% premium to the issue price in the Concurrent Financing for the purchase of one (1) Purchaser Share for a period of five years following the Effective Date.

**“Purchaser Filings”** means all documents publicly filed under the profile of the Purchaser on the System for Electronic Document Analysis Retrieval (SEDAR) since November 16, 2018.

**“Purchaser Material Contract”** means any Contract to which the Purchaser or any of its Subsidiaries is party or by which it or any of its assets, rights or properties are bound, that, if terminated or modified, would have a Material Adverse Effect.

**“Purchaser Preferred Shares”** means the Series A Convertible Preferred Shares in the capital of the Purchaser.

**“Purchaser Shareholders”** means the registered or beneficial holders of the Purchaser Shares, as the context requires.

**“Purchaser Shares”** means the common shares in the capital of the Purchaser.

**“Purchaser Subscription Receipt”** means the subscription receipts to be issued by the Purchaser as part of the Concurrent Financing, each representing the right of the holder thereof to receive, in certain circumstances set forth in the terms of the certificates governing the Purchaser Subscription Receipts and immediately prior to the Effective Time, one Purchaser Share, without any further act or formality, and for no additional consideration.

**“Purchaser Voting Agreements”** means the voting agreements (including all amendments thereto) between the Purchaser and the Company Locked-up Shareholders setting forth the terms and conditions upon which the Company Locked-up Shareholders have agreed, among other things, to vote their Common Shares in favour of the Arrangement Resolution.

**“Regulatory Approval”** means any consent, waiver, permit, exemption, review, order, decision or approval of, or any registration and filing with, any Governmental Entity, or the expiry, waiver or termination of any waiting period imposed by Law or a Governmental Entity, in each case in connection with the Arrangement.

**“Required Approval”** has the meaning specified in Section 2.2(3).

**“Securities Authority”** means the Ontario Securities Commission and any other applicable securities commissions or securities regulatory authority of a province or territory of Canada or the United States, including the United States Securities and Exchange Commission.

**“Securities Laws”** means the *Securities Act* (Ontario) and any other applicable provincial securities Laws.

**“Software”** means software, including all versions thereof, whether installed locally, on a local area network or delivered through the internet, and all related documentation, manuals, source code and object code, program files, data files, computer related data, field and data definitions and relationships, data definition specifications, data models, program and system logic, interfaces, program modules, routines, sub-routines, algorithms, program architecture, design concepts, system designs, program structure, sequence and organization, screen displays and report layouts, including any and all modifications, changes, release, versions, upgrades, updates or patches of any of the foregoing, and all other material related to such software.

**“Subsidiary”** has the meaning specified in National Instrument 45-106 - *Prospectus Exemptions* and, for the purposes of this Agreement, “control” shall include: (a) the possession, directly or indirectly, of the power to direct or cause the direction of the policies, management and affairs of the Person, whether through the ownership of voting securities, by contract or otherwise, including with respect to any general partner of another Person with the power to direct the policies, management and affairs of such Person; and (b) ownership, directly or indirectly, of more than 20% of the voting securities in any Person.

**“Superior Proposal”** means any unsolicited *bona fide* Acquisition Proposal made in writing on or after the date of this Agreement by an arm’s length third party (other than the Purchaser and its affiliates) to acquire not less than all of the outstanding Common Shares or all or substantially all of the assets of the Company on a consolidated basis that did not result from a breach of Article 5 and which or in respect of which:

- (a) the Company Board has determined in good faith, after consultation with its financial advisors and outside legal counsel, that such Acquisition Proposal would, taking into account all of the terms and conditions of such Acquisition Proposal (including time to completion and shareholder vote requirements), if consummated in accordance with its terms (but not assuming away any risk of non-completion), result in a transaction which is more favourable to the Company Shareholders from a financial point of view than the Arrangement (taking into account any amendments to this Agreement and the Arrangement proposed by the Purchaser pursuant to Section 5.4(2));
- (b) if it relates to the acquisition of outstanding Common Shares, the consideration paid for the Common Shares is made available to all of the Company Shareholders on the same terms and conditions;
- (c) is not subject to any financing condition and in respect of which adequate arrangements have been made to ensure that the required funds will be available to effect payment in full;
- (d) is not subject to any due diligence condition;
- (e) the Company Board has determined in good faith, after consultation with its financial advisors and outside legal counsel, that such Acquisition Proposal is reasonably capable of being completed in accordance with its terms, without undue delay, taking into account all legal, financial, regulatory and other aspects of such Acquisition Proposal and the Person making such Acquisition Proposal;
- (f) in the event that the Company does not have the financial resources to pay the Company Termination Fee, the terms of such Acquisition Proposal provide that the person making such Superior Proposal will advance or otherwise provide the Company the cash required for the Company to pay the Company Termination Fee and such amount will be advanced or provided on or before the date such Company Termination Fee becomes payable;
- (g) failure to recommend such Acquisition Proposal to the Company Shareholders would be inconsistent with the Company Board’s fiduciary duties under applicable Law; and
- (h) complies with applicable Law.

**“Superior Proposal Notice”** has the meaning specified in Section 5.4(1)(c).

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

**“Tax Returns”** means any and all returns, reports, declarations, elections, notices, forms, designations, filings, and statements (including estimated tax returns and reports, withholding tax returns and reports, and information returns and reports) filed or required to be filed in respect of Taxes.

**“Taxes”** means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever imposed by any Governmental Entity, whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to, income, gross receipts, profits, gains, windfalls, capital, capital stock, production, recapture, transfer, land transfer, license, gift, occupation, wealth, environment, net worth, indebtedness, surplus, sales, goods and services, harmonized sales, use, value-added, excise, special assessment, stamp, withholding, business, franchising, real or personal property, health, employee health, payroll, workers’ compensation, employment or unemployment, severance, social services, social security, education, utility, surtaxes, customs, import or export, and including all license and registration fees and all employment insurance, health insurance and government pension plan premiums or contributions; (ii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Entity on or in respect of amounts of the type described in clause (i) above or this clause (ii); (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of being a member of an affiliated, consolidated, combined or unitary group for any period; and (iv) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other Person or as a result of being a transferee or successor in interest to any party.

**“TotalSocial”** means an integrated data and analytics software-as-a-service platform, based on continuously collected US data and covering a wide range of brands and sold on a syndicated basis, that is further defined by the presence of both (a) online (social media) and (b) offline (WOM) data about brands with long-term, multi-year historical trends; and is based on what TotalSocial is as of the date hereof and shall not reflect any changes or modifications that take place subsequent to that date.

**“TSXV”** means the TSX Venture Exchange.

**“U.S. Exchange Act”** means the United States Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder.

**“U.S. Securities Act”** means the United States Securities Act of 1933, as amended and the rules and regulations promulgated thereunder.

## **Section 1.2 Certain Rules of Interpretation.**

In this Agreement, unless otherwise specified:

- (1) **Headings, etc.** The provision of a Table of Contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Agreement.
- (2) **Currency.** Unless otherwise stated, all references to dollars or to \$ are references to Canadian dollars.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases and References, etc.** The words “including”, “includes” and “include” mean “including (or includes or include) without limitation,” and “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of.” Unless stated otherwise, “Article”, “Section”, and “Schedule” followed by a number or letter mean and refer to the specified Article or Section of or schedule to this Agreement. The term “Agreement” and any reference in this Agreement to this Agreement or any other agreement or document includes, and is a reference to, this Agreement or such other agreement or document as it may have been, or may from time to time be, amended, restated, replaced, supplemented or novated and includes all schedules to it.
- (5) **Capitalized Terms.** All capitalized terms used in any Schedule, in the Purchaser Voting Agreements, and the Company Disclosure Letter, have, unless otherwise defined, the meanings ascribed to them in this Agreement.
- (6) **Knowledge.** Where any representation or warranty is expressly qualified by reference to the knowledge of the Company or the Purchaser, it will be deemed to refer to the actual knowledge, after making reasonable inquiries regarding the relevant matter, of Ed Keller of the Company, and Michael Racic of the Purchaser, as the case may be.
- (7) **Accounting Terms.** All accounting terms are to be interpreted in accordance with IFRS and all determinations of an accounting nature in respect of the Company required to be made will be made in a manner consistent with IFRS.
- (8) **Statutes.** Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.
- (9) **Computation of Time.** A period of time is to be computed as beginning on the day following the event that began the period and ending at 9:00 p.m. on the last day of the period, if the last day of the period is a Business Day, or at 9:00 p.m. on the next Business Day if the last day of the period is not a Business Day.
- (10) **Time References.** References to time are to local time, Toronto, Ontario.

### **Section 1.3 Schedules.**

- (1) The schedules attached to this Agreement form an integral part of this Agreement for all purposes of it.
- (2) The Company Disclosure Letter and all information contained therein is confidential information and may not be disclosed unless (i) it is required to be disclosed pursuant to Law unless such Law permits the Parties to refrain from disclosing the information for confidentiality or other purposes or (ii) a Party needs to disclose it in order to enforce or exercise its rights under this Agreement.

## **Article 2 THE ARRANGEMENT**

### **Section 2.1 Arrangement**

The Company and the Purchaser agree that the Arrangement will be implemented in accordance with and subject to the terms and conditions of this Agreement and the Plan of Arrangement. Without limitation to the foregoing, at the Effective Time, the Plan of Arrangement will become effective with the result that, among other things, the Purchaser will become the holder of all the outstanding Common Shares.

### **Section 2.2 Interim Order**

As soon as reasonably practicable after the date of this Agreement, but not prior to the satisfaction of the Financing Condition or the waiver thereof, the Company will apply in a manner reasonably acceptable to the Purchaser, pursuant to the CBCA and, in cooperation with the Purchaser, prepare, file and diligently pursue an application for the Interim Order, which will provide, among other things:

- (1) for the class of persons to whom notice is to be provided in respect of the Arrangement and the Company Meeting and for the manner in which such notice is to be provided;
- (2) for confirmation of the record date for the Company Meeting referred to in Section 2.3(1);
- (3) that the required level of approval (the “**Required Approval**”) for the Arrangement Resolution will be 66 2/3% of the votes cast on the Arrangement Resolution by Company Shareholders present in person or represented by proxy at the Company Meeting, each Common Share entitling the holder thereof to one vote on the Arrangement Resolution, and if required, a simple majority of the votes cast on the Arrangement Resolution excluding the votes for Common Shares required to be

excluded under Multilateral Instrument 61-101 – *Protection of Minority Security Holders in Special Transactions*;

- (4) that the terms, restrictions and conditions of the Company's Constatting Documents, including quorum requirements and all other matters, will apply in respect of the Company Meeting;
- (5) for the grant of the Dissent Rights to those Company Shareholders who are registered Company Shareholders;
- (6) for the notice requirements with respect to the presentation of the application to the Court for the Final Order;
- (7) that the Company Meeting may be adjourned or postponed from time to time by the Company in accordance with the terms of this Agreement without the need for additional approval of the Court;
- (8) that the record date for the Company Shareholders entitled to notice of and to vote at the Company Meeting will not, unless agreed to in writing by the Purchaser and the Company, change in respect of any adjournment(s) or postponement(s) of the Company Meeting;
- (9) that it is the Purchaser's intention to rely upon the exemption from registration provided by Section 3(a)(10) of the U.S. Securities Act with respect to the issuance of the Consideration Shares to be issued pursuant to the Arrangement, based on the Court's approval of the Arrangement; and
- (10) for such other matters as the Purchaser and/or the Company may reasonably require, subject to obtaining the prior consent of the other, such consent not to be unreasonably withheld or delayed.

### **Section 2.3 The Company Meeting**

Subject to the terms of this Agreement, the Company will:

- (1) convene and conduct the Company Meeting in accordance with the Interim Order, the Company's Constatting Documents and applicable Law, on the date prescribed by the Interim Order, for the purpose of considering the Arrangement Resolution and for any other proper purpose as may be set out in the Company Circular and agreed to by the Purchaser, acting reasonably, and not adjourn, postpone or cancel (or propose the adjournment, postponement or cancellation of) the Company Meeting without the prior written consent of the Purchaser, acting reasonably, except in the case of an adjournment as required for quorum purposes or as required or permitted under Section 5.4(5);
- (2) solicit proxies in favour of the approval of the Arrangement Resolution and against any resolution submitted by any Company Shareholder that is inconsistent with the Arrangement Resolution and the completion of any of the transactions contemplated

by this Agreement, including, if so requested by the Purchaser, acting reasonably, using such mutually agreeable dealer and proxy solicitation services firms as the Purchaser may request, at the Purchaser's expense, and cooperating with any such Persons engaged by the Purchaser to solicit proxies in favour of the approval of the Arrangement Resolution and in accordance with applicable Law;

- (3) provide the Purchaser with copies of or access to information regarding the Company Meeting generated by any dealer or proxy solicitation services firm, if any, as requested from time to time by the Purchaser;
- (4) permit the Purchaser, on behalf of the management of the Company, directly or through a soliciting dealer, to actively solicit proxies in favour of the Arrangement on behalf of management of the Company in compliance with Law and disclose in the Company Circular that the Purchaser may make such solicitations;
- (5) consult with the Purchaser in fixing the date of the Company Meeting, give notice to the Purchaser of the Company Meeting and allow the Purchaser's Representatives and legal counsel to attend the Company Meeting;
- (6) promptly advise the Purchaser, at such times as the Purchaser may reasonably request and at least on a daily basis on each of the last ten (10) Business Days prior to the date of the Company Meeting, as to the aggregate daily tally of the proxies delivered by the Depositary to the Company in respect of the Arrangement Resolution;
- (7) promptly advise the Purchaser of any communication (written or oral) from any Company Shareholder in opposition to the Arrangement, written notice of dissent, purported exercise or withdrawal of Dissent Rights, and written communications sent by or on behalf of the Company to any Company Shareholder exercising or purporting to exercise Dissent Rights;
- (8) not make any payment or settlement offer, or agree to any payment or settlement prior to the Effective Time with respect to Dissent Rights without the prior written consent of the Purchaser;
- (9) not change the record date for the Company Shareholders entitled to vote at the Company Meeting in connection with any adjournment or postponement of the Company Meeting, or change any other matters in connection with the Company Meeting unless required by Law or approved by the Purchaser; and
- (10) at the request of the Purchaser from time to time, provide the Purchaser with a list (in both written and electronic form) of (i) the registered Company Shareholders, together with their addresses and respective holdings of Common Shares, (ii) the names, addresses and holdings of all Persons having rights issued by the Company to acquire Common Shares (including Company Optionholders, and Company RSA Holders), and (iii) participants and book-based nominee registrants such as CDS & Co., CEDE & Co. and DTC, and non-objecting beneficial owners of Common Shares, together with their addresses and respective holdings of Common Shares. The Company will



from time to time require that its registrar and transfer agent furnish the Purchaser with such additional information, including updated or additional lists of Company Shareholders, and lists of securities positions and other assistance as the Purchaser may reasonably request in order to be able to communicate with respect to the Arrangement with the Company Securityholders and with such other Persons as are entitled to vote on the Arrangement Resolution.

#### **Section 2.4 The Company Circular**

- (1) The Company will as promptly as reasonably practicable, prepare and complete, in consultation with the Purchaser, the Company Circular together with any other documents required by Law in connection with the Company Meeting and the Arrangement, and the Company will, promptly after obtaining the Interim Order (and in all cases no later than seven (7) Business Days thereafter), cause the Company Circular and such other documents to be filed and sent to each Company Shareholder and other Person as required by the Interim Order and Law, in each case so as to permit the Company Meeting to be held by the date determined pursuant to Section 2.3(1).
- (2) The Company will ensure that the Company Circular complies in all material respects with applicable Law, does not contain any Misrepresentation (except that the Company will not be responsible for any information relating to the Purchaser, including the Purchaser Shares) and provides the Company Shareholders with sufficient information to permit them to form a reasoned judgement concerning the matters to be placed before the Company Meeting. Without limiting the generality of the foregoing, the Company Circular must include: (i) a copy of the Company Fairness Opinion, (ii) a statement that the Company Board has received the Company Fairness Opinion, and has unanimously, after receiving legal and financial advice, determined that the Arrangement Resolution is in the best interests of the Company and fair to the Company Shareholders and recommends that the Company Shareholders vote in favour of the Arrangement Resolution (the “**Company Board Recommendation**”), and (iii) a statement that the Company Locked-up Shareholders have entered into the Purchaser Voting Agreements and have agreed to vote all their Common Shares in favour of the Arrangement Resolution and against any resolution submitted by any Company Shareholder that is inconsistent with the Arrangement.
- (3) The Company will give the Purchaser and its legal counsel a reasonable opportunity to review and comment on drafts of the Company Circular and other related documents and will give reasonable consideration to any comments made by the Purchaser and its counsel and agrees that all information relating solely to the Purchaser included in the Company Circular must be in a form and content satisfactory to the Purchaser, acting reasonably. The Company will indemnify and save harmless the Purchaser and its officers, directors and employees from and against any and all liabilities, claims, demands, losses, costs, damages and expenses to which the Purchaser or any of its officers, directors and employees may be subject or may suffer as a result of, or arising from, any Misrepresentation contained in any information included in the Company Circular (other than with respect to information that was provided by the Purchaser for inclusion in the Company Circular), including as a result of any order made, or any

inquiry, investigation or proceeding instituted by any Securities Authority or other Governmental Entity based on such Misrepresentation

- (4) The Purchaser will provide all necessary information concerning the Purchaser that is required by Law to be included by the Company in the Company Circular or other related documents to the Company in writing, use reasonable commercial efforts to obtain any necessary consents from any of its auditors and any other advisors to the use of any financial, technical or other expert information required to be included in the Company Circular and to the identification in the Company Circular of each such advisor and will use reasonable commercial efforts to ensure that such information does not contain any Misrepresentation concerning the Purchaser or the Purchaser Shares. The Purchaser will indemnify and save harmless the Company and its officers, directors and employees from and against any and all liabilities, claims, demands, losses, costs, damages and expenses to which the Company or any of its officers, directors and employees may be subject or may suffer as a result of, or arising from, any Misrepresentation contained in any information included in the Company Circular that was provided by the Purchaser pursuant to this Section 2.4(4), including as a result of any order made, or any inquiry, investigation or proceeding instituted by any Securities Authority or other Governmental Entity based on such Misrepresentation.
- (5) The Purchaser will reasonably cooperate with and assist the Company in seeking the Interim Order and the Final Order, including by providing the Company on a timely basis any information reasonably required to be supplied by the Purchaser in connection therewith.
- (6) Each Party will promptly notify the other Party if it becomes aware that the Company Circular contains a Misrepresentation, or otherwise requires an amendment or supplement. The Parties will co-operate in the preparation of any such amendment or supplement as required or appropriate, and the Company will promptly mail, file or otherwise publicly disseminate any such amendment or supplement to the Company Shareholders and, if required by the Court or by Law, file the same with the Securities Authorities or any other Governmental Entity as required.

## **Section 2.5 Final Order**

If the Interim Order is obtained and the Arrangement Resolution is passed as provided for in the Interim Order and as required by applicable Law, the Company will take all steps necessary or desirable to submit the Arrangement to the Court and diligently pursue an application for the Final Order pursuant to Section 192 of the CBCA, as soon as reasonably practicable, but in any event not later than five (5) Business Days after the approval of the Arrangement Resolution at the Company Meeting as provided for in the Interim Order, or within such other time period as may be agreed upon by the Parties, each acting reasonably.

## **Section 2.6 Court Proceedings**

In connection with all Court proceedings relating to obtaining the Interim Order and the Final Order, the Company will:

- (1) diligently pursue, and cooperate with the Purchaser in diligently pursuing, the Interim Order and the Final Order;
- (2) provide legal counsel to the Purchaser with a reasonable opportunity to review and comment upon drafts of all material to be filed with the Court in connection with the Arrangement, and give reasonable consideration to all such comments;
- (3) provide copies of any notice of appearance, evidence or other documents served on the Company or its legal counsel in respect of the application for the Interim Order or the Final Order or any appeal from them, and any notice, written or oral, indicating the intention of any Person to appeal, or oppose the granting of, the Interim Order or the Final Order;
- (4) ensure that all material filed with the Court in connection with the Arrangement is consistent with this Agreement and the Plan of Arrangement;
- (5) not file any material with the Court in connection with the Arrangement or serve any such material, or agree to modify or amend any material so filed or served, except as contemplated by this Agreement or with the Purchaser's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, provided the Purchaser is not required to agree or consent to any increase in or variation in the form of the Consideration to be received by the Company Shareholders or other modification or amendment to such filed or served materials that expands or increases the Purchaser's obligations, or diminishes or limits the Purchaser's rights, set forth in any such filed or served materials or under this Agreement;
- (6) oppose any proposal from any Person that the Final Order contain any provision inconsistent with this Agreement, and if required by the terms of the Final Order or by Law to return to Court with respect to the Final Order do so only after notice to, and in consultation and cooperation with, the Purchaser; and
- (7) not object to legal counsel to the Purchaser making such submissions on the hearing of the motion for the Interim Order and the application for the Final Order as such counsel, acting reasonably and in consultation with Company Counsel, considers appropriate.

## **Section 2.7 No Fractional Shares**

The Purchaser will not be required to issue or deliver fractions of Consideration Shares or to distribute share certificates which evidence fractional Consideration Shares and such Consideration Shares will be rounded down or up to the nearest whole number, as applicable.

## **Section 2.8 Company Warrants**

The Company has no outstanding Company Warrants.

## **Section 2.9 Articles of Arrangement and Effective Date**

- (1) The Company will amend the Plan of Arrangement from time to time at the reasonable request of the Purchaser, provided that no such amendment is inconsistent with the

Interim Order or the Final Order or is prejudicial to the Company or the Company Shareholders.

- (2) The Company will file the Articles of Arrangement with the Director within 2 (two) Business Days after the satisfaction or, where not prohibited, waiver of the conditions set forth in Article 6, unless another time or date, which is prior to the Outside Date, is agreed to in writing by the Parties
- (3) The closing of the Arrangement will take place at the office of Spiegel Securities & Corporate Law, 1920 Yonge Street, Suite 300, Toronto, Ontario M4S 3E2, or at such other location as may be agreed upon by the Parties.

#### **Section 2.10 Withholding Taxes**

The Purchaser, the Company and the Depositary, as applicable, will be entitled to deduct and withhold from any consideration otherwise payable or otherwise deliverable to any Company Securityholders under the Plan of Arrangement (including any payment to any Dissenter) such amounts as the Purchaser, the Company or the Depositary, as applicable, are required or reasonably believe to be necessary to deduct and withhold from such consideration in order to meet a remittance requirement under any provision of any Laws in respect of Taxes. Any such amounts will be deducted, withheld and remitted from the consideration payable pursuant to the Plan of Arrangement and will be treated for all purposes under this Agreement as having been paid to the Company Securityholders in respect of which such deduction, withholding and remittance was made; provided that such deducted and withheld amounts are actually remitted to the appropriate Governmental Entity.

#### **Section 2.11 Announcement and Shareholder Communications**

The Purchaser and the Company will each publicly announce the transactions contemplated hereby promptly following the execution of this Agreement, the text and timing of each Party's announcement to be approved by the other Party in advance, each acting reasonably. The Purchaser and the Company agree to cooperate in the preparation of presentations, if any, to the Company Shareholders or the Purchaser Shareholders regarding the transactions contemplated by this Agreement and no Party will:

- (1) issue any press release or otherwise make public announcements with respect to this Agreement or the Plan of Arrangement without the consent of the other Party (which consent will not be unreasonably withheld or delayed); or
- (2) make any filing with any Governmental Entity with respect thereto without prior consultation with the other Party;

provided, however, that the foregoing will be subject to each Party's overriding obligation to make any disclosure or filing under Law or stock exchange rules, and the Party making such disclosure will use all commercially reasonable efforts to give prior written notice to the other Party and reasonable opportunity to review or comment on the disclosure or filing, and if such prior notice is not possible, to give such notice immediately following the making of such disclosure or filing.

## **Section 2.12 U.S. Securities Law Matters**

The Parties agree that the Arrangement will be carried out with the intention that all Consideration Shares issued on completion of the Arrangement to Company Shareholders will be issued by the Purchaser in reliance on the exemption from the registration requirements of the U.S. Securities Act provided by Section 3(a)(10) thereunder. In order to ensure the availability of the exemption under Section 3(a)(10) of the U.S. Securities Act, the Parties agree that the Arrangement will be carried out on the following basis:

- (1) the Arrangement will be subject to the approval of the Court;
- (2) the Court will be advised as to the intention of the Parties to rely on the exemption under Section 3(a)(10) of the U.S. Securities Act prior to the hearing required to approve the Arrangement;
- (3) the Court will be required to satisfy itself as to the fairness of the Arrangement to the Company Shareholders, subject to the Arrangement;
- (4) the Company will ensure that each Person entitled to receive Consideration Shares on completion of the Arrangement will be given adequate notice advising them of their right to attend the hearing of the Court to give approval of the Arrangement and providing them with sufficient information necessary for them to exercise that right;
- (5) each Person entitled to receive Consideration Shares will be advised that the Consideration Shares issued pursuant to the Arrangement have not been registered under the U.S. Securities Act and will be issued by the Purchaser in reliance on the exemption from registration under Section 3(a)(10) of the U.S. Securities Act and available exemptions from applicable state registration requirements;
- (6) the Final Order approving the Arrangement that is obtained from the Court will expressly state that the Arrangement is approved by the Court as being fair to the Company Shareholders;
- (7) the Interim Order approving the Company Meeting will specify that each Company Shareholder will have the right to appear before the Court at the hearing of the Court to give approval of the Arrangement so long as they enter an appearance within a reasonable time; and
- (8) the Company will request that the Final Order will include a statement to substantially the following effect:

“This Order will serve as a basis of a claim to an exemption, pursuant to section 3(a)(10) of the *United States Securities Act of 1933*, as amended, from the registration requirements otherwise imposed by that act, regarding the distribution of securities of Purchaser, pursuant to the Plan of Arrangement.”.

### **Section 2.13 Purchaser Board of Directors**

The Purchaser shall take all necessary actions to ensure that, upon the completion of the Arrangement Bruce Lev or another representative of Loeb Holding Corp. will be appointed as an observer to the board of directors of the Purchaser (the “**Observer**”), who shall have the right to attend all meetings of the Purchaser Board in a non-voting observer capacity and, in this respect, such representative shall receive from the Company copies of all notices, minutes, consents, and other materials provided to its directors at the same time and in the same manner as provided to its directors; provided, however, that such representative shall agree to hold in confidence and trust and to act in a fiduciary manner with respect to all information so provided; provided, further, that the Company reserves the right to withhold any information and to exclude such representative from any meeting or portion thereof if access to such information or attendance at such meeting could reasonably be expected to adversely affect the attorney-client privilege between the Company and its counsel; provided, further, that the Company shall provide concurrent notice to a representative of any such exclusion.

### **Section 2.14 Concurrent Financing**

- (1) The Purchaser agrees to use its reasonable commercial efforts to satisfy or waive the Financing Condition. Each of the Parties agrees to make available, or cause to be made available, to any dealers involved in the Concurrent Financing, on a timely basis, all books and records including all corporate, legal and financial information and documentation of such Party to permit such dealers, their legal counsel and other advisors to conduct a due diligence investigation of the business and affairs of the Parties, and will assist such dealers in sourcing any other information useful and necessary to conducting such due diligence. In addition, each Party shall use its reasonable best efforts to cause representatives of management of such Party to participate in an oral due diligence session, as may be requested by such dealers, acting reasonably. The Company shall, and shall cause its directors and officers to, use their respective commercially reasonable efforts to introduce the Purchaser to investors for the purpose of completing with Concurrent Financing.
- (2) Immediately prior to the Effective Time, pursuant to the terms and conditions of the Purchaser Subscription Receipts each Purchaser Subscription Receipt will be exchanged, without any further action on the part of the holder and for no additional consideration, for one (1) Purchaser Share.

### **Section 2.15 Purchaser Compensation Warrants and Purchaser Shares**

At the Effective Time, the Purchaser shall issue 261,250 Purchaser Compensation Warrants to Ed Keller, and 280,000 Purchaser Shares and 13,750 Purchaser Compensation Warrants to Oberon Securities, LLC.

## **Section 2.16 Company Options and Company RSAs**

- (1) The Purchaser agrees that for the period from the Effective Date until expiry of the Company Options (in accordance with their respective terms), the Purchaser will assume all of the covenants and obligations of the Company under the Company Options and in accordance with the terms and conditions of the respective option certificates, and the Purchaser and the Company shall do all things necessary to provide for the application of the provisions set forth in such option certificates with respect to the rights and interests of the holders thereof, such that upon exercise a Company Option will entitle the holder thereof to receive a number of Purchaser Shares equal to the number of Common Shares divided by the Exchange Ratio at an exercise price per share equal to the original exercise price multiplied by the Exchange Ratio.
- (2) The Company shall cause the RSAs to vest into Common Shares immediately prior to the Effective Time, and the Purchaser will issue Purchaser Shares in exchange for such Common Shares on the basis of the Exchange Ratio.
- (3) The Purchaser agrees to use its reasonable commercial efforts to satisfy or waive the Financing Condition. Each of the Parties agrees to make available, or cause to be made available, to any dealers involved in the Concurrent Financing, on a timely basis, all books and records including all corporate, legal and financial information and documentation of such Party to permit such dealers, their legal counsel and other advisors to conduct a due diligence investigation of the business and affairs of the Parties, and will assist such dealers in sourcing any other information useful and necessary to conducting such due diligence. In addition, each Party shall use its reasonable best efforts to cause representatives of management of such Party to participate in an oral due diligence session, as may be requested by such dealers, acting reasonably. The Company shall, and shall cause its directors and officers to, use their respective commercially reasonable efforts to introduce the Purchaser to investors for the purpose of completing with Concurrent Financing.
- (4) Immediately prior to the Effective Time, pursuant to the terms and conditions of the Purchaser Subscription Receipts each Purchaser Subscription Receipt will be exchanged, without any further action on the part of the holder and for no additional consideration, for one (1) Purchaser Share.

## **Article 3 REPRESENTATIONS AND WARRANTIES**

### **Section 3.1 Representations and Warranties of the Company**

- (1) Except as set forth in the correspondingly numbered paragraph of the Company Disclosure Letter, the Company represents and warrants to the Purchaser as set forth in

Schedule C and acknowledges and agrees that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement.

- (2) The representations and warranties of the Company contained in this Agreement will not survive the completion of the Arrangement and will expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms.

### **Section 3.2 Representations and Warranties of the Purchaser**

- (1) Except as disclosed in the Purchaser Filings, the Purchaser represents and warrants to the Company as set forth in Schedule D and acknowledges and agrees that the Company is relying upon the representations and warranties in connection with the entering into of this Agreement.
- (2) The representations and warranties of the Purchaser contained in this Agreement will not survive the completion of the Arrangement and will expire and be terminated on the earlier of the Effective Time and the date on which this Agreement is terminated in accordance with its terms.

## **Article 4 COVENANTS**

### **Section 4.1 Conduct of Business of the Company.**

- (1) Until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, the Company will conduct business in the Ordinary Course and will comply with the terms of all Company Material Contracts.
- (2) Without limiting the generality of Section 4.1(1), and without derogating from the obligations of the Company in Section 4.2, the Company covenants and agrees that, until the earlier of the Effective Time and the time this Agreement is terminated in accordance with its terms, except with the prior written consent of the Purchaser, such consent not to be unreasonably conditioned, withheld or delayed:
  - (a) the Company will use reasonable commercial efforts to preserve intact the current business organization of the Company, keep available the services of the present employees and agents of the Company and maintain good relations with, and the goodwill of, suppliers, customers, landlords, creditors, distributors and all other Persons having business relationships with the Company;
  - (b) in addition, the Company will:
    - (i) fully cooperate and consult through meetings with the Purchaser, as the Purchaser may reasonably request, to allow the Purchaser to monitor, and provide input with respect to the direction and control of, any activities relating to the operation of the Company Assets that may be permitted by the Purchaser or which are provided in the existing



budgeted expenditures as disclosed in the Company Disclosure Letter;  
and

- (ii) other than the Company entering into agreements for the sale of its services in the ordinary course of business, obtain the written consent of the Purchaser prior to entering into any Contract with a value of \$25,000 or greater with a term greater than one year, other than with respect to the Company's Directors and Officers insurance policy, which is renewable on August 6, 2021;
  - (iii) use reasonable commercial efforts to continue to maintain its status as a "reporting issuer" (or similar designated entity) not in default under Securities Laws in force in all provides of Canada where it is a reporting issuer as of the date hereof;
- (c) the Company will not, directly or indirectly, and will cause each of its Subsidiaries not to:
  - (i) alter or amend its Constatng Documents, (other than as contemplated under this Agreement or in connection with the Arrangement);
  - (ii) split, divide, combine, consolidate or reclassify the Common Shares or any securities of its capital stock, undertake any capital reorganization or declare, set aside or pay any dividend or other distribution (whether in cash, stock or property or any combination thereof);
  - (iii) redeem, repurchase, or otherwise acquire or subject to any Lien or offer to redeem, repurchase or otherwise acquire or subject to any Lien, any of its outstanding Common Shares or other securities or securities coverable into or exchangeable or exercisable for Common Shares or any such other securities or any shares or other securities of its Subsidiaries or reduce the stated capital in respect of the Common Shares;
  - (iv) issue, grant, deliver, sell, pledge or otherwise encumber, or authorize the issuance, grant, delivery, sale, pledge or other encumbrance of any Common Shares or other securities of the Company or its Subsidiaries or other equity or voting interests, or any options, warrants or similar rights exercisable or exchangeable for or convertible into or otherwise evidencing a right to acquire, Common Share or such capital stock or other equity or voting interests of the Company or its Subsidiaries, or any stock appreciation rights, phantom stock awards or other rights that are linked to the price or the value of Common Shares, except for (A) the issuance of Common Shares issuable upon the exercise of the Company Options or common shares underlying the Company RSAs, or (B) in connection with the Concurrent Financing;

- (v) amend the terms of any securities of the Company or any of its Subsidiaries;
- (vi) adopt a plan of liquidation or resolution providing for the liquidation or dissolution of the Company or any of its Subsidiaries;
- (vii) other than in respect of existing budgeted expenditures as disclosed in the Company Disclosure Letter, or as otherwise permitted by Section 4.1(2)(c)(x), acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, in one transaction or in a series of related transactions, any corporation, partnership, association or other business organization or division thereof or any property or asset, or make any investment by the purchase of securities, contribution of capital, property transfer, or purchase of any property or assets of any other Person;
- (viii) reorganize, amalgamate, combine or merge the Company with any other Person and will not cause or permit any of its Subsidiaries to reorganize, amalgamate or merge with any other Person;
- (ix) sell, lease, licence, pledge transfer, encumber or otherwise dispose of any assets or properties of the Company or its Subsidiaries except for inventory sold in the Ordinary Course;
- (x) make any capital expenditure or commitment to do so, except with respect to the development of the Company's technology assets as disclosed in the Company Filings, which individually or in the aggregate do not exceed \$25,000, provided however that all capital expenditures in the amount of \$25,000 or greater which are not subject to an executed Contract with the Company will require the prior written consent of the Purchaser, not to be unreasonably withheld or delayed, before such expenditure may be incurred;
- (xi) prepay any indebtedness for borrowed money before its scheduled maturity or increase, create, incur, assume or otherwise become liable for any indebtedness for borrowed money or guarantees thereof;
- (xii) except as disclosed in the Company Disclosure Letter, incur any expenses or incur any indebtedness (including the making of any payments in respect thereof, including any premiums or penalties thereon or fees in respect thereof) or issue any debt securities, or make any loans or advances make any loan or advance to, or any capital contribution or investment in, or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other Person;

- (xiii) enter into any interest rate, currency, equity or commodity swaps, hedges, derivatives, forward sales contracts or similar financial instruments;
  - (xiv) except as required by IFRS, make any change in the Company's methods of accounting;
  - (xv) compromise or settle any litigation, proceeding or governmental investigation;
  - (xvi) create any Subsidiary or enter into any Contracts or other arrangements regarding the control or management of the operations, or the appointment of governing bodies or enter into any Joint Ventures;
  - (xvii) except as contemplated in Section 4.7, amend, modify or terminate any material insurance (or re-insurance) policy of the Company in effect on the date of this Agreement, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance and re-insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the terminated, cancelled or lapsed policies for substantially similar premiums are in full force and effect;
  - (xviii) abandon or fail to diligently pursue any application for any material licences, permits, authorizations or registrations;
  - (xix) authorize, agree, resolve or otherwise commit, whether or not in writing, to do any of the foregoing; or
  - (xx) adopt any new Employee Plan or amend or modify, in any material way, any existing Employee Plan;
  - (xxi) enter into or amend any Contract with any broker, finder or investment banker;
- (d) the Company will not, and will not cause or permit any of its Subsidiaries to, directly or indirectly, except in the ordinary course of business:
- (i) terminate, fail to renew, cancel, waive, release, grant or transfer any rights of material value;
  - (ii) except in connection with matters otherwise permitted under this Section 4.1, enter into any Contract which would be a Company Material Contract if in existence on the date hereof, or terminate, cancel, extend, renew or amend, modify or change any Company Material Contract;

- (iii) enter into any lease or sublease of real property (whether as a lessor, sublessor, lessee or sublessee), or modify, amend or exercise any right to renew any lease or sublease of real property or acquire any interest in real property; or
  - (iv) enter into any Contract containing any provision restricting or triggered by the transactions contemplated herein;
- (e) neither the Company nor any of its Subsidiaries will, except in the ordinary course of business or pursuant to any existing Contracts or employment, pension, supplemental pension, termination or compensation arrangements or policies or plans in effect on the date hereof, and except as is necessary to comply with applicable Laws:
  - (i) grant to any officer, director, employee or consultant of the Company or any of its Subsidiaries an increase in compensation in any form;
  - (ii) grant any general salary increase, fee or pay any bonus or other material compensation to the directors, officers, employees or consultants of the Company and its Subsidiaries other than the payment of salaries, fees and benefits in the ordinary course of business;
  - (iii) take any action with respect to the grant or increase of any severance, change of control, retirement, retention or termination pay;
  - (iv) enter into or modify any employment or consulting agreement with any officer or director of the Company or any of its Subsidiaries;
  - (v) terminate the employment or consulting arrangement of any senior management employees, except for cause;
  - (vi) increase any benefits payable under its current severance or termination pay policies;
  - (vii) adopt or amend or make any contribution to or any award under the Company Option Plan or other bonus, profit sharing, option, pension, retirement, deferred compensation, insurance, incentive compensation, compensation or other similar plan, agreement, trust, fund or arrangement for the benefit of directors or senior officers or former directors or senior officers of the Company or any of its Subsidiaries other than as set forth in Company Disclosure Letter or as otherwise provided for in this Agreement; or

- (viii) except as otherwise provided in this Agreement, take any action to accelerate the time of payment of any compensation or benefits, amend or waive any performance or vesting criteria or accelerate vesting under the Company Option Plan;
- (f) the Company and each of its Subsidiaries will (i) duly and timely file all Tax Returns required to be filed by it on or after the date hereof (including, for greater certainty, any prescribed form or return required to be filed under subsections 66(12.7) and 211.91(2) of the Tax Act) and all such Tax Returns will be true, complete and correct in all material respects and (ii) timely withhold, collect, remit and pay all Taxes which are to be withheld, collected, remitted or paid by it to the extent due and payable except which have been reserved in the financial statements of the Company, and the Company will not (A) change its tax accounting methods, principles or practices, except insofar as may have been required by a change in IFRS or applicable Law, (B) settle, compromise or agree to the entry of judgment with respect to any action, claim or other proceeding relating to Taxes, (other than the payment, discharge or satisfaction of liabilities reflected or reserved against in the financial statements of the Company) (C) enter into any tax sharing, tax allocation or tax indemnification agreement, (D) make a request for a tax ruling to any Governmental Entity, (E) agree to any extension or waiver of the limitation period relating to any material Tax claim or assessment or reassessment, (F) take any action or enter into any transaction, other than a transaction contemplated by this Agreement, that could reasonably be expected to have the effect of reducing or eliminating the amount of the tax cost “bump” pursuant to paragraphs 88(1)(c) and (d) of the Tax Act otherwise available to the Purchaser and its Affiliates and its and their respective successors and assigns in respect of the non-depreciable capital properties owned by the Company; or (G) make any material Tax election, information schedule, return or designation, file any materially amended Tax Return, or surrender any right to claim a material Tax abatement, reduction, deduction, exemption, credit or refund; and
- (g) neither the Company nor any of its Subsidiaries will make an application to amend, terminate, allow to expire or lapse or otherwise modify any of its Permits or take any action or fail to take any action which action or failure to act would result in the material loss, expiration or surrender of, or the loss of any material benefit under, or reasonably be expected to cause any Governmental Entity to institute proceedings for the suspension, revocation or limitation of rights under, any material Permit necessary to conduct its businesses as now being conducted.

#### **Section 4.2 Company Covenants Regarding the Arrangement.**

- (1) The Company will use reasonable commercial efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper or advisable under Law to consummate the Arrangement as soon as practicable, including:

- (a) using reasonable commercial efforts to obtain and maintain all third party or other consents, waivers, permits, exemptions, orders, approvals, agreements, amendments or confirmations that are (A) required in connection with the Arrangement or (B) required in order to maintain the Company Material Contracts in full force and effect following completion of the Arrangement, in each case, on terms that are reasonably satisfactory to the Purchaser;
  - (b) using its reasonable commercial efforts to, on prior written approval of the Purchaser, oppose, lift or rescind any injunction, restraining or other order, decree or ruling seeking to restrain, enjoin or otherwise prohibit or adversely affect the consummation of the Arrangement and defend, or cause to be defended, any proceedings to which it is a party or brought against it or its directors or officers challenging the Arrangement or this Agreement;
  - (c) carrying out in accordance with and subject to the terms of this Agreement, the terms of the Interim Order and the Final Order applicable to it and complying promptly with all requirements imposed by Law on it with respect to this Agreement or the Arrangement;
  - (d) use its reasonable commercial efforts to carry out all actions necessary to ensure the availability of the exemption from registration under Section 3(a)(10) of the U.S. Securities Act;
  - (e) obtain the Required Approval in accordance with the terms of this Agreement; and
  - (f) not taking any action, or refraining from taking any commercially reasonable action, or permitting any action to be taken or not taken, which is inconsistent with this Agreement, or which would reasonably be expected to prevent, delay or otherwise impede the consummation of the Arrangement.
- (2) The Company will immediately notify the Purchaser orally and then promptly notify the Purchaser in writing of:
- (a) any Material Adverse Effect with respect to the Company or any change, effect, event, development, occurrence, circumstance or state of facts which would reasonably be expected to have a Material Adverse Effect with respect to the Company;
  - (b) any “material change” (as defined in the *Securities Act* (Ontario)) in relation to the Company or its Subsidiaries;
  - (c) any breach of this Agreement by the Company;
  - (d) any event occurring after the date of this Agreement that would render a representation or warranty, if made on that date or the Effective Date, inaccurate such that any of the conditions in Section 6.2(1) would not be satisfied

- (e) any notice or other communication from any Person alleging that the consent (or waiver, permit, exemption, order, approval, agreement, amendment or confirmation) of such Person is required in connection with this Agreement or the Arrangement;
  - (f) any notice or other communication from any Governmental Entity in connection with this Agreement (and the Company will contemporaneously provide a copy of any such written notice or communication to the Purchaser); or
  - (g) any filing, actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Company or that relate to this Agreement or the Arrangement.
- (3) In the event that the Purchaser concludes that it is necessary or desirable to proceed with another form of transaction (such as a formal take-over bid or amalgamation) whereby the Purchaser or its Affiliates would effectively acquire all of the Common Shares within approximately the same time periods and on economic terms and other terms and conditions (including tax treatment) and having consequences to the Company and the Company Shareholders which are equivalent to or better than those contemplated by this Agreement (an “**Alternative Transaction**”), the Company agrees to support the completion of such Alternative Transaction in the same manner as the Arrangement and will otherwise fulfill its covenants contained in this Agreement in respect of such Alternative Transaction. In the event of any proposed Alternative Transaction, any reference in this Agreement to the Arrangement will refer to the Alternative Transaction to the extent applicable, all terms, covenants, representations and warranties of this Agreement will be and will be deemed to have been made in the context of the Alternative Transaction and all references to time periods regarding the Arrangement, including the Effective Time, herein will refer to the date of closing of the transactions contemplated by the Alternative Transaction (as such date may be extended from time to time).

#### **Section 4.3 Purchaser Covenants Regarding Conduct of Business and regarding the Arrangement.**

- (1) From the date of this Agreement until the earlier of the Effective Time and the time that this Agreement is terminated in accordance with its terms, except as required by applicable Law, consented to by the Company in writing, or otherwise expressly permitted by this Agreement, the Purchaser will:
- (a) conduct its business only in the Ordinary Course consistent with past practice and to the extent consistent therewith, use its reasonable commercial efforts to
    - (i) preserve intact the present business organization of the Purchaser, (ii) maintain in effect all material Authorizations of the Purchaser, (iii) keep available the services of present officers, key employees and key consultants of the Purchaser; (iv) comply in all material respects with the terms of each

Purchaser Material Contract, and (v) preserve intact the material relationships of the Purchaser with suppliers and distributors; and

- (b) not, directly or indirectly, do or permit to occur any of the following: (i) amend or propose to amend its Constatng Documents or the terms of the Purchaser Shares in a manner that could have a material adverse effect on the market price or value of the Purchaser Shares to be issued in connection with the Arrangement; (ii) split, consolidate or reclassify any of its shares or undertake any other capital reorganization; (iii) reorganize, amalgamate, combine or merge the Purchaser with any other Person; or (iv) reduce the stated capital in respect of the Purchaser Shares.
- (2) The Purchaser will perform all obligations required to be performed by the Purchaser under this Agreement, co-operate with the Company in connection therewith, and do all such other acts and things as may be necessary or desirable in order to consummate and make effective, as soon as reasonably practicable, the transactions contemplated in this Agreement and, without limiting the generality of the foregoing, the Purchaser will:
- (a) defend all lawsuits or other legal, regulatory or other proceedings against the Purchaser challenging or affecting this Agreement or the consummation of the transactions contemplated hereby;
  - (b) apply for and use its reasonable commercial efforts to obtain approval of the listing and posting for trading on the TSXV of the Consideration Shares and otherwise comply with TSXV requirements relevant to this Agreement;
  - (c) provide such assistance as may be reasonably requested by the Company for the purposes of completing the Company Meeting;
  - (d) subject to the terms and conditions of this Agreement and of the Plan of Arrangement and applicable Laws, pay the aggregate Consideration to be paid pursuant to the Arrangement;
  - (e) comply in all material respects with all Laws;
  - (f) not take any action, or refrain from taking any commercially reasonable action, or permitting any action to be taken or not taken, which is inconsistent with this Agreement, or which would reasonably be expected to prevent, delay or otherwise impede the consummation of the Arrangement; and
  - (g) promptly notify the Company of: (i) any Material Adverse Effect with respect to the Purchaser or any change, effect, event, development, occurrence, circumstance or state of facts which would reasonably be expected to have a Material Adverse Effect with respect to the Purchaser; (ii) any notice or other communication from any Person alleging that the consent (or waiver, permit, exemption, order, approval, agreement, amendment or confirmation) of such Person is required in connection with this Agreement or the Arrangement; (iii)



any notice or other communication from any Governmental Entity in connection with this Agreement (and contemporaneously provide a copy of any such written notice or communication to the Company); and (iv) any filing, actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting the Purchaser, this Agreement or the Arrangement.

#### **Section 4.4 Regulatory Approvals**

- (1) The Parties will, as promptly as practicable, prepare and file all necessary documents, registrations, statements, petitions, filings and applications for the Regulatory Approvals (including the approval of the TSXV) and use their reasonable commercial efforts to obtain and maintain all Regulatory Approvals (including the approval of the TSXV).
- (2) The Parties will reasonably cooperate with one another in connection with obtaining the Regulatory Approvals including providing one another with copies of all notices and information or other correspondence supplied to, filed with or received from any Governmental Entity. Despite the forgoing, the Purchaser is under no obligation to take any steps or actions that would, in its sole discretion, affect the Purchaser's right to own, use or exploit its business, operations or assets or those of the Company.
- (3) Each Party shall permit the other Party an opportunity to review in advance any proposed substantive applications, notices, filings, submissions, undertakings, correspondence and communications (including responses to requests for information and inquiries from any Governmental Entity) in respect of obtaining or concluding the Regulatory Approvals and shall provide the other Party with a reasonable opportunity to comment thereon and agree to consider those comments in good faith and each Party shall provide the other Party with any substantive applications, notices, filings, submissions, undertakings or other substantive correspondence provided to a Governmental Entity or any substantive communications received from a Governmental Entity, in respect of obtaining or concluding the Regulatory Approvals.
- (4) Each Party shall keep the other Party reasonably informed on a timely basis of the status of discussions relating to obtaining or concluding the Regulatory Approvals sought by each such Party and, for greater certainty, no Party shall participate in any substantive meeting (whether in person, by telephone or otherwise) with a Governmental Entity in respect of obtaining or concluding the required Regulatory Approvals unless it advises the other Party in advance and gives such other Party an opportunity to attend.

#### **Section 4.5 Access to Information; Confidentiality**

- (1) From the date hereof until the earlier of the Effective Time and the termination of this Agreement pursuant to its terms, subject to compliance with applicable Laws and the terms of any existing Contracts upon reasonable notice, each of the Purchaser and the Company will, and will cause their respective representatives to, afford to the other Party and to representatives of the other Party, such access as the other Party may reasonably require at all reasonable times during normal business hours, including for

the purpose of facilitating integration business planning, to their officers, employees, agents, properties, books, records and contracts, and will furnish the other Party with all data and information as the other Party may reasonably request.

- (2) Investigations made by or on behalf of the Purchaser or the Company, whether under this Section or otherwise, will not waive, diminish the scope of, or otherwise affect any representation or warranty made by the other in this Agreement.
- (3) Each of the Parties acknowledges that the Confidentiality Agreement continues to apply, and that any information provided under Section 4.5(1) above that is non-public and/or proprietary in nature will be subject to the terms of the Confidentiality Agreement. If this Agreement is terminated in accordance with its terms, the obligations under the Confidentiality Agreement will survive the termination of this Agreement.

#### **Section 4.6 Notice and Cure Provisions**

- (1) Each Party will promptly notify the other Party of the occurrence, or failure to occur, of any event or state of facts which occurrence or failure would, or would be reasonably likely to:
  - (a) cause any of the representations or warranties of such Party contained in this Agreement to be untrue or inaccurate in any material respect at any time from the date of this Agreement to the Effective Time; or
  - (b) result in the failure to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by such Party under this Agreement.
- (2) Notification provided under this Section 4.6 will not affect the representations, warranties, covenants, agreements or obligations of the Parties (or remedies with respect thereto) or the conditions to the obligations of the Parties under this Agreement.
- (3) No Party may elect not to complete the transactions contemplated hereby pursuant to the conditions set forth herein or any termination right arising therefrom under Section 7.2(1)(c) or Section 7.2(1)(d) and no payments are payable as a result of such termination under this Agreement unless, prior to the Effective Time, the Party intending to rely thereon has delivered a written notice to the other Party specifying in reasonable detail all breaches of covenants, representations and warranties or other matters which the Party delivering such notice is asserting as the basis for the non-fulfilment or the applicable condition or termination right, as the case may be. If any such notice is delivered by a Party and the other Party is proceeding diligently to cure such matter and such matter is capable of being cured, no Party may terminate this Agreement until the earlier of the Outside Date and the expiration of a period of ten (10) Business Days from delivery of such notice. If such notice has been given prior to the date of the Company Meeting, such meeting, unless the Parties otherwise agree, will be postponed or adjourned until the expiry of such period (without causing any breach of any other provision contained herein).

## **Section 4.7 Indemnification**

- (1) The Purchaser will and will cause the Company (and any successors) to honour all rights to indemnification and exculpation now existing in favour of present and former directors, officers and employees of the Company and the Purchaser will cause the Company to ensure that the articles and bylaws of the Company (or any successor thereto) contain substantially the same provisions with respect to indemnification set forth in the articles and bylaws of the Company in effect immediately prior to the Effective Date, which provisions will not, except to the extent required by Law, be materially amended, repealed or otherwise modified for a period of six (6) years from the Effective Date in any manner, that would materially and adversely affect the rights thereunder of individuals who at any time on or before the Effective Date, were directors, officers or employees of the Company.
- (2) The provisions of this Section 4.7 are intended for the benefit of and will be enforceable by each insured or indemnified person, his or her heirs, executors, administrators and other legal representatives and, for such purpose, the Company (including any successor) hereby confirms that it is acting as agent and trustee on their behalf.
- (3) If the Company or any of its successors consolidates with or merges into any other person and is not the continuing or surviving corporation or entity of such consolidation or merger, proper provisions will be made by the Company and the Purchaser so that the successors of the Company will assume all of the obligations of the Company set forth in this Section 4.7.
- (4) The Purchaser will and will cause the Company to honour and abide by and perform the terms of all agreements of the Company with its directors, officers and employees in effect on the Effective Date, including without limitation, under indemnification agreements, employment agreements and retention agreements and in respect of those individuals who are on disability leave, parental leave or other permitted absence.
- (5) The provisions of this Section 4.7 will survive completion of the Arrangement and continue in full force and effect for a period of six (6) years following the Effective Date.

## **Article 5**

### **ADDITIONAL COVENANTS REGARDING NON-SOLICITATION**

#### **Section 5.1 Company Non-Solicitation**

- (1) Except as expressly provided in this Article 5, the Company will not, directly or indirectly, through any officer, director, employee, representative (including any financial or other adviser) or agent of the Company (collectively “**Company Representatives**”), or otherwise, and will not permit any such Person to:
  - (a) make, solicit, initiate, assist, promote, entertain, encourage or otherwise facilitate, directly or indirectly, (including by way of furnishing or providing

copies of access to, or disclosure of, any confidential information, properties, facilities, books or records of the Company or entering into any form of agreement, arrangement or understanding) any inquiry, proposal or offer that constitutes or could reasonably be expected to lead to, an Acquisition Proposal for the Company;

- (b) enter into or otherwise engage or participate in, directly or indirectly, any discussions or negotiations with, furnish information to, or otherwise co-operate in any way with, any Person (other than the Purchaser) regarding any inquiry, proposal or offer that constitutes or could reasonably be expected to lead to, an Acquisition Proposal for the Company; provided, however, that, for greater certainty, the Company may advise any Person making an unsolicited Acquisition Proposal for the Company that such Acquisition Proposal does not constitute a Superior Proposal when the Company Board has so determined;
  - (c) remain neutral with respect to, or agree to, approve or recommend, or propose publicly to agree to, approve or recommend any Acquisition Proposal (it being understood that publicly taking no position or a neutral position with respect to an Acquisition Proposal for a period exceeding two Business Days after such Acquisition Proposal has been publicly announced will be deemed to constitute a violation of this Section 5.1(1)(c));
  - (d) make or propose publicly to make a Company Change in Recommendation;
  - (e) accept, approve, endorse, recommend or enter into, or publicly propose to accept, approve, endorse, recommend or enter into, any agreement, understanding or arrangement effecting or related to any Acquisition Proposal or potential Acquisition Proposal; or
  - (f) make any public announcement or take any other action inconsistent with, or that could reasonably be likely to be regarded as detracting from, the approval, recommendation or declaration of advisability of the Company Board of the transactions contemplated hereby.
- (2) The Company will, and will cause the Company Representatives to, immediately cease and terminate, and cause to be terminated, any solicitation, encouragement, discussion, negotiations, or other activities commenced prior to the date of this Agreement with any Person (other than the Purchaser) with respect to any inquiry, proposal or offer that constitutes, or could reasonably be expected to lead to, an Acquisition Proposal for the Company, and in connection with such termination will:
- (a) discontinue access to and disclosure of all information, including the data rooms provided by the Company, and any confidential information, properties, facilities, books and records of the Company; and
  - (b) request: (i) the return or destruction of all copies of any confidential information regarding the Company provided to any Person other than the Purchaser, and

- (ii) the destruction of all material including or incorporating or otherwise reflecting such confidential information regarding the Company, using its reasonable commercial efforts to ensure that such requests are fully complied with in accordance with the terms of any rights or entitlements of the Company in respect thereof.
- (3) The Company represents and warrants that the Company has not waived any confidentiality, standstill or similar agreement or restriction to which the Company is a party and covenants and agrees that (i) the Company will take all necessary action to enforce each confidentiality, standstill or similar agreement or restriction to which the Company is a party, and (ii) neither the Company, nor any of the Company Representatives have released or will, without the prior written consent of the Purchaser (which may be withheld or delayed in the Purchaser's sole and absolute discretion), release any Person from, or waive, amend, suspend or otherwise modify such Person's obligations respecting the Company under any confidentiality, standstill or similar agreement or restriction to which the Company is a party, but for greater certainty, it is acknowledged and agreed that the automatic termination or release of such standstill and similar covenants of any such agreements as the result of entering into this Agreement will not constitute a breach of this Section 5.1.

## **Section 5.2 Notification of Acquisition Proposals**

- (1) If the Company or any of the Company Representatives, receives or otherwise becomes aware of any inquiry, proposal or offer that constitutes or could reasonably be expected to lead to an Acquisition Proposal for the Company, or any request for copies of, access to, or disclosure of, confidential information relating to the Company, including but not limited to information, access, or disclosure relating to the properties, facilities, books or records of the Company, the Company will immediately notify the Purchaser, at first orally, and then promptly and in any event within 24 hours in writing, of:
- (a) such Acquisition Proposal for the Company, inquiry, proposal, offer or request, including a description of its material terms and conditions, the identity of all Persons making the Acquisition Proposal for the Company, inquiry, proposal, offer or request, and will further provide the Purchaser with copies of all written documents, correspondence or other material received in respect of, from or on behalf of any such Person; and
  - (b) the status of developments and negotiations with respect to such Acquisition Proposal for the Company, inquiry, proposal, offer or request, including any changes, modifications or other amendments to any such Acquisition Proposal for the Company, inquiry, proposal, offer or request.

## **Section 5.3 Responding to an Acquisition Proposal for the Company**

Notwithstanding Section 5.1, if at any time, prior to obtaining the approval by the Company Shareholders of the Arrangement Resolution, the Company receives a *bona fide* written Acquisition Proposal for the Company from a Person that was not solicited by the Company and that did otherwise result from a breach of Section 5.1, the Company may engage

in or participate in discussions or negotiations with such Person regarding such Acquisition Proposal if and only if:

- (1) the Company Board first determines in good faith, after consultation with its financial advisors and its outside legal counsel, that such Acquisition Proposal for the Company constitutes or could reasonably be expected to lead to a Superior Proposal and that the failure to engage in such discussions or negotiations would be inconsistent with its fiduciary duties;
- (2) such Person was not restricted from making such Acquisition Proposal pursuant to an existing confidentiality, standstill, non-disclosure or similar restriction with the Company;
- (3) the Company has complied with its obligations under this Article 5;
- (4) prior to providing such access or disclosure to such Person, the Company:
  - (a) enters into a confidentiality and standstill agreement with such Person (unless such Person is already a party to a confidentiality and standstill agreement with the Company) having terms not more favorable in any material respect to such Person than the equivalent terms of the Confidentiality Agreement;
  - (b) provides a copy of such confidentiality and standstill agreement to the Purchaser promptly upon its execution and prior to furnishing any such information;
  - (c) provides the Purchaser with two Business Days prior written notice stating the Company's intention to furnish such information to such person, and to provide such copies, access or disclosure and that the Company Board has determined that failure to take such action would be inconsistent with its fiduciary duties; and
  - (d) such access or disclosure must have already been (or is simultaneously being) provided to the Purchaser; and
- (5) the Company contemporaneously provides to the Purchaser any non-public information concerning the Company that is provided to such Person which was not previously provided to the Purchaser.

#### **Section 5.4 Right to Match**

- (1) If the Company receives a *bona fide* Acquisition Proposal for the Company that constitutes a Superior Proposal prior to the approval of the Arrangement Resolution by the Company Shareholders, the Company may, subject to compliance with Article 7 and Section 8.2, enter into a definitive agreement with respect to such Acquisition Proposal, if and only if:

- (a) the Person making the Superior Proposal was not restricted from making such Acquisition Proposal pursuant to an existing confidentiality, standstill, non-disclosure or similar restriction with the Company;
  - (b) the Company has been, and continues to be, in compliance with its obligations under this Article 5;
  - (c) the Company has delivered to the Purchaser a written notice of the determination of the Company Board that (i) such Acquisition Proposal constitutes a Superior Proposal and (ii) of the intention of the Company to withdraw, modify, qualify or change in a manner adverse to the Purchaser its approval or recommendation of the Arrangement (including the recommendation that the Company Shareholders vote in favour of the Arrangement Resolution), and/or enter into an Acquisition Agreement with respect to such Superior Proposal in each case promptly following the making of such determination, together with a summary of the material terms of any proposed Acquisition Agreement or other agreement relating to such Superior Proposal to be executed with the person making such Superior Proposal (the “**Superior Proposal Notice**”);
  - (d) the Company has provided the Purchaser a copy of the Acquisition Agreement for the Superior Proposal;
  - (e) at least five (5) Business Days (the “**Matching Period**”) have elapsed from the date that is the later of the date on which the Purchaser received the Superior Proposal Notice and a copy of the proposed Acquisition Agreement for the Superior Proposal from the Company;
  - (f) during the Matching Period, the Purchaser has had the opportunity (but not the obligation), in accordance with Section 5.4(2), to offer to amend this Agreement and the Arrangement in order for such Acquisition Proposal to cease to be a Superior Proposal;
  - (g) if the Purchaser has offered to amend this Agreement and the Arrangement under Section 5.4(2), the Company Board has determined in good faith, after consultation with the Company’s outside legal counsel and financial advisers, that such Acquisition Proposal continues to constitute a Superior Proposal compared to the terms of the Arrangement as proposed to be amended by the Purchaser under Section 5.4(2); and
  - (h) prior to entering into such Acquisition Agreement the Company terminates this Agreement pursuant to Section 7.2(1)(c)(ii) and pays the Company Termination Fee pursuant to Section 8.2.
- (2) During the Matching Period, or such longer period as the Company may approve in writing for such purpose: (a) the Company Board will review in good faith any offer made by the Purchaser under Section 5.4(1)(f) to amend the terms of this Agreement

and the Arrangement in order to determine whether such proposal would, upon acceptance, result in the Acquisition Proposal for the Company previously constituting a Superior Proposal ceasing to be a Superior Proposal; and (b) the Company will negotiate in good faith with the Purchaser to make such amendments to the terms of this Agreement and the Arrangement as would enable the Purchaser to proceed with the transactions contemplated by this Agreement on such amended terms. If the Company Board determines that such Acquisition Proposal would cease to be a Superior Proposal, the Company will promptly so advise the Purchaser and the Company, and the Purchaser will amend this Agreement to reflect such offer made by the Purchaser and will take and cause to be taken all such actions as are necessary to give effect to the foregoing.

- (3) Each successive amendment to any Acquisition Proposal will constitute a new Acquisition Proposal for the purposes of this Section 5.4, and the Purchaser will be afforded a new five (5) Business Day Matching Period from the later of the date on which the Purchaser received the Superior Proposal Notice and a copy of the proposed agreement for the new Superior Proposal from the Company.
- (4) The Company Board will promptly reaffirm the Company Board Recommendation by press release after any Acquisition Proposal for the Company which is not determined to be a Superior Proposal is publicly announced or the Company Board determines that a proposed amendment to the terms of this Agreement as contemplated under Section 5.4(2) would result in an Acquisition Proposal no longer being a Superior Proposal. Such news release will state that the Company Board has determined that such Acquisition Proposal is not a Superior Proposal. The Company will provide the Purchaser and its outside legal counsel with a reasonable opportunity to review and comment on the form and content of any such press release, recognizing that whether or not such comments are appropriate will be determined by the Company, acting reasonably.
- (5) If the Company provides a Superior Proposal Notice to the Purchaser after a date that is less than five (5) Business Days before the Company Meeting, the Company will either proceed with or will postpone the Company Meeting, as directed by the Purchaser acting reasonably, to a date that is not less than five (5) Business Days and not more than ten (10) Business Days after the scheduled date of the Company Meeting; provided, however, that the Company Meeting will not be adjourned or postponed to a date later than seven (7) Business Days prior to the Outside Date.
- (6) Nothing contained in this Section 5.4 will limit in any way the obligation of the Company to convene and hold the Company Meeting in accordance with Section 2.3 of this Agreement while this Agreement remains in force and in no event will the Company be permitted to put the Superior Proposal to a vote of the Company Shareholders at the Company Meeting, it being understood that any necessary shareholder vote in respect of a Superior Proposal will require the Company to duly call and convene a separate meeting of the Company Shareholders.



- (7) Subject to its obligations under Section 8.2, nothing in this Agreement will prevent the Company Board from:
- (a) responding, through a directors' circular or otherwise, only to the extent required by applicable Securities Laws, to an Acquisition Proposal for the Company, or from making a Company Change in Recommendation as a result of a Material Adverse Effect with respect to the Purchaser;
  - (b) making any disclosure to the securityholders of the Company if the Company Board, acting in good faith and upon the advice of its legal advisors, will have first determined that the failure to make such disclosure would be inconsistent with the fiduciary duties of the Company Board or such disclosure is otherwise required under applicable Laws; or
  - (c) calling and/or holding a meeting of Company Shareholders requisitioned by Company Shareholders in accordance with the CBCA or taking any other action with respect to an Acquisition Proposal for the Company to the extent ordered or otherwise mandated by a court of competent jurisdiction in accordance with Laws.

#### **Section 5.5 Breach by Representatives**

Without limiting the generality of the foregoing, the Company will advise Company Representatives of the prohibitions set out in this Article 5 and any violation of the restrictions set forth in this Article 5 by the Company or Company Representatives is deemed to be a breach of this Article 5 by the Company.

#### **Section 5.6 Purchaser Non-Solicitation**

- (1) The Purchaser shall not solicit any offers to purchase the Purchaser Shares or assets, or any portion above 25% thereof, and will not, directly or indirectly, initiate, enter into or encourage any discussions or negotiations with any third party with respect to such a transaction or amalgamation, merger, take-over, plan of arrangement or similar transaction other than the Arrangement during the period commencing on the date hereof and ending on the termination of this Agreement. The Purchaser shall immediately cease and cause to be terminated any existing discussions or negotiations with any third party related to any of the foregoing. In the event the Purchaser is approached in respect of any such transaction, it shall immediately notify the Company.

### **Article 6 CONDITIONS**

#### **Section 6.1 Mutual Conditions Precedent**

The Parties are not required to complete the Arrangement unless each of the following conditions is satisfied on or prior to the Effective Time, which conditions may only be waived, in whole or in part, by the mutual consent of each of the Parties:

- (1) **Arrangement Resolution.** The Arrangement Resolution has been approved and adopted by the Company Shareholders at the Company Meeting in accordance with the Interim Order.
- (2) **Interim and Final Order.** The Interim Order and the Final Order have each been obtained on terms consistent with this Agreement and have not been set aside or modified in a manner unacceptable to either the Company or the Purchaser, each acting reasonably on appeal or otherwise.
- (3) **Illegality.** No Law will have been enacted, issued, promulgated, enforced, made, entered, issued or applied and no action or proceeding will otherwise have been taken under any Laws or by any Governmental Entity that makes the consummation of the Arrangement illegal or otherwise directly or indirectly ceases trades, prohibits, restrains or enjoins the Company or the Purchaser from consummating the Arrangement.
- (4) **TSXV Approval.** The conditional approval from the TSXV will have been obtained by the Company with respect to the Arrangement.
- (5) **US Securities Exemption.** The Consideration Shares to be issued pursuant to the Arrangement will be exempt from the registration requirements of the U.S. Securities Act pursuant to Section 3(a)(10) thereof and pursuant to exemptions from applicable state securities Laws, provided, however, that the Company will be not entitled to the benefit of the conditions in this Section 6.1(5), and will be deemed to have waived such condition in the event that the Company fails to advise the Court prior to hearing in respect of the Interim Order that the Purchaser intends to rely on the exemption from registration afforded by Section 3(a)(10) of the U.S. Securities Act based on the Court's approval of the Arrangement and comply with the requirements set forth in Section 2.12 and the Final Order will reflect such reliance.
- (6) **Third Party Approvals.** All Regulatory Approvals and all third Person and other consents, waivers, permits, exemptions, orders, approvals, agreements and amendments and modifications to agreements, indentures or arrangements, in each case, the failure of which to obtain or the non-expiry of which would, or could reasonably be expected to have, a material adverse effect, or materially impede the completion of the Arrangement, shall have been obtained or received.

## **Section 6.2 Additional Conditions Precedent to the Obligations of the Purchaser**

The Purchaser is not required to complete the Arrangement unless each of the following conditions is satisfied on or before the Effective Time, which conditions are for the exclusive benefit of the Purchaser and may only be waived, in whole or in part, by the Purchaser in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Company (including those in Schedule C) which are qualified by references to materiality or by the expression "Material Adverse Effect" and the representations and warranties set forth in Section 5.1(3) were true and correct as of the date of this Agreement and are

true and correct as of the Effective Time, in all respects, **and** all other representations and warranties of the Company were true and correct as of the date of this Agreement and are true and correct as of the Effective Time, in all material respects, in each case except for representations and warranties made as of a specified date, the accuracy of which will be determined as of such specified date, and the Company has delivered a certificate confirming same to the Purchaser, executed by two (2) senior officers of the Company (in each case without personal liability) addressed to the Purchaser and dated the Effective Date.

- (2) **Performance of Covenants.** The Company has fulfilled or complied in all material respects with each of the covenants of the Company contained in this Agreement to be fulfilled or complied with by it on or prior to the Effective Time and has delivered a certificate confirming same to the Purchaser, executed by two (2) senior officers of the Company (in each case without personal liability) addressed to the Purchaser and dated the Effective Date.
- (3) **No Legal Action.** There is no action or proceeding pending or threatened by any Person in any jurisdiction that is reasonably likely to:
  - (a) cease trade, enjoin, prohibit, or impose any limitations, damages or conditions on, the Purchaser's ability to acquire, hold, or exercise full rights of ownership over, any Common Shares, including the right to vote the Common Shares;
  - (b) prohibit or restrict the Arrangement, or the ownership or operation by the Purchaser of the business or assets of the Purchaser, the Company, or compel the Purchaser to dispose of or hold separate any material portion of the business or assets of the Purchaser, the Company as a result of the Arrangement; or
  - (c) prevent or materially delay the consummation of the Arrangement, or if the Arrangement is consummated, have a Material Adverse Effect with respect to the Company.
- (4) **Dissent Rights.** Dissent Rights have not been exercised and not withdrawn with respect to more than 5% of the issued and outstanding Common Shares.
- (5) **No Material Adverse Effect.** There will not have occurred or exist a Material Adverse Effect with respect to the Company that has not been publicly disclosed by the Company prior to the date hereof or disclosed to the Purchaser in writing prior to the date hereof, and since the date of this Agreement, there will not have occurred or exist a Material Adverse Effect or any event, occurrence, circumstance or development that would reasonably be expected to have a Material Adverse Effect with respect to the Company and the Purchaser will have received a certificate signed on behalf of the Company by the chief executive officer and chief financial officer (in each case without personal liability) of the Company to such effect.
- (6) **Waivers.** All waivers, consents, permits, approvals, releases, licences or authorizations under or pursuant to any Company Material Contract which the Purchaser has

determined are necessary in connection with the completion of the Arrangement, will have been obtained on terms which are satisfactory to the Company, acting reasonably.

- (7) **No Amendment.** The Plan of Arrangement will not have been modified or amended in a manner adverse to the Purchaser without the Purchaser's consent in its sole and absolute discretion.
- (8) **Purchaser Voting Agreements.** Each of the Company Locked-up Shareholders will have entered into a Purchaser Voting Agreement (in form and substance satisfactory to the Purchaser) with the Purchaser, none of such Purchaser Voting Agreements will have been terminated and none of the Company Locked-up Shareholders will have breached, in any material respect, any of the representations, warranties and covenants thereof.
- (9) **Directors and Officers.** The Company and its Subsidiaries shall have received resignations and mutual releases from each director and officer, other than [Text Redacted: the omitted text sets forth job title(s) of individual(s).] and with respect to [Text Redacted: the omitted text sets forth name(s) of individual(s).], (i) a non-competition agreement from [Text Redacted: the omitted text sets forth name(s) of individual(s).] with respect to selling a platform that is competitive to TotalSocial for a term of six months, and (ii) a non-solicitation agreement for a term of 12 months whereby [Text Redacted: the omitted text sets forth name(s) of individual(s).] not to solicit the Company's current clients, each of which are listed in Section 6.2(9) of the Company Disclosure Letter, and clients that sign contracts with the Company between the date hereof and the Effective Date, regardless of the dollar value of the contract, and each dated effective as of the Effective Date, against receipt by such Persons of commercially reasonable releases from the Company and its Subsidiaries and, in both cases, acceptable to the Purchaser, acting reasonably, and no change of control or similar payments to directors or officers shall become owing by the Company or the Purchaser as a result of the completion of the Arrangement, other than [Text Redacted: the omitted text sets forth name(s) of individual(s).].
- (10) **Employment and Consulting Agreements.** The Purchaser has signed [Text Redacted: particulars of employment agreements.]
- (11) **Deferral Bonuses.** The Company shall have entered into releases, in form and substance satisfactory to the Purchaser, with each director, officer, employee, consultant, and under which such individuals will have agreed to release the Company from any obligation to pay a "deferral" bonus in respect of any portion of deferred wages or compensation owed by the Company to such individuals.

- (12) **Financing Condition.** The Purchaser shall have satisfied or waived the Financing Condition.
- (13) **Company Financial Position.** The Company shall have cash of at least \$280,000 and net working capital of at least \$110,000 at the Effective Time.

### **Section 6.3 Additional Conditions Precedent to the Obligations of the Company**

The Company is not required to complete the Arrangement unless each of the following conditions is satisfied on or before the Effective Time, which conditions are for the exclusive benefit of the Company and may only be waived, in whole or in part, by the Company in its sole discretion:

- (1) **Representations and Warranties.** The representations and warranties of the Purchaser (including those in Schedule D) which are qualified by references to materiality were true and correct as of the date of this Agreement and are true and correct as of the Effective Time, in all respects, and all other representations and warranties of the Purchaser were true and correct as of the date of this Agreement and are true and correct as of the Effective Time, in all material respects, in each case except for representations and warranties made as of a specified date, the accuracy of which will be determined as of such specified date, and the Purchaser has delivered a certificate confirming same to the Company, executed by two (2) senior officers of the Purchaser (in each case without personal liability) addressed to the Company and dated the Effective Date.
- (2) **Performance of Covenants.** The Purchaser has fulfilled or complied in all material respects with each of the covenants of the Purchaser contained in this Agreement to be fulfilled or complied with by it on or prior to the Effective Time and has delivered a certificate confirming same to the Company, executed by two (2) senior officers of the Purchaser (in each case without personal liability) addressed to the Company and dated the Effective Date.
- (3) **No Legal Action.** There is no action or proceeding pending or threatened by any Person in any jurisdiction that is reasonably likely to:
  - (a) cease trade, enjoin, prohibit, or impose any limitations, damages or conditions on, the Purchaser's ability to acquire, hold, or exercise full rights of ownership over, any Common Shares, including the right to vote the Common Shares;
  - (b) prohibit or restrict the Arrangement, or the ownership or operation by the Purchaser of the business or assets of the Purchaser, the Company, or compel the Purchaser to dispose of or hold separate any material portion of the business or assets of the Purchaser, the Company as a result of the Arrangement; or

- (c) prevent or materially delay the consummation of the Arrangement, or if the Arrangement is consummated, have a Material Adverse Effect with respect to the Purchaser.
- (4) **No Material Adverse Effect.** There will not have occurred or exist a Material Adverse Effect with respect to the Purchaser that has not been publicly disclosed by the Purchaser prior to the date hereof or disclosed to the Company in writing prior to the date hereof, and since the date of this Agreement, there will not have occurred or exist a Material Adverse Effect or any event, occurrence, circumstance or development that would reasonably be expected to have a Material Adverse Effect with respect to the Purchaser and the Company will have received a certificate signed on behalf of the Purchaser by the chief executive officer and chief financial officer (in each case without personal liability) of the Purchaser to such effect.
- (5) **Financing Condition.** The Purchaser shall have satisfied or waived the Financing Condition.

#### **Section 6.4 Satisfaction of Conditions**

The conditions precedent set out in Section 6.1, Section 6.2 and Section 6.3 will be conclusively deemed to have been satisfied, waived or released when the Certificate of Arrangement is issued by the Director.

### **Article 7 TERM AND TERMINATION**

#### **Section 7.1 Term**

This Agreement will be effective from the date hereof until the earlier of the Effective Date and the termination of this Agreement in accordance with its terms (except if and to the extent any provisions are specifically noted herein as surviving the termination of this Agreement).

#### **Section 7.2 Termination**

- (1) This Agreement may be terminated prior to the Effective Time by:
  - (a) the mutual written agreement of the Parties; or
  - (b) either the Company or the Purchaser if:
    - (i) the Required Approval is not obtained at the Company Meeting in accordance with the Interim Order;
    - (ii) the Financing Condition is not satisfied or waived;
    - (iii) after the date of this Agreement, any Law is enacted, made, enforced or amended, as applicable, that makes the consummation of the

Arrangement illegal or otherwise permanently prohibits or enjoins the Company or the Purchaser from consummating the Arrangement, and such Law has, if applicable, become final and non-appealable; or

- (iv) the Effective Time does not occur on or prior to the Outside Date, provided that a Party may not terminate this Agreement pursuant to this Section 7.2(1)(b)(iv) if the failure of the Effective Time to so occur has been caused by, or is a result of, a breach by such Party of any of its representations or warranties or the failure of such Party to perform any of its covenants or agreements under this Agreement; or
- (c) the Company if:
- (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Purchaser under this Agreement occurs that would cause any condition in Section 6.3(1) or Section 6.3(1) not to be satisfied, and such breach or failure is incapable of being cured and provided the Company is not then in breach of this Agreement so as to cause any condition in Section 6.2(1) or Section 6.2(2) not to be satisfied;
  - (ii) prior to the approval by the Company Shareholders of the Arrangement Resolution, the Company Board authorizes the Company to enter into a written agreement (other than a confidentiality and standstill agreement permitted by and in accordance with Section 5.3(4)(a)) with respect to a Company Superior Proposal, provided the Company is then in compliance with Article 5 and that prior to or concurrent with such termination the Company pays the Company Termination Fee in accordance with Section 8.2(1)(c); or
  - (iii) a Material Adverse Effect with respect to the Purchaser or any event, occurrence, circumstance or development that could reasonably be expected to be a Material Adverse Effect with respect to the Purchaser has occurred.
- (d) the Purchaser if:
- (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company under this Agreement occurs that would cause any condition in Section 6.2(2) not to be satisfied, and such breach or failure is incapable of being cured and provided the Purchaser is not then in breach of this Agreement so as to cause any condition in Section 6.3(1) or Section 6.3(1) not to be satisfied;
  - (ii) either (A) the Company Board fails to publicly make a recommendation that the Company Shareholders vote in favour of the Arrangement

Resolution as contemplated in Section 2.4(2) and Section 5.4(4) or the Company or the Company Board withdraws, modifies, qualifies or changes in a manner adverse to the Purchaser its approval or recommendation of the Arrangement (it being understood that publicly taking no position or a neutral position by the Company and/or the Company Board with respect to an Acquisition Proposal for a period exceeding two Business Days after an Acquisition Proposal has been publicly announced will be deemed to constitute such a withdrawal, modification, qualification or change), (B) the Purchaser requests that the Company Board reaffirm its recommendation that the Company Shareholders vote in favour of the Arrangement Resolution and the Company Board will not have done so by the earlier of (x) the second Business Day following receipt of such request and (y) the Company Meeting (each of the foregoing a “**Company Change in Recommendation**”), (C) the Company and/or the Company Board accepts, approves, endorses or recommends any Acquisition Proposal, (D) the Company enters into an Acquisition Agreement in respect of any Acquisition Proposal (other than an confidentiality and standstill agreement permitted by Section 5.3(4)(a)) or (E) the Company or the Company Board publicly proposes or announces its intention to do any of the foregoing;

- (iii) the Company breaches any of its material obligations or material covenants set forth in Article 5;
- (iv) a Material Adverse Effect with respect to the Company or any event, occurrence, circumstance or development that could reasonably be expected to be a Material Adverse Effect with respect to the Company has occurred;
- (v) the Company delivers written notice as contemplated in Section 5.4(1)(c);
- (vi) the Company Meeting has not occurred on or by the Outside Date and the delay is caused principally by the fault or bad faith of the Company; or
- (vii) the Company Board proposes to approve and authorize, or approves and authorizes the Company to enter into, a definitive agreement providing for the implementation of a Superior Proposal prior to the Company Meeting in accordance with Section 5.4.

(2) The Party desiring to terminate this Agreement pursuant to this Section 7.2 (other than Section 7.2(1)(a)) will give notice of such termination to the other Party, specifying in reasonable detail the basis for such Party's exercise of its termination right.



### **Section 7.3 Effect of Termination/Survival**

- (1) If this Agreement is terminated pursuant to Section 7.2, this Agreement will become void and of no further force or effect without liability of any Party (or any shareholder, director, officer, employee, agent, consultant or representative of such Party) to any other Party to this Agreement, except that this Section 7.3 and Section 8.2 through to and including Section 8.14, and all related definitions set forth in Section 1.1 and the provisions of the Confidentiality Agreement will survive any such termination of this Agreement, and provided further that no Party will be relieved of any liability for any wilful breach by it of this Agreement.
- (2) As used in this Section 7.3, “wilful breach” means a breach that is a consequence of an act undertaken by the breaching party with the actual knowledge that the taking of such act would, or would be reasonably expected to, cause a breach of this Agreement.

## **Article 8 GENERAL PROVISIONS**

### **Section 8.1 Amendments**

This Agreement and the Plan of Arrangement may, at any time and from time to time before or after the holding of the Company Meeting but not later than the Effective Time, be amended by mutual written agreement of the Parties, without further notice to or authorization on the part of the Company Shareholders and any such amendment may, without limitation:

- (1) change the time for performance of any of the obligations or acts of the Parties;
- (2) modify any representation or warranty contained in this Agreement or in any document delivered pursuant to this Agreement;
- (3) modify any of the covenants contained in this Agreement and waive or modify performance of any of the obligations of the Parties; and/or
- (4) modify any mutual conditions contained in this Agreement;

provided that such amendment does not: (i) invalidate any required approval of the Arrangement by the Company Shareholders; or (ii) after the holding of the Company Meeting, result in an adverse change in the quantum or form of consideration payable to Company Shareholders pursuant to the Arrangement.

### **Section 8.2 Termination Fees**

- (1) For the purposes of this Agreement,
  - (a) “**Company Termination Fee**” means \$250,000.
  - (b) “**Company Termination Fee Event**” means the termination of this Agreement:

- (i) by the Purchaser, pursuant to Section 7.2(1)(d)(ii), Section 7.2(1)(d)(iii) or Section 7.2(1)(d)(v);
  - (ii) by the Company, pursuant to Section 7.2(1)(c)(ii);
  - (iii) by the Purchaser, pursuant to Section 7.2(1)(d)(i), Section 7.2(1)(d)(vi) or Section 7.2(1)(d)(vii) and the Company will have (x) completed any Acquisition Proposal within twelve months after this Agreement is terminated or (y) entered into an Acquisition Agreement in respect of any Acquisition Proposal or the Company Board will have recommended any Acquisition Proposal, in each case, within twelve months after this Agreement is terminated, which Acquisition Proposal in either case, as it may be modified or amended, is subsequently completed (whether before or after the expiry of such twelve month period);
  - (iv) by the Company or the Purchaser pursuant to Section 7.2(1)(b)(i) or Section 7.2(1)(b)(iii) if:
    - (A) prior to such termination, an Acquisition Proposal for the Company is made or publicly announced by any Person other than the Purchaser or any of its Affiliates and not withdrawn; and
    - (B) within 12 months following the date of such termination, (x) such Acquisition Proposal for the Company referred to in clause (A) above is consummated, or (y) the Company, directly or indirectly, in one or more transactions, enters into an Acquisition Agreement in respect of a Acquisition Proposal (whether or not such Acquisition Proposal is the same as the original Acquisition Proposal), provided that the purposes of the foregoing, the term "Acquisition Proposal" will have the meaning specified in Section 1.1, except that references to "20% or more" in the definition of "Acquisition Proposal" in Section 1.1 will be deemed to be references to "50% or more";
  - (v) by the Company or the Purchaser pursuant to Section 7.2(1)(b)(iii) if at such time the Purchaser was permitted to terminate this Agreement pursuant to Section 7.2(1)(d);
- (c) **"Purchaser Termination Fee"** means \$250,000.
- (2) The Company Termination Fee will be paid by the Company to the Purchaser as follows, by wire transfer of immediately available funds, if a Company Termination Fee Event occurs due to:

- (a) a termination of this Agreement described in Section 8.2(1)(b)(i), within three (3) Business Days of the occurrence of such Company Termination Fee Event;
- (b) a termination of this Agreement described in Section 8.2(1)(b)(ii), prior to or simultaneously with the occurrence of such Company Termination Fee Event; and
- (c) a termination of this Agreement described in Section 8.2(1)(b)(iii) or Section 8.2(1)(b)(iv), on or prior to the earlier of the consummation of the Acquisition Proposal for the Company or the entering into of an Acquisition Agreement.

If the Company does not have sufficient financial resources to pay the Company Termination Fee, then it will be a condition of (i) any Superior Proposal where the Company has entered into any agreement to support such share acquisition or to transfer such assets, as applicable, that the person making such Superior Proposal or acquisition, as applicable, will advance or otherwise provide to the Company the cash required for the Company to pay the Company Termination Fee, which amount will be so advanced or provided prior to the date on which the Company is required to pay the Company Termination Fee.

- (3) In the event that this Agreement is terminated by the Company pursuant to a breach by the Purchaser of any of its obligations under Section 5.6, the Purchaser shall forthwith pay to the Company the Purchaser Termination Fee by wire transfer of immediately available funds.
- (4) The Company and the Purchaser acknowledge that the agreements contained in this Section 8.2 are an integral part of the transactions contemplated by this Agreement, and that without these agreements, neither the Purchaser nor the Company would enter into this Agreement, and that the amounts set out in this Section 8.2 represent liquidated damages which are a genuine pre-estimate of the damages, including opportunity costs, which the Purchaser or the Company will suffer or incur as a result of the event giving rise to such damages and resultant termination of this Agreement, and are not penalties. The Company and the Purchaser irrevocably waive any right they may have to raise as a defence that any such liquidated damages are excessive or punitive. For greater certainty, each Party agrees that, upon any termination of this Agreement under circumstances where the Purchaser is entitled to the Company Termination Fee or the Company is entitled to the Purchaser Termination Fee and such applicable termination fee is paid in full, the Purchaser or the Company, as the case may be, will be precluded from any other remedy against the other Party at Law or in equity or otherwise (including, without limitation, an order for specific performance), and will not seek to obtain any recovery, judgment, or damages of any kind, including consequential, indirect, or punitive damages, against the other Party or any of their respective directors, officers, employees, partners, managers, members, shareholders or Affiliates or their respective representatives in connection with this Agreement or the transactions contemplated hereby.

### **Section 8.3 Expenses and Expense Reimbursement**

- (1) All out-of-pocket third-party transaction expenses incurred in connection with this Agreement and the Plan of Arrangement, including all costs, expenses and fees incurred prior to or after the Effective Date in connection with, or incidental to, the Plan of Arrangement, will be paid by the Party incurring such expenses, whether or not the Arrangement is consummated.

### **Section 8.4 Notices.**

Any notice, or other communication given regarding the matters contemplated by this Agreement (must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:

- (a) to the Purchaser at:

DGTL Holdings Inc.  
510- 580 Hornby Street  
Vancouver, British Columbia  
V6C 3B6

Attention: Michael Racic, CEO  
Telephone: (516) 672-9496  
Email: mike@dgtlinc.com

with a copy to:

Garfinkle Biderman LLP  
Dynamic Funds Tower  
1 Adelaide Street East, Suite 801  
Toronto, Ontario M5C 2V9

Attention: Grant Duthie  
Email: gduthie@garfinkle.com

- (b) to the Company at:

Engagement Labs Inc.  
PO Box 89001, CP 1 BP  
L'Île-Bizard, Quebec H9C 2Z3  
Attention: Gilbert Boyer  
Telephone: (514) 317-6448 ext. 109  
Email: gilbert.boyer@engagementlabs.com

with a copy to:

Spiegel Securities & Corporate Law  
1920 Yonge Street, Suite 300

Toronto, Ontario M4S 3E2

Attention: Robert N. Spiegel  
Telephone: (416) 366-5494  
Email: robert@spiegellaw.ca

Any notice or other communication is deemed to be given and received (i) if sent by personal delivery or same day courier, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by overnight courier, on the next Business Day, (iii) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile; or (iv) if sent by email, on the date of sending if it is a Business Day and the email was sent prior to 4:00 p.m. (Toronto time) and otherwise on the next Business Day. Each Party may change its address for service from time to time by providing a notice in accordance with the foregoing. Any subsequent notice or other communication must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a notice will be assumed not to be changed. Sending a copy of a notice or other communication to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the notice or other communication to that Party. The failure to send a copy of a notice or other communication to legal counsel does not invalidate delivery of that notice or other communication to a Party.

#### **Section 8.5 Time of the Essence.**

Time is of the essence in this Agreement.

#### **Section 8.6 Injunctive Relief.**

The Parties agree that irreparable harm would occur for which money damages would not be an adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties will be entitled to injunctive and other equitable relief to prevent breaches of this Agreement, and to enforce compliance with the terms of this Agreement, this being in addition to any other remedy to which the Parties may be entitled at law or in equity.

#### **Section 8.7 Third Party Beneficiaries.**

- (1) Except as provided in Section 4.7 which, without limiting its terms, is intended as stipulations for the benefit of the third Persons mentioned in such provisions (such third Persons referred to in this Section 8.7 as the "**Indemnified Persons**") and except for the rights of the Company Shareholders to receive the Consideration Shares at the Effective Time pursuant to the Arrangement (for which purpose the Company hereby confirms that it is acting as agent on behalf of the Company Shareholders), the Company and the Purchaser intend that this Agreement will not benefit or create any right or cause of action in favour of any Person, other than the Parties and that no Person, other than the Parties, will be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

- (2) Despite the foregoing, the Purchaser acknowledges to each of the Indemnified Persons their direct rights against it under Section 4.7 of this Agreement, which is intended for the benefit of, and will be enforceable by, each Indemnified Person, his or her heirs and his or her legal representatives, and for such purpose, the Company confirms that it is acting as trustee on their behalf, and agrees to enforce such provisions on their behalf.

#### **Section 8.8 Waiver.**

No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

#### **Section 8.9 Entire Agreement.**

This Agreement, together with the Confidentiality Agreement, constitutes the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The Parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

#### **Section 8.10 Successors and Assigns.**

- (1) This Agreement becomes effective only when executed by the Company and the Purchaser. After that time, it will be binding upon and enure to the benefit of the Company, the Purchaser and their respective successors and permitted assigns.
- (2) Neither this Agreement nor any of the rights or obligations under this Agreement are assignable or transferable by any Party without the prior written consent of the other Party.

#### **Section 8.11 Severability.**

If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

**Section 8.12 Governing Law.**

- (1) This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- (2) Each Party irrevocably attorns and submits to the exclusive jurisdiction of the Ontario courts situated in the City of Toronto and waives objection to the venue of any proceeding in such court or that such court provides an inconvenient forum.

**Section 8.13 Rules of Construction.**

The Parties to this Agreement waive the application of any Law or rule of construction providing that ambiguities in any agreement or other document will be construed against the party drafting such agreement or other document.

**Section 8.14 Language.**

The Parties expressly acknowledge that they have requested that this Agreement and all ancillary and related documents thereto be drafted in the English language only. Les parties aux présentes reconnaissent avoir exigé que la présente entente et tous les documents qui y sont accessoires soient rédigés en anglais seulement.

**Section 8.15 Counterparts.**

This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together will be deemed to constitute one and the same instrument. The Parties will be entitled to rely upon delivery of an executed facsimile or similar executed electronic copy of this Agreement, and such facsimile or similar executed electronic copy will be legally effective to create a valid and binding agreement between the Parties.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF** the Parties have executed this Arrangement Agreement.

**DGTL HOLDINGS INC.**

By: “Michael Racic”  
Authorized Signing Officer

**ENGAGEMENT LABS INC.**

By: “Ed Keller”  
Authorized Signing Officer



**SCHEDULE A**  
**PLAN OF ARRANGEMENT**  
  
**UNDER SECTION 192**  
**OF THE *CANADA BUSINESS CORPORATIONS ACT***

**ARTICLE 1**  
**INTERPRETATION**

**1.1 Definitions.**

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

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

**“Arrangement Agreement”** means the agreement made as of the date hereof between the Purchaser and the Company, including all schedules annexed thereto, together with the Company Disclosure Letter, as each may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

**“Arrangement Resolution”** means the special resolution of the Company Shareholders approving the Arrangement, which is to be considered at the Company Meeting and will be in substantially the form of Schedule B to the Arrangement Agreement.

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

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

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

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

**“Common Shares”** means the common shares in the capital of the Company.

**“Company”** means Engagement Labs Inc.

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

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

**“Company Shareholders”** means the registered or beneficial holders of the Common Shares, as the context requires, and **“Company Shareholder”** means any one of them.

**“Consideration”** means 5,320,000 Consideration Shares PLUS the number of Common Shares issued upon the exercise of any Company Options or Company RSAs prior to the Effective Date multiplied by the Exchange Ratio, MINUS that number of Consideration Shares equal to the number of Dissenting Shares multiplied by the Exchange Ratio, which will be issued on a pro rata basis to all Company Shareholders other than Dissenters, pursuant to the Plan of Arrangement, in exchange for all of the Common Shares other than Dissenting Shares that are issued and outstanding at the Effective Time.

**“Court”** means the Ontario Superior Court of Justice (Commercial List).

**“Depository”** means Computershare Investor Services Inc., or any other depository or trust company, bank or financial institution agreed to between the Purchaser and the Company for the purpose of, among other things, exchanging certificates representing Common Shares for Purchaser Shares in connection with the Arrangement.

**“Director”** shall have the meaning ascribed to such term in the CBCA.

**“Dissent Rights”** means the rights of dissent exercisable by the Company Shareholders in respect of the Arrangement described in Article 3 hereto.

**“Dissenter”** means a Company Shareholder who has duly exercised a Dissent Right and who is ultimately entitled to be paid the fair value of the Common Shares held by such Company Shareholder.

**“Dissenting Shares”** has the meaning ascribed thereto in Section 3.1.

**“Effective Date”** means the date shown on the Certificate of Arrangement.

**“Effective Time”** means the time (Toronto time) on the Effective Date, at which a Certificate of Arrangement is issued by Corporations Canada or such other time as the Parties agree to in writing before the Effective Date.

**“Exchange Ratio”** means 5,320,000 Purchaser Shares divided by the number of Common Shares outstanding immediately prior to the Effective Time.

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

**“Governmental Entity”** means (i) any international, multinational, national, federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau, ministry, agency or instrumentality, domestic or foreign, (ii) any subdivision, agent or authority of any of the above, (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, (iv) any Securities Authority, or (v) any stock exchange.

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

**“Lien”** means any mortgage, charge, pledge, hypothec, security interest, prior claim, encroachments, option, right of first refusal or first offer, occupancy right, covenant, assignment, lien (statutory or otherwise), defect of title, or restriction or adverse right or claim, or other third-party interest or encumbrance of any kind, in each case, whether contingent or absolute.

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

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

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

**“Purchaser”** means DGTL Holdings Inc.

**“Purchaser Shares”** means the common shares in the capital of the Purchaser.

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

## **1.2 Certain Rules of Interpretation.**

In this Agreement, unless otherwise specified:

- (1) **Headings, etc.** The division of this Plan of Arrangement into Articles and Sections and the insertion of headings are for convenient reference only and do not affect the construction or interpretation of this Plan of Arrangement.
- (2) **Currency.** Unless otherwise stated, all references to dollars or to \$ are references to Canadian dollars.
- (3) **Gender and Number.** Any reference to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) **Certain Phrases, etc.** The words (i) **“including”, “includes” and “include”** mean **“including (or includes or include) without limitation,”** (ii) **“the aggregate of”, “the total of”, “the sum of”,** or a phrase of similar meaning means **“the aggregate (or total or sum), without duplication, of,”** and (iii) unless stated otherwise, **“Article”, “Section”, and “Schedule”** followed by a number or letter mean and refer to the specified Article or Section of or Schedule to this Plan of Arrangement.
- (5) **Statutes.** Any reference to a statute refers to such statute and all rules and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.
- (6) **Computation of Time.** A period of time is to be computed as beginning on the day following the event that began the period and ending at 9:00 p.m. on the last day of the period, if the last day of the period is a Business Day, or at 9:00 p.m. on the next Business Day if the last day of the period is not a Business Day. If the date on which any action is required or permitted to be taken under this Plan of Arrangement by a Person is not a Business Day, such action will be required or permitted to be taken on the next succeeding day which is a Business Day.
- (7) **Time References.** References to time are to local time, Toronto, Ontario.

## **ARTICLE 2 THE ARRANGEMENT**

### **2.1 Arrangement Agreement.**

This Plan of Arrangement is made pursuant to and subject to the provisions of the Arrangement Agreement.

## **2.2 Binding Effect.**

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Purchaser, the Company, all holders and beneficial owners of Common Shares (including Dissenters) and the Depositary at and after the Effective Time without any further act or formality required on the part of any Person.

## **2.3 Arrangement.**

At the Effective Time the following will occur and will be deemed to occur sequentially as set out below without any further authorization, act or formality, in each case effective as at five-minute intervals starting at the Effective Time:

- (a) each issued Common Share outstanding immediately prior to the Effective Time held by a Company Shareholder in respect of which Dissent Rights have been validly exercised will be deemed to have been transferred without any further act or formality, to the Purchaser, free and clear of any Liens, in consideration for a debt claim against the Purchaser in an amount and payable in accordance with Article 3, and:
  - (i) such Company Shareholder will cease to be the holder of such Dissenting Shares and will cease to have any rights as holder of such Common Shares other than the right to be paid fair value for such Dissenting Shares as set out in Section 3.1(a);
  - (ii) such Company Shareholder's name will be removed as the registered holder of such Dissenting Shares from the registers of Common Shares maintained by or on behalf of the Company; and
  - (iii) the Purchaser will be deemed to be the transferee of such Dissenting Shares, free and clear of any Liens.
- (b) immediately thereafter, each issued and outstanding Common Share (other than any Common Share in respect of which a Company Shareholder has validly exercised its Dissent Right) will be transferred to, and acquired by the Purchaser, without any act or formality on the part of the holder of such Common Share or the Purchaser, free and clear of all Liens, in exchange for such number of Purchaser Shares equal to the Exchange Ratio, provided that the aggregate number of Purchaser Shares payable to any Company Shareholder, if calculated to include a fraction of a Purchaser Share, will be rounded down to the nearest whole Purchaser Share, with no consideration being paid for the fractional share, and the name of each such Company Shareholder will be removed from the register of holders of Common Shares and added to the register of holders of Purchaser Shares, and the Purchaser will be recorded as the registered holder of such Common Shares so exchanged and will be deemed to be the legal and beneficial owner thereof.

## **ARTICLE 3 RIGHTS OF DISSENT**

### **3.1 Rights of Dissent.**

Pursuant to the Interim Order, holders of Common Shares may exercise dissent rights (“**Dissent Rights**”) in connection with the Arrangement pursuant to and in the manner set forth in Section 190 of the CBCA, as modified by the Interim Order and this Section 3.1, provided however that written objection to the Arrangement Resolution must be received by the Company not later than 5:00 p.m. (Toronto time) on the Business Day that is two Business Days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Dissenters who duly exercise their Dissent Rights with respect to their Common Shares (“**Dissenting Shares**”) will be deemed to have transferred the Common Shares held by them and in respect of which Dissent Rights have been validly exercised to the Purchaser free and clear of all Liens, and if they:

- (a) ultimately are entitled to be paid fair value for their Dissenting Shares, will be entitled to be paid the fair value of such Dissenting Shares, and will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holders not exercised their Dissent Rights in respect of such Dissenting Shares; or
- (b) ultimately are not entitled, for any reason, to be paid fair value for such Dissenting Shares will be deemed to have participated in the Arrangement on the same basis as a non-dissenting holder of Common Shares;

but in no case will the Company be required to recognize such persons as holding Common Shares on or after the Effective Date.

### **3.2 Recognition of Dissenting Holders.**

If a Company Shareholder exercises the Dissent Right, the Purchaser will, on the Effective Date, set aside a number of Purchaser Shares which is attributable under the Arrangement to the Common Shares for which Dissent Rights have been exercised. If the Dissenter is ultimately not entitled to be paid fair value for their Dissenting Shares, they will be deemed to have participated in the Arrangement on the same basis as the non-dissenting Company Shareholder and the Purchaser will distribute to such Company Shareholder the Purchaser Shares that the Company Shareholder is entitled to receive pursuant to the terms of the Arrangement. If Company Shareholder duly complies with the procedures in connection with the exercise of Dissent Rights and is ultimately entitled to be paid fair value for their Dissenting Shares, the Purchaser will pay the amount to be paid in respect of the Dissenting Shares.

## **ARTICLE 4**

### **CERTIFICATES AND PAYMENTS**

#### **4.1 Depositary and Procedures.**

- (a) The Purchaser will deposit the Purchaser Shares with the Depositary to satisfy the consideration issuable and/or payable to the Company Shareholders pursuant to this Plan of Arrangement (other than Company Shareholders validly exercising Dissent Rights and who have not withdrawn their notice of objection).
- (b) After the Effective Date, certificates formerly representing Common Shares which are held by a Company Shareholder will, except for Common Shares held by Dissenters, represent only the right to receive the Consideration issuable and/or payable therefor pursuant to Section 2.3 in accordance with the terms of this Plan of Arrangement.
- (c) No dividends or other distributions declared or made after the Effective Date with respect to the Purchaser Shares with a record date after the Effective Date will be payable or paid to the holder of any unsurrendered certificate or certificates for Common Shares which, immediately prior to the Effective Date, represented outstanding Common Shares and will not be payable or paid until the surrender of certificates for Common Shares for exchange for the Consideration issuable and/or payable therefor pursuant to Section 2.3 in accordance with the terms of this Plan of Arrangement.
- (d) As soon as reasonably practicable after the Effective Date, the Depositary will forward to each Company Shareholder that submitted a duly completed Letter of Transmittal Letter to the Depositary, together with the certificate (if any) representing the Common Shares held by such Company Shareholder, the certificates representing the Purchaser Shares issued to such Company Shareholder pursuant to Section 2.3(b), which shares will be registered in such name or names and either (i) delivered to the address or addresses as such Company Shareholder directed in their Letter of Transmittal Letter or (ii) made available for pick up at the offices of the Depositary in accordance with the instructions of the Company Shareholder in the Letter of Transmittal.
- (e) Company Shareholders that did not submit an effective Letter of Transmittal prior to the Effective Date may take delivery of the Consideration issuable or payable to them by delivering the certificates representing Common Shares formerly held by them to the Depositary at the offices indicated in the Letter of Transmittal. Such certificates must be accompanied by a duly completed Letter of Transmittal, together with such other documents as the Depositary may require. Certificates representing the Purchaser issued to such Company Shareholder pursuant to Section 2.3 will be registered in such name or names and delivered to the address or addresses as such Company Shareholder directed in their Letter of Transmittal or (ii) made available for pick up at the offices of the Depositary in accordance with the instructions of the Company Shareholder in the Letter of Transmittal, as soon as reasonably practicable after receipt by the Depositary of the required certificates and documents.

- (f) Any certificate which immediately prior to the Effective Date represented outstanding Common Shares and which has not been surrendered, with all other instruments required by this Article 4, on or prior to the sixth anniversary of the Effective Date, will cease to represent any claim against or interest of any kind or nature in the Company, the Purchaser or the Depositary.
- (g) In the event any certificate, which immediately before the Effective Time represented one or more outstanding Common Shares that was exchanged pursuant to Section 2.3, is lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such certificate to be lost, stolen or destroyed, the Depositary will issue in exchange for such lost, stolen or destroyed certificate, the consideration to which such Person is entitled in respect of the Common Shares represented by such lost, stolen, or destroyed certificate pursuant to Section 2.3 deliverable in accordance with such Person's Letter of Transmittal. When authorizing such issuances or payment in exchange for any lost, stolen or destroyed certificate, the Person to whom consideration is to be issued and/or paid will, as a condition precedent to the issuance and/or payment thereof, give a bond satisfactory to the Purchaser and its transfer agent in such sum as the Purchaser may direct or otherwise indemnify the Purchaser in a manner satisfactory to it, against any claim that may be made against one or both of them with respect to the certificate alleged to have been lost, stolen or destroyed.

#### **4.2 No Liens.**

Any exchange or transfer of securities pursuant to this Plan of Arrangement will be free and clear of any Liens or other claims of third parties of any kind.

#### **4.3 Withholding Rights.**

The Purchaser, the Company and the Depositary, as applicable, will be entitled to deduct and withhold from any consideration otherwise payable or otherwise deliverable to any Company Securityholders under the Plan of Arrangement such amounts as the Purchaser, the Company or the Depositary, as applicable, are required or reasonably believe to be necessary to deduct and withhold from such consideration in order to meet a remittance requirement under any provision of any Laws in respect of Taxes. Any such amounts will be deducted, withheld and remitted from the consideration payable pursuant to the Plan of Arrangement and will be treated for all purposes under this Agreement as having been paid to the Company Securityholders in respect of which such deduction, withholding and remittance was made; provided that such deducted and withheld amounts are actually remitted to the appropriate Governmental Entity.

#### **4.4 Paramountcy.**

From and after the Effective Time: (a) this Plan of Arrangement will take precedence and priority over any and all Common Shares issued prior to the Effective Time, (b) the rights and obligations of the Company Securityholders, the Company, the Purchaser, the Depositary and any transfer agent or other depositary therefor in relation thereto, will be solely as provided for in this Plan of Arrangement, and (c) all actions, causes of action, claims or proceedings (actual



or contingent and whether or not previously asserted) based on or in any way relating to any Common Shares will be deemed to have been settled, compromised, released and determined without liability except as set forth in this Plan of Arrangement.

## **ARTICLE 5 AMENDMENTS**

### **5.1 Amendments to Plan of Arrangement.**

- (a) The Company may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must (i) be set out in writing, (ii) be approved by the Purchaser, (iii) filed with the Court and, if made following the Company Meeting, approved by the Court, and (iv) communicated to the Company Securityholders if and as required by the Court.
- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by the Company at any time prior to the Company Meeting (provided that the Purchaser will have consented thereto) with or without any other prior notice or communication, and if so proposed and accepted by the Persons voting at the Company Meeting (other than as may be required under the Interim Order), will become part of this Plan of Arrangement for all purposes.
- (c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting will be effective only if (i) it is consented to in writing by each of the Company and the Purchaser (in each case, acting reasonably), and (ii) if required by the Court, it is consented to by some or all of the Company Shareholders voting in the manner directed by the Court.
- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by the Purchaser, provided that it concerns a matter which, in the reasonable opinion of the Purchaser, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not materially adverse to the financial or economic interest of the Company Shareholders.

## **ARTICLE 6 FURTHER ASSURANCES**

### **6.1 Further Assurances.**

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



**SCHEDULE B**  
**ARRANGEMENT RESOLUTION**

BE IT RESOLVED THAT:

1. The arrangement (the “**Arrangement**”) under Section 192 of the *Canada Business Corporations Act* (the “**CBCA**”) involving Engagement Labs Inc. (the “**Company**”) and DGTL Holdings Inc. (the “**Purchaser**”), as more particularly described and set forth in the management information circular (the “**Circular**”) dated □ of the Company accompanying the notice of this meeting (as the Arrangement may be amended, modified or supplemented in accordance with its terms) is hereby authorized, approved and adopted.
2. The plan of arrangement of the Company (as it has been or may be amended, modified or supplemented (the “**Plan of Arrangement**”), the full text of which is set out in Schedule □ to the Circular, is hereby authorized, approved and adopted.
3. The arrangement agreement (the “**Arrangement Agreement**”) between the Company and the Purchaser dated □, 2021, and all the related transactions contemplated therein, the actions of the directors of the Company in approving the Arrangement Agreement, and the actions of the directors and officers of the Company in executing and delivering the Arrangement Agreement, and any amendments, modifications or supplements thereto, are hereby ratified and approved.
4. The Company be and is hereby authorized to apply for a final order from the Ontario Superior Court to approve the Arrangement on the terms set forth in the Arrangement Agreement and the Plan of Arrangement (as they may be amended, modified or supplemented and as described in the Circular).
5. Notwithstanding that this resolution has been passed (and the Arrangement adopted) by the shareholders of the Company or that the Arrangement has been approved by the Ontario Superior Court, the directors of the Company are hereby authorized and empowered to, without notice to or approval of the shareholders of the Company, (i) amend, modify or supplement the Arrangement Agreement or the Plan of Arrangement to the extent permitted by the Arrangement Agreement and (ii) subject to the terms of the Arrangement Agreement, not to proceed with the Arrangement and related transactions.
6. Any one officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute, whether under the corporate seal or otherwise, and deliver for filing with the Director under the CBCA articles of arrangement and such other documents as are necessary or desirable to give effect to the Arrangement in accordance with the Arrangement Agreement, such determination to be conclusively evidenced by the execution and delivery of such articles of arrangement and any such other documents.
7. Any one officer or director of the Company is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed, whether under the

corporate seal or otherwise, and to deliver or cause to be delivered all such other documents and instruments and to perform or cause to be performed all such other acts and things as such person determines may be necessary or desirable to give full effect to the foregoing resolution and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of such document or instrument or the doing of any such act or thing.

## SCHEDULE C

### REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the correspondingly numbered paragraph of the Company Disclosure Letter, the Company hereby represents and warrants to the Purchaser as follows, and acknowledges and agrees that the Purchaser is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (1) **Organization and Qualification.** The Company is a corporation duly incorporated and validly existing under the federal Law of Canada and has the corporate power and authority to own, operate and lease its assets and to conduct its business as presently conducted. The Company is duly qualified, licensed or registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or otherwise held, or the nature of its activities makes such qualification necessary, and has all Authorizations required to own, lease and operate its properties and to carry on its business as now conducted. True and complete copies of the Constatting Documents of the Company have been disclosed in the Company Data Room and no action has been taken to amend or supersede such documents.
- (2) **Corporate Authorization.** The Company has the requisite corporate power and authority to enter into and perform its obligations under this Agreement. The execution and delivery and performance by the Company of this Agreement and the consummation of the Arrangement have been duly authorized by the Company Board and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or the consummation of the Arrangement other than approval by the Company Board of the Company Circular, approval by the Company Shareholders of the Arrangement Resolution in the manner required by the Interim Order and Law and receipt by the Company of the Final Order.
- (3) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by the Company, and constitutes a legal, valid and binding agreement of the Company enforceable against it in accordance with its terms subject only to any limitation under bankruptcy, insolvency or other Law affecting the enforcement of creditors' rights generally and the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (4) **Governmental Authorization.** The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Arrangement does not require any Authorization or other action by or in respect of, or filing, recording, registering or publication with, or notification to, any Governmental Entity other than (i) the Interim Order and any approvals required by the Interim Order; (ii) the Final Order; (iii) filings with the Director under the OBCA; and (iv) compliance with Securities Law and stock exchange rules and policies.
- (5) **No Conflict/Non-Contravention.** The execution, delivery and performance by the Company of this Agreement and the consummation of the Arrangement do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition): (i) contravene, conflict with, or result in any violation or breach of the Constatting Documents of the Company or the Company Subsidiaries; (ii) contravene, conflict with or result in a violation or breach of Law; (iii) allow any Person to exercise any rights, require

any consent or other action by any Person, or constitute a default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Company is entitled (including by triggering any rights of first refusal or first offer, change in control provision or other restriction or limitation) under any Contract or other instrument indenture, deed of trust, mortgage, bond or any Authorization to which the Company is a party of by which the is bound; or (iv) result in the creation or imposition of any Lien upon any of the Company's assets.

(6) **Capitalization.**

- (a) The authorized capital of the Company consists of an unlimited number of Common Shares. As of the date of this Agreement, 46,818,652 Common Shares are issued and outstanding. All outstanding Common Shares have been duly authorized and validly issued and are fully paid and non-assessable. All of the Common Shares issuable upon the exercise of outstanding Company Options and Company RSAs have been duly authorized and, upon issuance in accordance with their respective terms, will be validly issued as fully paid and non-assessable and are not and will not be subject to or issued in violation of, any pre-emptive rights. No Common Shares have been issued in violation of any Law.
- (b) As of date of this Agreement, there are 4,058,230 Company Options outstanding. Section (6) of the Company Disclosure Letter sets forth, in respect of each Company Option outstanding as of the date of this Agreement: (i) the number of Common Shares issuable upon exercise; (ii) the purchase price payable; (iii) the date of grant; (iv) the date of expiry; (v) the name of the registered holder; and identifying whether such holder is not an employee of the Company; and (vi) the extent to which such Company Options are vested and are exercisable, identifying whether such vesting or exercise may be accelerated as a result, either alone or together with another event or occurrence, of the Arrangement. The Company Option Plan and the issuance of Common Shares thereunder (including all outstanding Company Options) have been duly authorized by the Company Board in compliance with Law and the terms of the Company Option Plan, and the grants of the outstanding Company Options have been made in accordance with Law. All Common Shares that may be issued pursuant to the exercise of outstanding Company Options will, when issued in accordance with their respective terms, be duly authorized, validly issued, fully-paid and non-assessable and are not and will not be subject to or issued in violation of, any pre-emptive rights.
- (c) As of date of this Agreement, there are 887,768 Company RSAs outstanding. Section (6) of the Company Disclosure Letter sets forth, in respect of each Company RSA outstanding as of the date of this Agreement: (i) the number of Common Shares issuable upon exercise; (ii) the purchase price payable; (iii) the date of grant; (iv) the date of expiry; (v) the name of the registered holder; and identifying whether such holder is not an employee of the Company; and (vi) the extent to which such Company RSAs are vested and are exercisable, identifying whether such vesting or exercise may be accelerated as a result, either alone or together with another event or occurrence, of the Arrangement. The Company Restricted Share Award Plan and the issuance of Common Shares thereunder (including all outstanding Company RSAs) have been

duly authorized by the Company Board in compliance with Law and the terms of the Company Restricted Share Award Plan, and the grants of the outstanding Company RSAs have been made in accordance with Law. All Common Shares that may be issued pursuant to the exercise of outstanding Company RSAs will, when issued in accordance with their respective terms, be duly authorized, validly issued, fully-paid and non-assessable and are not and will not be subject to or issued in violation of, any pre-emptive rights.

- (d) As of date of this Agreement, there are no Company RSUs outstanding.
  - (e) As of date of this Agreement, there are no Company Warrants outstanding.
  - (f) Except for outstanding Company Options, and Company RSAs, there are no issued, outstanding or authorized options, warrants, calls, conversion, pre-emptive, redemption, repurchase, stock appreciation or other rights, or any other agreements, arrangements, instruments or commitments of any kind that obligate the Company to, directly or indirectly, issue or sell any securities of the Company, or give any Person a right to subscribe for or acquire from the Company, any securities of the Company.
  - (g) There are no issued, outstanding or authorized:
    - i. obligations of the Company to repurchase, redeem or otherwise acquire any securities of the Company, or qualify securities for public distribution in Canada or elsewhere, or with respect to the voting or disposition of any securities of the Company; or
    - ii. (ii) notes, bonds, debentures or other evidence of indebtedness or any other agreements, arrangements, instruments or commitments of any kind that give any Person, directly or indirectly, the right to vote with holders of Common Shares on any matter.
  - (h) The Company has not declared or paid any dividends or distributions on its Common Shares in the past five years.
- (7) **Third Party Consents.** No consent, waiver or approval from other parties to the Company Material Contracts is: (i) required to be obtained by the Company or the Company Subsidiaries in connection with the execution, delivery and performance by the Company of this Agreement or the consummation of the Arrangement; or (ii) required in order to maintain the Company Material Contracts in full force and effect immediately upon the consummation of the Arrangement.
- (8) **Shareholders' and Similar Agreements.** The Company and the Company Subsidiaries are not party to any shareholder, pooling, voting, or other similar arrangement or agreement relating to the ownership or voting of any of the securities of the Company, the Company Subsidiaries, or pursuant to which any Person may have any right or claim in connection with any existing or past equity interest in the Company or the Company Subsidiaries, and the Company and the Company Subsidiaries have not adopted a shareholder rights plan or any other similar plan or agreement.

(9) **Subsidiaries.**

- (a) The Company has no Subsidiaries except for those set forth in Section (9) of the Company Disclosure Letter (collectively, the “**Company Subsidiaries**”).
- (b) All of the outstanding shares in the capital of the Company Subsidiaries are owned directly or indirectly by the Company and are: (A) validly issued and fully-paid and all such shares are owned free and clear of all Liens of any kind or nature whatsoever; and (B) free of any other restrictions including any restriction on the right to vote, sell or otherwise dispose of shares, and no person has any right for the purchase of any interest in such shares or for the issue or allotment of any unissued shares or other securities of the Company Subsidiaries.
- (c) The Company Subsidiaries are duly incorporated, validly existing and in good standing under the respective Laws of their jurisdiction of its incorporation and have full corporate power and authority to own, lease and operate their respective assets and conduct their respective business as now owned, leased, operated and conducted.
- (d) The Company Subsidiaries are duly qualified to carry on business and are in good standing in each jurisdiction in which the character of its properties or the nature of its activities makes such qualification necessary. True and complete copies of the constating documents of the Company Subsidiaries have been delivered or made available to the Purchaser, and neither the Company nor any of its Subsidiaries has taken any action to amend or supersede such documents.
- (e) Neither the Company nor the Company Subsidiaries owns more than 5% of the issued and outstanding (on a fully diluted basis) any capital stock, or other equity interests in any person.

(10) **Securities Law Matters.**

- (a) The Company is a “reporting issuer” not in default in the provinces of British Columbia, Alberta, Manitoba, Ontario and Quebec. The Common Shares are listed and posted for trading on the TSXV. The Company is not in breach of Securities Laws or the rules or regulations of the TSXV.
- (b) The Company has not taken any action to cease to be a reporting issuer in any province or territory nor has the Company received notification from any Securities Authority seeking to revoke the reporting issuer status of the Company. No delisting, suspension of trading or cease trade or other order or restriction with respect to any securities of the Company is pending, in effect, or to the knowledge of the Company, has been threatened, or is expected to be implemented or undertaken, and to its knowledge, the Company is not subject to any formal or informal review, enquiry, investigation or other proceeding relating to any such order or restriction.
- (c) The Company has timely filed or furnished all Company Filings required to be filed or furnished by the Company with any Governmental Entity (including “documents affecting the rights of securityholders” and “material contracts” required to be filed



by Part 12 of National Instrument 51-102 - Continuous Disclosure Obligations). Each of the Company Filings complied as filed with Law and did not, as of the date filed (or, if amended or superseded by a subsequent filing prior to the date of this Agreement, on the date of such filing), contain any Misrepresentation.

- (d) The Company has not filed any confidential material change report (which at the date of this Agreement remains confidential) or any other confidential filings filed to or furnished with, as applicable, any Securities Authority.

(11) **U.S. Securities Law Matters.**

- (a) The Company does not have, nor is it required to have, any class of securities registered under the U.S. Exchange Act, nor is the Company subject to any reporting obligation pursuant to section 15(d) of the U.S. Exchange Act.
- (b) The Company is not an investment company registered or required to be registered under the United States Investment Company 1940 and is a “foreign private issuer” (as such term is defined in Rule 3b-4 under the U.S. Exchange Act).
- (c) The Common Shares are traded on the OTC Pink Sheet Market under the symbol ELBSF

(12) **Financial Statements.**

- (a) The audited financial statements of the Company as at and for each of the fiscal years ended December 31, 2019 and December 31, 2020 (including the notes thereto and the auditor’s report thereon), and the interim financial statements of the Company as at and for the period ended March 31, 2021, including the notes thereto (collectively, the “**Company Financial Statements**”) were prepared in accordance with IFRS consistently applied (except (i) as otherwise indicated in such financial statements and the notes thereto or, in the case of audited statements, in the related report of the Purchaser’s independent auditors, as the case may be, or (ii) in the case of unaudited interim statements, are subject to normal period-end adjustments and may omit notes which are not required by applicable Law in the unaudited statements) and fairly present in all material respects the consolidated financial position, results of operations and changes in financial position of the Company as of the date thereof and for the period indicated therein (subject, in the case of any unaudited interim financial statements, to normal period-end adjustments). Since December 31, 2019, there has been no material change in the Company’s financial accounting policies, methods or practices.
- (b) The Company does not intend to correct or restate, nor to the knowledge of the Company, is there any basis for any correction or restatement of, any aspect of any of the financial statements referred to herein. The selected financial data and the summary financial information included in the Company Filings present fairly the information shown in the Company Filings and have been compiled on a basis consistent with that of the Company Financial Statements. The other financial and

operational information included in the Company Filings presents fairly the information included in the Company Filings.

- (c) There are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Company with unconsolidated entities or other Persons.

**(13) Disclosure Controls and Internal Control over Financial Reporting.**

- (a) The Company has established and maintains or has caused to be established and maintained, a system of disclosure controls and procedures for a Venture Issuer (as such terms are defined in National Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings*) designed to provide reasonable assurance that information required to be disclosed by the Company in its annual filings, interim filings or other reports filed or submitted by it under applicable Securities Laws is recorded, processed, summarized and reported within the time periods specified in applicable Securities Laws. Such disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by the Company in its annual filings, interim filings or other reports filed or submitted under applicable Securities Laws is accumulated and communicated to the Company's management, including its chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.
- (b) The Company has established and maintains or has caused to be established and maintained, a system of internal control over financial reporting (as such term is defined in National Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings*) to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS.
- (c) There is no material weakness relating to the Company's internal control over its financial reporting that involves management or other employees who have a significant role in the internal control over financial reporting of the Company.
- (d) None of the Company, or, to the Company's knowledge, any director or officer or auditor, accountant or representative of the Company has received or otherwise obtained knowledge of any material complaint, allegation, assertion, or claim, whether written or oral, regarding accounting, internal accounting controls or auditing matters, including any material complaint, allegation, assertion, or claim that the Company has engaged in questionable accounting or auditing practices, or any expression of concern from its employees regarding questionable accounting or auditing matters.

**(14) No Undisclosed Liabilities.**

- (a) There are no liabilities or obligations of the Company of any kind whatsoever, whether accrued, contingent, absolute, determined, determinable or otherwise, other than liabilities or obligations: (i) disclosed in the Company Filings; (ii) incurred in the

Ordinary Course; or (iii) incurred in connection with this Agreement. Without limiting the foregoing, the Company Financial Statements reflect provisions in accordance with IFRS, specifically International Accounting Standard 37 relating to contingent liabilities for pending litigation and other contingent obligations of the Company, which represent the best estimate of the expenditure required to settle the present obligation at the end of the reporting period.

- (b) The principal amount of all indebtedness for borrowed money of the Company, including capital leases is \$1,466,913 as of March 31, 2021, of which \$778,435 represents PPP Loans that may be forgiven and there has been no material increase to such amount as of the date hereof.
- (15) **Auditors.** There has not been a reportable disagreement (within the meaning of Section 4.11 of National Instrument 51-102 – *Continuous Disclosure Obligations*) with the Company’s auditors;
- (16) **Non-Arms’ Length Transactions.** The Company is not indebted to any director, officer or employee of the Company or any of their respective affiliates or associates (except for amounts due in the Ordinary Course as salaries, bonuses and directors’ fees or the reimbursement of Ordinary Course expenses, and for any separation agreement disclosed to the Purchaser). Except for employment or indemnity arrangements entered into in the Ordinary Course or as disclosed in the Company Filings, there are no Contracts with, or advances, loans, guarantees, liabilities or other obligations to, on behalf or for the benefit of, any shareholder, officer or director of the Company, or any of their respective affiliates or associates.
- (17) **No “Collateral Benefit”.** To the knowledge of the Company, no related party of the Company (within the meaning of Multilateral Instrument 61-101 - Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions) together with its associated entities, beneficially owns or exercises control or direction over 1% or more of the outstanding Common Shares, except for related parties who will not receive a “collateral benefit” (within the meaning of such instrument) as a consequence of the transactions contemplated by this Agreement.
- (18) **Absence of Certain Changes or Events.** Since December 31, 2020,
- (a) the Company has conducted its business only in the Ordinary Course;
  - (b) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) which has had, or is reasonably likely to have, a Material Adverse Effect has been incurred;
  - (c) except as disclosed in the Company Filings, the Company has not either approved or entered into any agreement in respect of the purchase of assets or any interest therein or the sale, transfer or other disposition of any portion of its assets or any interest therein currently owned by the Company and the Company Subsidiaries and affiliates, whether by asset sale, transfer of shares or otherwise, or the change of control (by sale

or transfer of shares or sale of all or substantially all of the property and assets of the Company);

- (d) there has not been any change in the accounting practices used by the Company;
- (e) except for ordinary course adjustments to employees (other than directors or officers), there has not been any material increase in the salary, bonus, or other remuneration payable to any non-executive employees of the Company;
- (f) there has not been any redemption, repurchase or other acquisition of Common Shares by the Company, or any declaration, setting aside or payment of any dividend or other distribution (whether in cash or otherwise) with respect to the Common Shares;
- (g) there has not been a material change in the level of accounts receivable or payable, inventories or employees, other than those changes in the Ordinary Course;
- (h) there has not been any entering into, or an amendment of, any Company Material Contract other than in the Ordinary Course;
- (i) there has not been any satisfaction or settlement of any material claims or material liabilities that were not reflected in the Company Filings, other than the settlement of claims or liabilities incurred in the Ordinary Course; and
- (j) except for Ordinary Course adjustments or except as disclosed in the Company Filings, there has not been any increase in the salary, bonus, or other remuneration payable to any officers of the Company or any amendment or modification to the vesting or exercisability schedule or criteria, including any acceleration, right to accelerate or acceleration event or other entitlement under any stock option, restricted stock, deferred compensation or other compensation award of any officer of the Company.

(19) **Compliance with Laws.**

- (a) The Company and the Company Subsidiaries are in compliance with the requirements of all applicable Laws which affect it or its business or assets or to which it is subject (the “**Subject Laws**”). Neither the Company nor the Company Subsidiaries have received within the last twelve months any written notice or other written communication from any Governmental Entity with respect to a violation and/ or failure to comply with the Subject Laws.
- (b) Neither the Company, the Company Subsidiaries, nor to the knowledge of the Company, any of their respective directors, executives, representatives, agents or employees has, (i) used or is using any corporate funds for any illegal contributions, gifts, entertainment or other expenses relating to political activity that would be illegal, (ii) used or is using any corporate funds for any direct or indirect illegal payments to any foreign or domestic governmental officials or employees, (iii) violated or is violating any provision of the *Corruption of Foreign Public Officials Act* (Canada) or any applicable Law of similar effect, (iv) violated or is in violation of

any provision of the *Criminal Code* (Canada) relating to foreign corrupt practices, including making any contribution to any candidate for public office, in either case, where either the payment or gift or the purpose of such contribution payment or gift was or is prohibited under the foregoing or any other applicable Law of any locality; (v) has established or maintained, or is maintaining, any illegal fund of corporate monies or other properties, or (vi) made any bribe, illegal rebate, illegal payoff, influence payment, kickback or other illegal payment of any nature.

- (c) The operations of the Company and the Company Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the money laundering statutes of all applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the “**Money Laundering Laws**”) and no action, suit or proceeding by or before any court of governmental authority or any arbitrator non- Governmental Entity involving the Company or the Company Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

(20) **Authorizations and Licenses.**

- (a) The Company and the Company Subsidiaries have received and hold all Authorizations that are required by Law in connection with the operation of the business of the Company as presently conducted, or in connection with the ownership, operation or use of the assets of the Company.
- (b) The Company and the Company Subsidiaries lawfully hold, own or use, and has complied with, all such Authorizations and each Authorization is valid and in full force and effect in accordance with its terms, and is renewable by its terms or in the Ordinary Course.
- (c) No action, investigation or proceeding is pending in respect of or regarding any such Authorization and none of the Company, the Company Subsidiaries or, to the knowledge of the Company, any of their respective officers or directors has received notice, whether written or oral, of revocation, non-renewal or material amendments of any such Authorization, or of the intention of any Person to revoke, refuse to renew or materially amend any such Authorization, and all such Authorizations continue to be effective in order for the Company and its affiliates to continue to conduct their respective businesses as they are currently being conducted.
- (d) Neither the Company, the Company Subsidiaries or, to the knowledge of the Company, any of their respective officers or directors, owns or has any proprietary, financial or other interests (direct or indirect) in any such Authorization.

(21) **No Option on Assets.** No Person has any agreement or option or any right or privilege capable of becoming an agreement or option for the purchase from the Company or the Company Subsidiaries of their respective material assets.

(22) **Insolvency.** No act or proceeding has been taken by or against the Company or any of the Company Subsidiaries in connection with the dissolution, liquidation, winding up, bankruptcy or reorganization of the Company or the Company Subsidiaries or for the appointment of a trustee, receiver, manager or other administrator of the Company or the Company Subsidiaries or any of its properties or assets nor is any such act or proceeding, to the knowledge of the Company, threatened. Neither the Company nor the Company Subsidiaries has sought protection under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or similar legislation. Neither the Company nor any of the Company Subsidiaries nor any of their respective properties or assets is subject to any outstanding judgment, order, writ, injunction or decree that involves or may involve, or restricts or may restrict, the right or ability of the Company or any of the Company Subsidiaries to conduct its business in all material respects as it has been carried on prior to the date hereof, or that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or would reasonably be expected to prevent or significantly impede or materially delay the completion of the Arrangement.

(23) **Operational Matters:**

All costs, expenses, and liabilities payable on or prior to the date hereof under the terms of any contracts and agreements to which the Company is directly or indirectly bound have been properly and timely paid, except for such expenses that are being currently paid prior to delinquency in the Ordinary Course.

(24) **Restrictions on Business Activities.** There is no agreement, judgement, injunction, order or decree binding upon the Company that has or could reasonably be expected to have the effect of prohibiting, restricting or materially impairing any business practice of the Company, any acquisition of property by the Company, or the conduct of business by the Company as currently conducted (including following the transaction contemplated by this Agreement).

(25) **Company Board Approval.**

(a) The Company Board, at a meeting duly called and held, upon consultation with legal and financial advisors, has unanimously: (i) determined that the Consideration to be received by the Company Shareholders pursuant to the Arrangement and this Agreement is fair to such holders and that the Arrangement is in the best interests of the Company; (ii) resolved to unanimously recommend that the Company Shareholders vote in favour of the Arrangement Resolution; and (iii) authorized the entering into of this Agreement and the performance by the Company of its obligations under this Agreement, and no action has been taken to amend, or supersede such determinations, resolutions, or authorizations. Each director and executive officer of the Company intends to vote all Common Shares held by him or her in favour of the Arrangement Resolution and has agreed that the news release referred to in the Agreement may so state and that references to such intention may be made in the Circular and other documents relating to the Arrangement.

(26) **Material Contracts.**

- (a) Section (26) of the Company Disclosure Letter sets out a complete and accurate list of all Company Material Contracts. True and complete copies of the Company Material Contracts have been disclosed in the Company Data Room.
- (b) Each Company Material Contract is (i) legal, valid, binding and in full force and effect and is enforceable by the Company in accordance with its terms (subject to bankruptcy, insolvency and other Laws affecting creditors' rights generally, and to general principles of equity); (ii) the product of fair and arms' length negotiations between the parties thereto; and (iii) except as disclosed in Section (26) of the Company Disclosure Letter, does not, by its terms, require the consent of any parties thereto to the Arrangement.
- (c) The Company has performed in all material respects all respective obligations required to be performed by it to date under the Company Material Contracts and the Company is not in breach or default under any Company Material Contract, nor does there exist any condition that with the passage of time or the giving of notice or both would result in such a breach or default.
- (d) The Company does now know of, nor has it received any notice (whether written or oral) of, any breach or default under nor does there exist any condition which with the passage of time or the giving of notice or both would result in such a breach or default under) any such Company Material Contract by any other party to a Company Material Contract.
- (e) The Company has not received any notice (whether written or oral), that any party to a Company Material Contract intends to cancel, terminate or otherwise modify or not renew its relationship with the Company, and, to the knowledge of the Company, no such action has been threatened.

**(27) Intellectual Property.**

- (a) Section (27) of the Company Disclosure Letter sets forth a complete and accurate list of all Owned Intellectual Property, including all registrations of, and applications for registration of, Owned Intellectual Property and all Contracts that comprise or relate to the Owned Intellectual Property. The Company holds the entire right, title and interest in and to all of the Owned Intellectual Property, free of all Encumbrances, and has the exclusive and unfettered right to use the Owned Intellectual Property, except to the extent the Company has licensed others to use the Owned Intellectual Property pursuant to Contracts listed in Section (27) of the Company Disclosure Letter. The Owned Intellectual Property is valid, and the rights of the Company in the Owned Intellectual Property are enforceable. All registrations and applications for registration of the Owned Intellectual Property are in good standing, have been filed in a timely manner within the appropriate offices to preserve the rights thereto and assignments have been recorded in favour of the Company. To the knowledge of the Company, no Owned Intellectual Property has expired, has been cancelled, expunged or impeached, or has lapsed for failure to be renewed or maintained and no Owned Intellectual Property has been used, not used, enforced or not enforced in a manner that could

reasonably be expected to result in the abandonment, cancellation or unenforceability of any of the Owned Intellectual Property.

- (b) Section (27) of the Company Disclosure Letter sets forth a complete and accurate list of all Licensed Intellectual Property, and all Contracts that comprise or relate to such Licensed Intellectual Property. The Company has the non-exclusive right to use the Licensed Intellectual Property set out in Section (27). The Company is not a party to any contract or commitment to pay any royalty or other fee to use the Licensed Intellectual Property except as set out in the Contracts listed in Section (27).

The Licensed Intellectual Property is used by the Company with the consent or license from the rightful owner thereof, and all necessary consents and licences relating to the Licensed Intellectual Property are in good standing, binding and enforceable in accordance with their respective terms and no default exists on the part of the Company thereunder, and none of those consents and licenses requires prior approval of any transfer or assignment to remain in force and effect. No consents are required in order for the Licensed Intellectual Property to be licensed or sub-licensed to the Company except as set out in Section (27). The Company is not in material default or breach of any license agreement required to be scheduled on Section (27) and there exists no state of facts which, after notice or lapse of time or both, would constitute a material default or material breach.

- (c) To the extent any computer code embedded in any Licensed Intellectual Property or Owned Intellectual Property contains any “open source” software or any code derived from open source software (in any format or medium whatsoever), Company warrants that the Licensed Intellectual Property and the Owned Intellectual Property, when used by or on behalf of Purchaser or any Users will not cause any Licensed Intellectual Property or Owned Intellectual Property or any other Software with which it is used to become subject to any free or open source license or require the distribution or disclosure of the source code for Licensed Intellectual Property, Owned Intellectual Property or any Software acquired by or licensed to Purchaser by Company.
- (d) The Business Intellectual Property is all of the Intellectual Property used or required for the proper carrying on of the Company’s business, as it has been and is now conducted, and in accordance with the current documented plans of the Company. No Business Intellectual Property is subject to any outstanding order, award, decision, injunction, judgment, decree, stipulation or agreement materially restricting the transfer, use, enforcement or licensing thereof by the Company.

Except as set out in Section (27), no Business Intellectual Property is subject to any escrow obligations. The Purchaser has the right and authority to use after the Effective Date the Business Intellectual Property in the manner presently conducted by the Company and to the Company’s knowledge, the Company is not subject to any agreement or arrangement containing any covenant or other provision that in any way limits or restricts the ability of Purchaser to register, use, exploit, assert or enforce any Owned Intellectual Property anywhere in the world.

- (e) To the knowledge of the Company, the use of the Business Intellectual Property has not Infringed the Intellectual Property of any other Person. The Company has not



received any notice that the use of the Business Intellectual Property Infringes any Intellectual Property of any other Person, and no action or proceeding have been instituted or, to the knowledge of the Company, are pending or threatened, alleging any such infringement.

- (f) To the knowledge of the Company, no Person has Infringed any of the Owned Intellectual Property or the right and interest of the Company in the Licensed Intellectual Property. The Company has not issued a notice to any Person alleging any such infringement, and no action or proceeding have been instituted or are pending or threatened, alleging any such infringement.
- (g) All of the Owned Intellectual Property that has been developed or created by the Company Employees or pursuant to Contracts with consultants or contractors (collectively, the “**Developers**”) has been assigned to the Company in writing or in another enforceable manner. The Developers have waived in writing their moral and authors’ rights they may have in the Owned Intellectual Property. To the knowledge of the Company, no Person has claimed that any current or former Developer has, as a result of contribution to any Owned Intellectual Property, violated the terms and conditions of any Contract with that Person or disclosed or used any trade secret of that Person, and no Developer has claimed any rights in the Owned Intellectual Property.
- (h) The Owned Intellectual Property is not subject to any actions or proceedings, including any actual or, to the knowledge of the Company, threatened claim for cancellation, expungement, impeachment, re-examination, invalidity or any termination or limitation thereof.
- (i) Entering into this Agreement will not alter, impair or extinguish any of the Business Intellectual Property or trigger any rights of first refusal requiring the sale, assignment or transfer of any Business Intellectual Property to another Person.
- (j) The Company is not required to use, copy or replicate any part of the Intellectual Property forming part of the Purchased Assets in connection with the operations it may conduct after the Effective Date.
- (k) There has been no sale, offer for sale or, to the knowledge of the Company, public disclosure, of any invention owned by the Company and forming a part of the Owned Intellectual Property, by the Company (including through a non-confidential publication or presentation by a Developer, officer, or director) that could reasonably be expected to affect the Company or the Purchaser obtaining or maintaining valid patent rights for that invention.
- (l) There has been no sale, offer for sale or, to the knowledge of the Company, public disclosure, of any invention that is described in a patent application (whether now in preparation or filed and in good standing) and forming a part of the Owned Intellectual Property by a Person that would prevent the Company or the Purchaser from obtaining or maintaining valid patent rights to that invention following Closing.

- (m) To the knowledge of the Company, there is no publication, including any patent, published or laid-open patent application, journal article, catalogue, promotion, or specification of any other Person which would prevent the Company or the Purchaser from obtaining or maintaining valid patent rights to an invention described in a patent application (whether now in preparation or filed and in good standing) and forming part of the Owned Intellectual Property.

**(28) Internal IT Systems.**

(1) Section (28) of the Company Disclosure Letter sets out a brief description of the Internal IT Systems and an accurate and complete list of all Contracts, including warranties, leases and licences, that comprise or relate to the Internal IT Systems.

(n) The Internal IT Systems are either owned by, or properly licensed or leased to, the Company. The Company is not in default under the licences or leases and there are no grounds on which they might be terminated. There are no circumstances in which the ownership, benefit, or right to use the Internal IT Systems may be lost by virtue of the Arrangement or the performance of this Agreement.

(o) The Internal IT Systems have not failed to any material extent and the data which they process has not been corrupted. The Company has, in accordance with best industry practice, taken precautions to preserve the availability, security and integrity of the Internal IT Systems and the data and information stored on the Internal IT Systems. To the knowledge of the Company, the Internal IT Systems do not contain any Disabling Code, and the Company has taken reasonable steps and implemented reasonable procedures, in accordance with best industry practice, to ensure that its Internal IT Systems do not and will not contain Disabling Code.

(p) The Internal IT Systems do not contain systems which are not available from third party suppliers on arm's-length commercial terms.

(q) The Internal IT Systems, all Business Intellectual Property and all Personal Information have at all times been subjected to commercially appropriate security controls by the Company, or by its respective agents and representatives, so as to restrict the use and disclosure thereof solely to authorized Persons, and to protect and safeguard the secrecy and confidentiality of the Internal IT Systems, Business Intellectual Property and Personal Information.

(r) To the knowledge of the Company, the Internal IT Systems adequately meet the data processing needs of the Company's operations and affairs, in each case as presently conducted and as currently contemplated to be conducted. The Company has taken appropriate action by instruction, Contract or otherwise with the Employees or other Persons permitted access to Internal IT Systems and data used or stored in the Internal IT Systems to protect against unauthorized access, use, copying, modification, theft and destruction of any part of the Internal IT Systems or data. Company Employees whose employment is terminated at the Effective Time shall have no further access to the Internal IT Systems following Effective Date.

(s) The Company has and has maintained back-up systems and disaster recovery systems, consistent with current industry standards, designed to adequately and properly ensure the availability of the functionality provided by the Internal IT Systems in the event of any malfunction of, or other form of disaster affecting, the Internal IT Systems.

(t) All licensed Software which comprises part of the Internal IT Systems, other than Software, which is provided over the internet, is in machine-readable form, contains current revisions of that Software as delivered to the Company by the licensors thereof and includes all object codes and documentation which is used or required by the Company for use in its Internal IT Systems sufficient to permit a Person of reasonable skill and experience to operate and maintain that Software. Except for Commercial Software and as set out in Section (28) of the Company Disclosure Letter, to the extent that Software is licensed Software, a copy of the source code for such Software is in escrow for the benefit of the Company in the event of the occurrence of certain triggering events and none of the licences for that Software will be adversely affected by the Arrangement or requires prior approval of the Arrangement by the applicable licensor to remain in force or effect.

(u) Owned Software when used by or on behalf of Company or any Users will not cause any Owned Software to become subject to any free or open-source license or require the distribution or disclosure of the source code for Owned Software.

(v) There are no known problems or defects in the Owned Software including bugs, logic errors or failures of the Owned Software to operate as described in the related documentation and the Owned Software operates in accordance with its documentation and specifications. The Owned Software does not contain any undocumented Disabling Code.

(w) The customers of the Company are not provided with object code or any software as Total Social is delivered on a Software-as-a-Service platform.

**(29) Litigation.**

(a) There is no claim, action, inquiry, proceeding or investigation in effect or ongoing, pending or, to the knowledge of the Company, threatened against or relating to the Company, the business of the Company or affecting any of its assets. None of the proceedings disclosed in Section (29) of the Company Disclosure Letter, if determined adverse to the interests of the Company, would have, or reasonably could be expected to: (i) have a Material Adverse Effect; (ii) prevent, hinder or delay the consummation of the Arrangement; or (iii) materially affect the Purchaser's ability to own or operate the business of the Company, nor to the knowledge of the Company, are there any events or circumstances which could reasonably be expected to give rise to any such claim, action, proceeding or investigation.

(b) There is no bankruptcy, liquidation, winding-up or other similar proceeding pending or in progress, or, to the knowledge of the Company, threatened against or relating to the Company before any Governmental Entity.

(c) There is no judgment, writ, decree, injunction, rule, award or order of any Governmental Entity outstanding against the Company or any of the Company Subsidiaries in respect of its businesses, properties or assets.

**(30) Environmental Matters.**

(a) The Company and the Company Subsidiaries are in material compliance with all applicable Environmental Laws, and neither the Company nor any of the Company

Subsidiaries have used, except in material compliance with all Environmental Laws, any property or facility which it owns or leases, or previously owned or leased, to conduct any Environmental Activity, except where such use would not result in a Material Adverse Effect;

- (b) neither the Company nor the Company Subsidiaries, nor, to the knowledge of the Company, any of their predecessor companies, have received any notice of any material claim, judicial or administrative proceeding, order or direction, pending, instituted, threatened, concluded or issued against, the Company or the Company Subsidiaries or any of their properties, assets or operations relating to, or alleging any violation of, any Environmental Laws;
- (31) **Health and Safety.** The Company and the Company Subsidiaries have operated in all material respects in accordance with all applicable Laws with respect to employment and labour, including employment and labour standards, occupational health and safety, employment equity, pay equity, workers' compensation, human rights, labour relations and privacy, and there are no current, pending, or, to the knowledge of the Company, threatened actions or proceedings before any Governmental Authority with respect to any such matters.
- (32) **Employment Matters.**
- (a) Except as set out in Section (32) of the Company Disclosure Letter, the Company has not entered into any written or oral agreement or understanding providing for severance or termination payments to any director, officer or employee in connection with the termination of their position or their employment as a direct result of a change in control of the Company (including as a result of the Arrangement).
  - (b) The Company is not (i) a party to any collective bargaining agreement, or (ii) subject to any application for certification or, to the knowledge of the Company, threatened or apparent union-organizing campaigns for employees not covered under a collective bargaining agreement.
  - (c) The Company is not subject to any claim for wrongful dismissal, constructive dismissal or any other tort claim, actual or, to the knowledge of the Company, threatened, or any litigation actual, or to the knowledge of the Company, threatened, relating to employment or termination of employment of employees or independent contractors. No labour strike, lock-out, slowdown or work stoppage is pending or to the knowledge of the Company, threatened against or directly affecting the Company.
  - (e) All amounts due or accrued due for all salary, wages, bonuses, vacation with pay, workers compensation and other benefits under any benefit plan for the period up to March 31, 2021, have either been paid or are accurately reflected in the Company's financial books and records.
  - (f) The Company and the Company Subsidiaries have operated in all material respects in accordance with all applicable Laws with respect to employment and labour, including employment and labour standards, occupational health and safety, employment equity, pay equity, workers' compensation, human rights, labour

relations and privacy, and there are no current, pending, or, to the knowledge of the Company, threatened actions or proceedings before any Governmental Entity with respect to any such matters.

- (g) Except as set out in Section (32) of the Company Disclosure Letter, neither the execution of this Agreement nor the consummation of the Arrangement and the other transactions contemplated in this Agreement will:
  - i. result in any payment (including severance, unemployment compensation, “golden parachute”, bonus or otherwise) becoming due to any person or other entity including, but not limited to, any director, officer, employee or consultant of the Company or any of the Company Subsidiaries or Affiliates, or increase any benefits otherwise payable under any pension or benefits plan of any member of the Company or any of the Company Subsidiaries or Affiliates or result in the acceleration of the time of payment or vesting of any such benefits;
  - ii. increase the rate of wages, salaries, commissions, bonuses, incentive compensation or other remuneration, severance entitlements, or benefits otherwise payable to any current or former employee of the Company; or
  - iii. result in the acceleration of the time of payment or vesting of any benefits or entitlements otherwise available pursuant to any Employee Plans.
- (h) Except as set out in Section (32) of the Company Disclosure Letter, neither the Company nor any of the Company Subsidiaries currently sponsors, maintains, contributes to or has any liability under, nor has ever sponsored, maintained, contributed to or incurred any liability under a “registered pension plan” or a “retirement compensation arrangement”, each as defined under the Tax Act, a “pension plan” as defined under applicable pension benefits standards legislation, or any other plan organized and administered to provide pensions for employees or former employees of any member of the Company or any of the Company Subsidiaries or Affiliates.
- (i) The Company has provided to the Purchaser true and complete copies of all written agreements between the Company or any of the Company Subsidiaries and each key employee, consultant or independent contractor, each as listed in Section (32) of the Company Disclosure Letter.
- (j) Each of the Company and the Company Subsidiaries is in compliance with all material terms and conditions of employment and all Laws respecting employment, including pay equity, wages, hours of work, overtime, occupational health and safety, workers compensation and human rights, and, except as set out in Section (32) of the Company Disclosure Letter, neither the Company nor any of the Company Subsidiaries is subject to any outstanding grievance, complaint, investigation, orders under such Laws, claim for wrongful dismissal, constructive dismissal, unfair labour practice or any other claim, or, to the knowledge of the Company, threatened claim, relating to employment or termination of employment or relationships of the Company employees, consultants or independent contractors and there is no basis for such claim. No event has occurred that, with the notice or lapse of time or both, would

constitute a breach, violation or default of such terms and conditions of employment and Laws by the Company or any of the Company Subsidiaries.

**(33) Employee Plans.**

- (a) The Company has disclosed in Section (33) of the Company Disclosure Letter all Employee Plans
- (b) The Company has disclosed in Section (33) of the Company Data Room true, correct and complete copies of all the Employee Plans as amended, together with all related documentation including funding and investment management agreements, summary plan descriptions, the most recent actuarial reports, financial statements, asset statements, material opinions and memoranda (whether externally or internally prepared) and material correspondence with regulatory authorities or other relevant Persons. No changes have occurred or are expected to occur which would materially affect the information contained in the actuarial reports, financial statements or asset statements required to be provided to the Purchaser.
- (c) Each Employee Plan is and has been established, registered, qualified and, in all material respects, administered in accordance with Law, and in accordance with their terms, the terms of the material documents that support such Employee Plan and the terms of agreements between the Company and its employees and former employees who are members of, or beneficiaries under, the Employee Plan. To the knowledge of the Company, no fact or circumstance exists which could adversely affect the registered status of any such Employee Plan. Neither the Company, the Company Subsidiaries, nor any of their respective agents or delegates, has breached any fiduciary obligation with respect to the administration or investment of any Employee Plan.
- (d) All current obligations of the Company and Company Subsidiaries regarding the Employee Plans have been satisfied in all material respects. All contributions, premiums or taxes required to be made or paid by the Company and the Company Subsidiaries under the terms of each Employee Plan or by Law in respect of the Employee Plans have been made in a timely fashion in accordance with Law in all material respects and in accordance with the terms of the applicable Employee Plan. No currently outstanding notice of underfunding, non-compliance, failure to be in good standing or otherwise has been received by the Company or the Company Subsidiaries from any applicable Governmental Entity in respect of any Employee Plan that is a pension or retirement plan.

**(34) Severance Payments.**

- (a) Subject to the Company's understanding that at the Effective Time, a termination payment shall only be due to [Text Redacted: the omitted text sets forth name(s) of individual(s) and dollar amounts.].

**(35) Non-Competition Agreements.** No current or proposed officer or director of the Company, nor to the knowledge of the Company, any employee of the Company or any of the Company

Subsidiaries, is subject to any limitations or restrictions on their activities or investments, including any non-competition provisions, that would in any way limit or restrict their involvement with the Company or the Company Subsidiaries or the business affairs of the Company or the Company Subsidiaries as now conducted or presently proposed to be conducted.

(36) **Real Property and Leased Properties.**

- (a) The Company and the Company Subsidiaries do not own any real or immovable property.
- (b) Section (36) of the Company Data Room contains complete and accurate copies of all leases and subleases for real and immovable property leased or subleased by the Company or any of the Company Subsidiaries (the “**Leased Properties**”).
- (c) With respect to all Leased Properties: (A) each lease or sublease in respect thereof is in good standing, legal, valid, binding and in full force and effect and is a legal, valid, binding obligation of, and is enforceable against, each other party thereto in accordance with its terms subject to any limitation under bankruptcy, insolvency or other Law affecting the enforcement of creditors’ rights generally and the discretion that a court may exercise in the granting of equitable remedies, such as specific performance and injunction; and (B) there is no event of breach or default, or any event which, with the giving of notice, the lapse of time or both, would become an event of default, under any such lease or sublease and, to the knowledge of the Company, none of the Company or any of the Company Subsidiaries has received or delivered any notice of any material breach of, or default under, any such lease or sublease.

(37) **Personal Property.** The Company and the Company Subsidiaries have valid, good and marketable title to all personal property owned by them, except as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(38) **Insurance.**

- (a) The Company and the Company Subsidiaries are, and have been continuously since December 31, 2018, insured by reputable third-party insurers in amounts and in respect of such risks as the Company has reasonably determined to be appropriate for the size and nature of the business of the Company and its assets, including a sufficient level of insurance necessary to comply with the terms and conditions of its Authorizations and the Company Material Contracts.
- (b) Section (38) of the Company Data Room contains true, correct and complete copies of insurance policies which are maintained by the Company and the Company Subsidiaries in effect on the date of this Agreement (including copies of all written amendments, supplements and other modifications thereto or waivers of rights thereunder), and the most recent inspection reports received from insurance underwriters.

- (c) The third-party insurance policies of the Company and the Company Subsidiaries are in full force and effect in accordance with their terms, and the Company and the Company Subsidiaries are not in material default under the terms of any such policy. There has not been any proposed, contemplated or threatened termination of, or material premium increase with respect to, any of such policies.
- (d) The limits contained within such policies have not been exhausted or significantly diminished and no further premiums or payments will be due following the Effective Time with respect to periods of time occurring prior to the Effective Time.
- (e) Section (38) of the Company Data Room contains a complete and accurate claims history for the Company and the Company Subsidiaries during the past three years including with respect to insurance obtained but not currently maintained, together with a statement of the aggregate amount of claims paid out, and claims pending.
- (f) There is no material claim pending under any insurance policy that has been denied, rejected, questioned or disputed by any insurer or as to which any insurer has made any reservation of rights or refused to cover all or any portion of such claims. All (material) proceedings covered by any of the insurance policies have been properly reported to and accepted by the applicable insurer.

(39) **Taxes.**

- (a) The Company and the Company Subsidiaries have duly and in a timely manner made or prepared all Tax Returns required to be made or prepared by it, and duly and in a timely manner filed all Tax Returns required to be filed by it with the appropriate Governmental Entity, such Tax Returns were complete and correct in all material respects and the Company and the Company Subsidiaries have paid all Taxes, including installments on account of Taxes for the current year required by applicable Law, which are due and payable by it whether or not assessed by the appropriate Governmental Entity. Since the publication date of the Company Financial Statements, no material liability in respect of Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the Ordinary Course.
- (b) The Company and the Company Subsidiaries have duly and timely withheld all Taxes and other amounts required by Law to be withheld by it (including Taxes and other amounts required to be withheld by it in respect of any amount paid or credited or deemed to be paid or credited by it to or for the benefit of any Person) and has duly and timely remitted to the appropriate Governmental Entity such Taxes or other amounts required by Law to be remitted by it.
- (c) The Company and the Company Subsidiaries have in all material respects (i) duly and timely collected all amounts on account of any sales, use or transfer Taxes, including goods and services, harmonized sales, provincial and territorial taxes and state and local taxes, required by Law to be collected by it and (ii) have duly and timely remitted to the appropriate Governmental Entity such amounts required by Law to be remitted by it.



- (d) The Company and the Company Subsidiaries have not made, prepared and/or filed any elections, designations or similar filings relating to Taxes or entered into any agreement or other arrangement in respect of Taxes or Tax Returns that has effect for any period ending after the Effective Date.
  - (e) There are no proceedings, investigations, audits or claims now pending or threatened against the Company and the Company Subsidiaries in respect of any Taxes and there are no matters under discussion, audit or appeal with any Governmental Entity relating to Taxes.
  - (f) The Company and the Company Subsidiaries have not acquired property from a non-arm's length Person, within the meaning of the Tax Act: (i) for consideration the value of which is less than the fair market value of the property; or (ii) as a contribution of capital for which no shares were issued by the acquirer of the property.
  - (g) For the purposes of the Tax Act and any other relevant Tax purposes the Company is resident in Canada and a "taxable Canadian corporation".
  - (h) There are no Liens for Taxes upon any properties or assets of the Company and the Company Subsidiaries (other than Liens relating to Taxes not yet due and payable and for which adequate reserves have been recorded on the most recent balance sheet included in the Company Financial Statements).
  - (i) The Company has made available to the Purchaser true and complete copies of all Tax Returns, examination reports and statements of deficiencies for taxable periods, or transactions consummated, for which the applicable statutory periods of limitations have not expired.
- (40) **Company Data Room Information.** All information provided in the Company Data Room is true and correct in all respects and does not contain any omissions as at its respective date as stated therein, or, if any such information is undated, as of the date of its delivery to the data site for purposes of the transactions contemplated by this Agreement. None of the information provided in the Company Data Room has been amended except as provided in the Company Data Room. Additionally, all information provided to the Purchaser in relation to the Purchaser's due diligence requests, including information not provided in the Company Data Room, is true and correct in all respects and does not contain any omissions as at its respective date as stated therein and has not been amended except as provided to the Purchaser. The Company acknowledges that the Purchaser is relying on all information provided to it by the Company in entering into this Agreement.
- (41) **Shareholder Rights Plan.** As of the date hereof, there is no shareholder rights plan, "poison pill" antitakeover plan, or similar device in effect to which the Company or any of the Company Subsidiaries or affiliates is subject, party or otherwise bound, and the Company is not party to any shareholder, pooling, voting trust or other similar agreement relating to the issued and outstanding shares in the capital of the Company or any of the Company Subsidiaries or Affiliates.

- (42) **Confidentiality Agreements.** All agreements entered into by the Company or any of the Company Subsidiaries with persons regarding the confidentiality of information provided to such person or reviewed by such persons with respect to any transaction in the nature described in the definition of Acquisition Proposal, each contain customary provisions, including standstill provisions, have not been waived or released with respect to the applicability of any such “standstill” or other provisions of such confidentiality agreements, except to the extent such agreements contain provisions that provide for automatic exemptions as a result of the Arrangement.
- (43) **Brokers.** The Company has not employed any broker or finder or incurred any liability for any brokerage fees, commissions or finder’s fees in connection with the transactions contemplated by this Agreement other than Oberon Securities, LLC.
- (44) **Books and Records.** The corporate records and minute books of the Company and the Company Subsidiaries have been maintained in accordance with all applicable Laws, and the minute books of the Company and the Company Subsidiaries as provided to the Purchaser are complete and accurate in all material respects. The corporate minute books for the Company and the Company Subsidiaries contain minutes of all meetings and resolutions of the directors and shares of the Company and the Company Subsidiaries, respectively, held. The financial books and records and accounts of the Company and the Company Subsidiaries in all material respects: (a) have been maintained in accordance with good business practices and in accordance with IFRS and with the accounting principles generally accepted in Canada, on a basis consistent with prior years except as noted in the Company’s financial statements (including the notes thereto); (b) are stated in reasonable detail and accurately and fairly reflect the transactions and dispositions of assets of the Company and the Company Subsidiaries; and (c) accurately and fairly reflect the basis for the Company’s financial statements.
- (45) **Five Percent Shareholders.** To the knowledge of the Company, it has no Five Percent Shareholders other than certain of the Company Locked-Up Shareholders.
- (46) **Full Disclosure.** The information and statements contained in this Agreement are true and correct and together with the Company Filings, the Company Data Room and the Company Disclosure Letter, constitute full, true and plain disclosure of all material facts relating to the Company on a consolidated basis, and contain no misrepresentations.

## SCHEDULE D

### REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Except as disclosed in the Purchaser Filings filed before the date of this Agreement, the Purchaser hereby represents and warrants to the Purchaser as follows, and acknowledges and agrees that the Company is relying upon such representations and warranties in connection with the entering into of this Agreement:

- (1) **Organization and Qualification.** The Purchaser is a corporation duly incorporated and validly existing under the federal Laws of Canada and the Purchaser has all requisite corporate power and authority to own, operate or lease its assets and to conduct its business as presently conducted and, as applicable, to enter into this Agreement and to consummate the Arrangement subject to the terms and conditions contained in this Agreement and the Plan of Arrangement. The Purchaser is duly qualified, licensed or registered to carry on business and is in good standing in each jurisdiction in which the character of its assets and properties, owned, leased, licensed or otherwise held, or the nature of its activities makes such qualification necessary, and has all Authorizations required to own, lease and operate its properties and to carry on its business as now conducted, except where the failure to be so qualified will not, individually or in the aggregate, have a Material Adverse Effect. No action has been taken to amend or supersede such documents.
- (2) **Authority and Enforceability.** The Purchaser has full power and authority to execute this Agreement and to perform its obligations under this Agreement. The execution and delivery by the Purchaser of this Agreement, the performance by it of its obligations hereunder, and the Arrangement have been duly and validly authorized by the Purchaser Board and no other corporate proceedings on the part of the Purchaser are necessary to authorize the execution and delivery by it of this Agreement or the completion by the Purchaser of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Purchaser and constitutes a legal, valid and binding obligation of the Purchaser enforceable in accordance with its terms, subject only to any limitation under bankruptcy, insolvency or other Law affecting the enforcement of creditors' rights generally and the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (3) **Subsidiaries.** Other than as disclosed in the Purchaser Filings, the Purchaser has no Subsidiaries.
- (4) **Capitalization.**
  - (a) The authorized share capital of the Purchaser consists of an unlimited number of common shares and an unlimited number of preferred shares. As of the date of this Agreement, 37,958,125 Purchaser Shares and 5,737,744 Purchaser Preferred Shares are issued and outstanding. Except for this Agreement and pursuant to the Concurrent Financing, there are no options, warrants, convertible securities, call rights, outstanding stock appreciation rights, phantom equity rights or other rights, shareholder rights plans, agreements arrangements or commitments of any character whatsoever (pre-emptive, contingent or otherwise) requiring or which may require the issuance, sale or transfer by the Purchaser of any shares of the

Purchaser (including Purchaser Shares) or any securities convertible into, or exchangeable or exercisable for, or otherwise evidencing a right to acquire, any shares of or other equity or voting interests in the Purchaser (including Purchaser Shares) other than those disclosed in the Purchaser Filings.

- (b) All outstanding Purchaser Shares and Purchaser Preferred Shares have been duly authorized and validly issued, are fully paid and non-assessable. There are no outstanding contractual or other obligations of the Purchaser to repurchase, redeem or otherwise acquire any Purchaser Shares or Purchaser Preferred Shares. Other than the Purchaser Shares, there are no securities or other instruments or obligations of the Purchaser that carry the right to vote generally with the Purchaser Shareholders on any matter. The Purchaser is not a party to any shareholder, pooling, voting or other similar agreement with respect to any shares in the capital of or other equity or voting interests in the Purchaser and, to the knowledge of the Purchaser, as of the date of this Agreement, there are no irrevocable proxies and no voting agreements with respect to any shares in the capital of, or other equity or voting interests in, the Purchaser. The Purchaser does not have a shareholder rights plan or any other similar plan or agreement.
  - (c) The Consideration Shares have been, or prior to the Effective Time will be, validly authorized, allotted and reserved for issuance and when issued in accordance with the terms of the Arrangement, will be validly issued as fully paid and non-assessable.
- (5) **Government Approvals, Notices and Filings.** Except as disclosed in the Purchaser Filings, no consent or approval of, giving of notice to, making filings with or taking of any action in respect of or by any Governmental Entity is required to be obtained or given by the Purchaser with respect to the execution, delivery or performance by the Purchaser of this Agreement or the consummation of the transactions contemplated hereunder, except: (i) the approval of the TSX in connection with the issuance of the Consideration Shares, (ii) where the failure to obtain any such consent, approval, to give any such notice, to make any such filings or to take any such action would not, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect or (iii) those as would be required solely as a result of the identity or the legal or regulatory status of Purchaser or any of its Affiliates.
- (6) **Third Party Consents, Approvals and Notices.** The execution and delivery of this Agreement by the Purchaser does not and the consummation of the Arrangement do not and will not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition): (i) violate, conflict with or result in any provisions of the Constatng Documents of the Purchaser; (ii) allow any Person to exercise any rights, require any consent or other action by any Person, or constitute a default under, or cause or permit the termination, cancellation, acceleration or other change of any right or obligation or the loss of any benefit to which the Purchaser is entitled (including by triggering any rights of first refusal or first offer, change in control provision or other restriction or limitation) under any Contract or other instrument indenture, deed of trust, mortgage, bond or any Authorization to which the Purchaser is a party of by which the is bound, except in each case as would not, individually or in the aggregate be expected to

have a Material Adverse Effect; (iii) result in the imposition of any Lien upon any of the properties or assets of the Purchaser, cause the acceleration or material modification of any rights or obligations under, create in any party the right to terminate, constitute a default or breach of, or violate or conflict with the terms, conditions or provisions of, any Purchaser Material Contract to which the Purchaser is a party, or (iv) result in a breach or violation by the Purchaser of any of the terms, conditions or provisions of any Law which would, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect.

- (7) **Financial Statements.** The Purchaser's audited financial statements as at and for each of the financial year ended May 31, 2020 and the period from incorporation on June 8, 2018 to May 31, 2019 (including the notes thereto) and the Purchaser's unaudited financial statements as at and for the nine months ended February 28, 2021 (including the notes thereto and the auditor's report thereon) (collectively, the "**Purchaser Financial Statements**") were prepared in accordance with IFRS consistently applied (except (i) as otherwise indicated in such financial statements and the notes thereto or, in the case of audited statements, in the related report of the Purchaser's independent auditors, as the case may be, or (ii) in the case of unaudited interim statements, are subject to normal period-end adjustments and may omit notes which are not required by applicable Laws in the unaudited statements) and fairly present in all material respects the consolidated financial position, results of operations and changes in financial position of the Purchaser as of the date thereof and for the period indicated therein (subject, in the case of any unaudited interim financial statements, to normal period-end adjustments). Since May 31, 2019, there has been no material change in the Purchaser's financial accounting policies, methods or practices. The Purchaser does not intend to correct or restate, nor to the knowledge of the Purchaser, is there any basis for any correction or restatement of, any aspect of any of the financial statements referred to herein. There are no off-balance sheet transactions, arrangements, obligations (including contingent obligations) or other relationships of the Purchaser with unconsolidated entities or other Persons.

(8) **Reporting Status and Securities Laws Matters.**

- (a) The Purchaser Shares are listed and posted for trading on the TSXV, and the Purchaser is not in default of the rules, regulations or policies of the TSXV. The Purchaser is not subject to continuous or periodic, or other disclosure requirements under any securities laws in any jurisdiction other than the provinces and territories of Canada. No delisting, suspension of trading in or cease trade or other order or restriction with respect to any securities of the Purchaser and no inquiry or investigation (formal or informal) of any Securities Authority or the TSXV, is pending, in effect or ongoing or, to the knowledge of the Purchaser, has been threatened or is expected to be implemented or undertaken.
- (b) The Purchaser is a "reporting issuer" or the equivalent thereof in the provinces of British Columbia, Alberta, Ontario, New Brunswick and Nova Scotia and is not in default under applicable Securities Laws and the Purchaser has complied in all material respects with applicable Securities Laws. The Purchaser has timely filed or furnished all Purchaser Filings with any Governmental Entity (including" documents affecting the rights of securityholders" and "material contracts" required

to be filed by Part 12 of National Instrument 51-102 - Continuous Disclosure Obligations). Each of the Purchaser Filings complied as filed with Law and did not, as of the date filed (or, if amended or superseded by a subsequent filing prior to the date of this Agreement, on the date of such filing), contain any Misrepresentation. The Purchaser has not filed any confidential material change report or other document with any applicable Securities Authorities or any other applicable Governmental Entities which remains confidential as of the date of this Agreement.

- (9) **Books and Records.** The financial books, records and accounts of the Purchaser (i) have been maintained in all material respects in compliance with applicable Laws, (ii) accurately and fairly reflect the material transactions, acquisitions and dispositions of the property and assets of the Purchaser, and (iii) accurately and fairly reflect the basis for the Purchaser Financial Statements. The minute books of the Purchaser, including the meetings of the Purchaser Board, are complete and accurate in all material respects.
- (10) **Disclosure Controls.** The Purchaser has established and maintains, or has caused to be established and maintained, a system of disclosure controls and procedures that are designed to provide reasonable assurance that information required to be disclosed by the Purchaser in its annual filings, interim filings or other reports filed or submitted by it under applicable Securities Laws are recorded, processed, summarized and reported within the time periods specified in applicable Securities Laws. Such disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed by the Purchaser in its annual filings, interim filings or other reports filed or submitted under applicable Securities Laws are accumulated and communicated to the Purchaser's management, including its chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure.
- (11) **Internal Control.**
  - (a) The Purchaser has established and maintains or has caused to be established and maintained, a system of internal control over financial reporting that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with IFRS, and includes policies and procedures that (i) pertain to the maintenance of records that accurately and fairly reflect the material transactions, acquisitions and dispositions of the property and assets of the Purchaser, (ii) are designed to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with IFRS, and that material receipts and expenditures of the Purchaser are made only in accordance with authorizations of management and directors of the Purchaser; and (iii) are designed to provide reasonable assurance regarding prevention or timely detection of any unauthorized acquisition, use or disposition of the property or assets of the Purchaser that could have a material adverse effect on the Purchaser Financial Statements.

- (b) There is no material weakness relating to the Purchaser's internal control over its financial reporting that involves management or other employees who have a significant role in the internal control over financial reporting of the Purchaser.
- (c) None of the Purchaser, or, to the Purchaser's knowledge, any director or officer or auditor, accountant or representative of the Purchaser has received or otherwise obtained knowledge of any material complaint, allegation, assertion, or claim, whether written or oral, regarding accounting, internal accounting controls or auditing matters, including any material complaint, allegation, assertion, or claim that the Purchaser has engaged in questionable accounting or auditing practices, or any expression of concern from its employees regarding questionable accounting or auditing matters.

(12) **Absence of Other Liabilities.**

- (a) There are no liabilities or obligations of the Purchaser of any kind whatsoever, whether accrued, absolute, contingent, determined, determinable or otherwise, other than liabilities or obligations (i) disclosed in the Purchaser Filings, (ii) incurred in connection with this Agreement, or (iii) incurred in the Ordinary Course since the date of the most recently filed Purchaser Financial Statements.
- (b) The Purchaser is not a party to, or has any commitment to become a party to, any joint venture, off balance sheet partnership or any similar agreement (including any agreement or arrangement relating to any transaction or relationship between or among the Purchaser, on the one hand, and any unconsolidated entity, including any structured finance, special purpose, or limited purpose entity or person, on the other hand) or any "off balance sheet arrangements" (as defined in the instructions to Form 51-102F1 of National Instrument 51-102, -*Continuous Disclosure Obligations*) where the result, purpose or effect of such agreement or arrangement is to avoid disclosure, of any material transaction involving, or material liabilities of, the Purchaser in the Purchaser's financial statements or any other documents filed by the Purchaser under applicable Securities Laws.
- (c) **Absence of Changes.** Except as set forth in, or permitted by, this Agreement, since February 28, 2021 (i) the business of the Purchaser has been conducted only in the Ordinary Course, (ii) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) which has had, or is reasonably likely to have, a Material Adverse Effect, has been incurred, (iii) the Purchaser has not amended or made any changes to the Constating Documents of the Purchaser, (iv) there has not been any change in the accounting practices used by the Purchaser, except as disclosed in the Purchaser Filings, and (v) there has been no material write-down in the assets of the Purchaser



(13) **Material Contracts.**

- (a) Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, the Purchaser is not in breach or violation of or default (in each case, with or without notice or lapse of time or both) under the terms of any Purchaser Material Contract. As of the date hereof, to the knowledge of the Purchaser, no other party to any Purchaser Material Contract is in material breach of, or default under the terms of, or has threatened to terminate, any such Purchaser Material Contract. Each Purchaser Material Contract is a valid and binding obligation of the Purchaser in accordance with their respective terms and conditions, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other laws of general application affecting the rights and remedies of creditors and general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). To the knowledge of the Purchaser, there are no circumstances that are reasonably likely to adversely affect the ability of the Purchaser to perform its material obligations under any Purchaser Material Contract. The Purchaser has not received any notice (whether written or oral), that any party to a Purchaser Material Contract intends to cancel, terminate or otherwise modify or not renew its relationship with the Purchaser and, to the knowledge of the Purchaser, no such action has been threatened.

(14) **Employment and Labour Relations.**

- (a) There are no material agreements, promises or commitments providing for cash or other compensation or benefits upon the consummation of the transactions contemplated by this Agreement. The Purchaser is in material compliance with all employment contracts and have not received any written notice from any employee or consultant that any term of a Contract has been breached.
- (b) There are no labour proceedings pending or, to the knowledge of the Purchaser, unfair labour practice complaints threatened before any Governmental Entity in any jurisdiction with respect to the Purchaser that would reasonably be expected to have a Material Adverse Effect.
- (c) There is no labour strike, work stoppage or lockout pending or to the knowledge of the Purchaser threatened against the Purchaser that would reasonably be expected to have a Material Adverse Effect.
- (d) The Purchaser is not a party to or bound by any collective agreements and no collective agreement is currently being negotiated by the Purchaser.

(15) **Environmental.**

- (a) Since May 31, 2019, the business of the Purchaser is in compliance with all



applicable Environmental Laws except for such instances where the failure to comply would not reasonably be expected to have a Material Adverse Effect. There are no outstanding or to knowledge of the Purchaser threatened writs, injunctions, decrees, orders, judgments, actions, suits, claims, governmental information requests or proceedings against the Purchaser relating to non-compliance with or liability under any Environmental Law that would have a Material Adverse Effect. No written notice, order, complaint, or penalty has been received by the Purchaser alleging that the Purchaser is in violation of, or has any liability or potential liability under, any Environmental Law, and the Purchaser is not aware of any facts or circumstances that could reasonably be expected to give rise to any such notice, claim, order, complaint or penalty.

(16) **Taxes.**

- (a) The Purchaser has duly and timely made or prepared all Tax Returns required to be made or prepared by it, has duly and timely filed all Tax Returns required to be filed by it with the appropriate Governmental Entity and such Tax Returns are complete and correct in all material respects.
- (b) The Purchaser has, in all material respects: (i) duly and timely paid all Taxes due and payable by it; (ii) duly and timely withheld all Taxes and other amounts required by Laws to be withheld by it and has duly and timely remitted to the appropriate Governmental Entity such Taxes and other amounts required by Laws to be remitted by it; and (iii) duly and timely collected all amounts on account of sales or transfer taxes, including goods and services, harmonized sales, sales, value added, federal, provincial, state or territorial sales taxes, required by Law to be collected by it and has duly and timely remitted to the appropriate Governmental Entity any such amounts required by Laws to be remitted by it.
- (c) The charges, accruals and reserves for Taxes reflected on the Purchaser Financial Statements (whether or not due and whether or not shown on any of the Tax returns but excluding any provision for deferred income taxes) are, in the opinion of the Purchaser, adequate under IFRS, to cover Taxes with respect to the Purchaser for the period covered thereby, in all material respects and since the publication date, no material liability for Taxes not reflected in such statements or otherwise provided for has been assessed, proposed to be assessed, incurred or accrued, other than in the Ordinary Course.
- (d) Other than as publicly disclosed there are no investigations, audits or claims now pending or to the knowledge of the Purchaser, threatened against any of the Purchaser in respect of any Taxes and there are no matters under discussion, audit or appeal with any Governmental Entity relating to Taxes.

- (e) No waiver of any statutory limitation period with respect to Taxes has been given or requested with respect to the Purchaser.
  - (f) The Purchaser has not entered into any agreement or other arrangement in respect of Taxes or Tax Returns that has effect for any period ending after the Effective Date.
  - (g) There are no Liens for Taxes upon any properties or assets of the Purchaser (other than Liens relating to Taxes not yet due and payable and for which adequate reserves have been recorded on the most recent balance sheet included in the Purchaser Financial Statements).
  - (h) For the purposes of the Tax Act and any other relevant Tax purposes, the Purchaser is resident in Canada and a “taxable Canadian corporation”.
- (17) **Insurance.** The Purchaser is, and has been continuously since April 20, 2020, insured by reputable third-party insurers in amounts and in respect of such risks as the Purchaser has reasonably determined to be appropriate for the size and nature of the business of the Purchaser and its assets, including a sufficient level of insurance necessary to comply with the terms and conditions of its Authorizations and the Purchaser Material Contracts. The third-party insurance policies of the Purchaser are in full force and effect in accordance with their terms and the Purchaser is not in material default under the terms of any such policy. There is no material claim pending under any such policies as to which coverage has been questioned, denied or disputed, and no notice of cancellation or termination has been received with respect to any such policy which has not been replaced on substantially similar terms prior to the date of such cancellation or termination.
- (18) **Authorizations.** The Purchaser holds all Authorizations necessary for the lawful operation of the business currently conducted by the Purchaser, other than such Authorizations the absence of which would not, individually or in the aggregate, have reasonably be expected to have a Material Adverse Effect. Each Authorization is valid, binding and in full force and effect, and the Purchaser is in material compliance with the terms of such Authorizations. The Purchaser has not received any notice of proceedings relating to the revocation or modification of any such Authorization which, if the subject of an unfavourable decision, ruling or finding would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and there has not occurred any event which would reasonably be expected to result in the revocation, cancellation, non-renewal or adverse modification of any such Authorization.
- (19) **Compliance with Laws.**
- (a) The Purchaser is in compliance with the requirements of all applicable Laws

which affect it or its business or assets or to which it is subject (the “**Subject Laws**”), except for such instances where the failure to comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Purchaser has not received within the last twelve months any written notice or other written communication from any Governmental Entity with respect to a violation and/ or failure to comply with the Subject Laws, except for such instances where the failure to comply would not reasonably be expected to have a Material Adverse Effect.

- (b) Neither the Purchaser, nor to the knowledge of the Purchaser, any of its directors, executives, representatives, agents or employees has, (i) used or is using any corporate funds for any illegal contributions, gifts, entertainment or other expenses relating to political activity that would be illegal, (ii) used or is using any corporate funds for any direct or indirect illegal payments to any foreign or domestic governmental officials or employees, (iii) violated or is violating any provision of the *Corruption of Foreign Public Officials Act* (Canada) or any applicable Law of similar effect, (iv) has established or maintained, or is maintaining, any illegal fund of corporate monies or other properties, or (v) made any bribe, illegal rebate, illegal payoff, influence payment, kickback or other illegal payment of any nature.

- (20) **Related Party Transactions.** Except as contemplated by this Agreement, and as disclosed in the Purchaser Filings, no shareholder, officer, director or consultant of the Purchaser, nor any of their respective Affiliates (other than the Purchaser) (i) provides material services to (other than service as an employee, director, officer or consultant) or is involved in any business arrangement or relationship with the Purchaser other than employment arrangements or consulting agreements entered into in the Ordinary Course, (ii) owns any material property or right, tangible or intangible, which is used by the Purchaser, or (iii) is a party to any Contracts or other transactions (including relating to indebtedness of the Purchaser, but excluding any employment, consulting or similar contracts) in which the Purchaser is the counter-party.

- (21) **Restrictions on Conduct of Business.** The Purchaser is not a party to or bound by any non-competition agreement, any non-solicitation agreement, or any other agreement, obligation, judgment, injunction, order or decree which purports to (i) limit in any material respect the manner or the localities in which all or any portion of the business of the Purchaser are conducted, (ii) limit any business practice of the Purchaser in any material respect, or (iii) restrict any acquisition or disposition of any property by the Purchaser in any material respect. None of the Purchaser or any of its properties or assets is subject to any outstanding judgment, order, writ, injunction or decree that involves or may involve, or restricts or may restrict, the right or ability of the Purchaser to conduct its business in all material respects as it has been carried on prior to the date hereof, or that would impede the consummation of the transactions contemplated by this Agreement.

- (22) **Litigation.** There are no claims, actions, suits, arbitrations, inquiries, investigations or proceedings that have been commenced or are pending or, to the knowledge of the Purchaser, threatened against or relating to the Purchaser or its property or assets before any court or Governmental Entity that, if adversely determined, would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or prevent or delay consummation of the transactions contemplated by this Agreement. The Purchaser is not subject to any outstanding order that would have or reasonably be expected to have a Material Adverse Effect or prevent or delay consummation of the transactions contemplated by this Agreement.
- (23) **Auditors.** The auditors of the Purchaser are independent public accountants as required by applicable Laws and there is not now, and there has not since May 31, 2019, been, any reportable event (as defined in National Instrument 51-102 - *Continuous Disclosure Obligations*) with the present or any former auditors of the Purchaser.
- (24) **Arrangements with Company Shareholders.** Other than the Purchaser Voting Agreements, the Purchaser does not have any agreement, arrangement or understanding (whether written or oral) with respect to the Company or any of its securities, business or operations with any shareholder of the Company, any interested party of the Company, or any joint actor with any such persons (and for this purpose, the terms “interested party”, “related party” and “joint actor” shall have the respective meanings ascribed to such terms in *Multilateral Instrument 61-101- Insider Bids, Issuer Bids, Going Private transactions and Related Party Transactions*).
- (25) **Purchaser Board Approval.** The Purchaser Board, after consultation with its financial and legal advisors, has unanimously (i) determined that entering into this Agreement and completion of the transactions contemplated thereby are fair to and in the best interests of the Purchaser Shareholders; and (ii) authorized the entering into of this Agreement and the performance by the Purchaser of its obligations under this Agreement, including without limitation, to issue the Consideration Shares; and no action has been taken to amend or supersede such determinations, resolutions or authorizations.